

CONSIDERATIONS CONCERNING THE PROMULGATION OF AN ENVIRONMENTALLY JUST PUBLIC HEALTH ORDINANCE

Environmental Justice attempts to remedy the negative impacts of environmental regulations that fall disproportionately on low income and/or minority communities. This intersection of environmental and civil rights requires dynamic enforcement that adapts to public and environmental needs. The ordinance focuses on assessment and enforcement: its equity and accountability. Through comprehensive data collection and timely analysis, remediation can proactively recognize and prevent injustices as they develop. This level of foresight, coupled with public participation, will ensure impartial enforcement of environmental regulations or laws. The ordinance not only aims to resolve cases of injustice, but provides communities with a framework and resources for sustainable economic development. A dynamic system of regulation that evolves in response to analytical and public feedback will protect the environment, public health, and communities' civil rights.

Rationale

In considering the development of a policy to address environmental injustice, it is helpful to place this effort in the context of history and the context of possibility. The persistence of these disparities suggests that these issues must be tackled. One of the purposes of government is to address the problems that individuals cannot come to grips with and to find ways to address issues that are not easily solved.

Moreover, the ordinance seeks to instill an appropriate sense of urgency to address the intersection of environmental injustice with economic, social, and political dispossession. The ordinance acknowledges the disproportionate effects of environmental regulation on low income and/or minority communities as a direct result of the misallocation of environmental burdens, stemming from an absence of responsible governance. Provisions are set in place to empower civil society and alter existing mechanisms capable of remedying these greater injustices, in the interest of resolving conflict and advancing collective progress.

Definitions

Unless specifically defined, words or phrases used in the ordinance shall be interpreted to have the meaning they have in common usage and to give the ordinance the most reasonable interpretation and application. Stressing the rule of reason provides flexibility and gives the opportunity to see how and with what goal processes are conducted.

Declaration of Policy

By articulating the policy clearly, these statements can be consulted in the future as a guide to resolve questions. Clearly stating what actions are necessary, will provide certainty and due process that is efficient, reliable, and trustworthy. These policies connect the goals with its implementation. As such, the [appropriate authority] is committed to the following principles:

Equal Protection

It is useful to define or discuss the principle within the context of Environmental Justice as an application, not as an abstract concept. Equal protection is often interpreted as a limit, a point at which the government intervened to rectify a situation of discrimination. However, another way to think about it can be in a more positive way, as something that must be taken into account at many points in order to effect the fair and equal treatment of all people regardless of race, color, culture, national origin, or income. Equal protection should be defined in the context of development or redevelopment, and enforcement of laws, regulations, policies, and/or actions that can improve public health and/or the environment in order to bring about Environmental Justice.

Prevention

The mechanism of an EJ Community Impact Assessment is designed to bring about closer scrutiny of alternatives. Appropriate action should be taken to prevent or mitigate harm, when such harm is reasonably foreseeable. The [city/town/village] is given the authority to refuse approval for development or redevelopment when alternatives are not being adequately examined in good faith. Interested parties have a chance to pose inquiries, in order to ensure that good faith examinations of alternatives are made. The process of Administrative Review can better realize the intent of the impact assessment process rather than simply focusing on just the impacts themselves, and it can encourage the siting and development of cleaner and safer activities that do not require assessment or extensive evaluation of alternatives.

Another aspect of prevention is to conduct studies in a community to reduce impacts and favor cleaner and safer development. This provides a foundation to ensure that those living, residing, and/or working in a community understand the risks and have effective resources for reducing them.

Proportionality

Development or redevelopment initiatives shall be encouraged that will not disproportionately impact public health or the environment, or impose undue impacts on low income and/or minority communities. Disproportionate environmental burdens and pollution imposed on low income and/or minority communities pursuant to standards of Environmental Justice shall be identified, prevented, and, where possible, eliminated. This necessitates the understanding of cumulative risks.

Access to Information

Complete and accurate information shall be provided on potential impacts on public health and the environment associated with municipal decisions. Public participation and transparent decision-making shall be promoted as crucial to identify risks to public health and the environment, and alternatives shall be selected that avoid or minimize such risks.

Additionally, available expertise should be tapped to help with decision-making and evaluation pertinent to implementing this policy effectively. Members of a community who have expertise relevant to evaluating alternatives or impact should be asked to provide advice and comment, and public discussion of relevant questions should be conducted in frequent open meeting that take place in the neighborhoods at the convenience of those potentially affected.

Scope

It is the goal of the [appropriate authority] to provide Environmental Justice to all EJ communities of [city/town/village] by insuring that all Proposed Projects will not have a material, cumulative, and/or adverse impact on those communities in which they are located.

Because the process of an EJ Community Impact Assessment will only protect some communities, it is important to stress that the [city/town/village] has the universal goal to protect public health and the environment in its entire jurisdiction.

Assessment

An EJ Community Impact Assessment is meant to give an overview of the potential impact of a Proposed Project in an EJ community. The following factors shall be included:

- a. an overview of both positive and negative impacts of the Proposed Project;
- b. any cumulative impacts, which, when viewed in isolation, may be considered insignificant, but when viewed in combination with prior or planned development and ongoing activities or reasonably foreseeable activities, may prove to be detrimental;
- c. any adverse effects, which cannot reasonably be avoided, but taking into account practicable and feasible mitigation measures, including mitigation that may offset existing impacts;
- d. any reasonable alternatives to the Proposed Project or portion thereof, including identification and consideration of alternatives which do not require an EJ Community Impact Assessment;
- e. any potentially irreversible environmental and public health impacts, and commitment of resources, which cannot feasibly be avoided, as well as any other negative environmental and public health impacts, which may disproportionately affect low income and/or minority communities, or otherwise contradict with the principles of Environmental Justice, such as food justice and generational equity.
- f. any specific benefits to a Proposed Project in relation to the development of a community.

The EJ Checklist provides additional relevant analysis to the [appropriate authority], which includes, at minimum:

- a. name of the applicant;
- b. contact information;
- c. location of the Proposed Project;
- d. summary description of the Proposed Project;
- e. description of the existing land use at project site;
- f. summary description of pre-existing environmental conditions within a half-mile radius of project site;
- g. description of the measures taken to inform or engage the community about the Proposed Project prior to the application.

Public Notice

It is especially important that information being spread to EJ communities is in a comprehensible format. This means that documents should be translated into the languages present in a community and that the information is given in plain language. This means that efforts should be

made to streamline information in such a way that individuals do not have to have previous knowledge to understand it. Its purpose is to educate, not confuse, and to give the people a simple way to address the problem at hand.

Public Participation

The process for public engagement should be brief and simple. A public space should be provided for public education and comment, for example at community meetings, preferably held in the evenings and with multiple dates to attend, or with video or transcript posted online. There should also be a window of time given to interested parties to comment on an EJ Community Impact Assessment completed for a project in their community, whether in person or online. In order to provide this option, there should be clear instructions on how to comment. A position for a community advocate can be established to help bring affected parties into the discussion. There should be a translator present at public events, possibly through the Department of Justice's Limited English Proficiency Plan.

Administrative Review

An applicant must demonstrate that all reasonable strategies to mitigate any significant impacts on the impacted community have been exhausted. As put, such developments may not be excused from the requirement to address those points in the provision. The notice by an applicant will provide an opportunity for meaningful input and participation.

The [appropriate authority] shall take, at minimum, the following Environmental Justice factors into consideration:

- a. reasonably available demographic information on the community in which the Proposed Project is located, including demographic and environmental maps from the [appropriate authority] of the [city/town/village] of the [name of city/town/village] and the United States Environmental Protection Agency;
- b. reasonably available information on the potential disproportionate burden of a community in which the Proposed Project is located in respect to public health and environment, including number of pollution sources that could potentially impact that community, proximity of those source to the community, and hazardous waste sites in the area;
- c. reasonably available information on the presence of sensitive receptors within one mile of a Proposed Project, including residences, schools, hospitals, elder care or special needs facilities, daycare centers, and public parks or playgrounds.

A Proposed Project will have a material, cumulative, and/or adverse impact on the public health or environment of a community in which a Proposed Project is located when operation of that project would cause a public nuisance, significantly interfering with a public health or environment right common to the general public. A Proposed Project shall be considered a per se public nuisance if the [appropriate authority] finds that there is reasonable basis to conclude that the Proposed Project will cause cases, including, but not limited to, of:

- a. excess cancer risk;
- b. excess risk of acute health effects;
- c. excess risk in the event of an accident.

If the [appropriate authority] conditionally approves an EJ Community Impact Assessment, thus imposing such conditions on an applicant that are necessary to mitigate the material, cumulative, and/or adverse impact of the Proposed Project, these conditions must then be expressly set forth in the findings and conclusion of the [appropriate authority].

Appeal

Within a remediation process of historic injustice, alternative dispute resolution is recommended. This provides a way for an applicant as well as interested parties to address their grievances, while it also seeks change, shares in decision-making, and promotes innovative solutions. Alternative dispute resolution, which includes, but is not limited to mediation and arbitration, can also be used in cases where there is no clear legal claim or where litigation is just not practical or affordable. A process of mediation with an independent mediator subject to the approval of all parties and under supervision of the [appropriate authority] is recommended.

If an agreement cannot be reached, a public appeal process should take place. In that case, the [appropriate authority] shall conduct an evidentiary hearing on the record and shall, by majority vote, enter a decision either affirming, reversing, vacating, or otherwise modifying the findings and conclusions made by the [appropriate authority]. This appeal process provides an applicant as well as interested parties with a mechanism for error correction.

Enforcement

Within an Environmental Justice ordinance, it is important to make sure that there is firm action associated with proposed regulations. An enforcement strategy helps to ensure that all communities within the [city/town/village] live in a safe and healthy environment, and that law enforcement responds as fully as possible to the real risks to public health and the environment that they face.

Evaluation of the effectiveness of enforcement should be periodically undertaken in order to determine whether compliance rates are either increasing or decreasing, and whether resources are and can be effectively targeted to means of resolving conflicts so that they do not recur, victims are made whole, and violators are given the chance of rehabilitation and reform their activities.

Public Danger

This needs to be understood in cumulative terms. Health disparities, social inequalities, and environmental injustice cumulatively affect individual as well as community vulnerability and risk. Cumulative risk assessment and remedial action need to address all of these sources of vulnerability.

Further Comments

In moving forward on strengthening compliance, a community needs to reexamine its investment strategy. One example of this is through the Community Reinvestment Act, which is intended to encourage banking and savings institutions to help meet the credit needs of communities and to stop discrimination against low to moderate income communities when investing capital. Banks depending on the Federal Deposit Insurance Corporation are evaluated on these practices. These regulations given by the Community Reinvestment Act mean that a community has the right to

fight against non-compliance. A community may employ incentives to report observed violations of the ordinance or existing laws mentioned therein.

Another example of how to examine the investment strategy of a community is through the development of green jobs and economies. In order for investments to be leveraged, regulation changes are necessary. The performance of clean investments must be measured based on its ability to maintain and enhance natural capital as a source of public benefits. This includes evaluation of social and economic dimensions of the investments, carried out with a multi-stakeholder approach. Mandatory corporate reporting that enhances accountability to parties complicit in dirty investments, or investments based in fossil fuels, is essential. Surrogate accountability is the most fitting method to ensure consideration of the social and environmental consequences of corporate injustice. This involves a third party mediator between vulnerable communities and corporate actors, to sanction power wielders. Communities are also encouraged to make pledges to limit or eradicate any further investment in industry dependent on dirty energy.

An Environmental Justice ordinance should also provide communities with the framework and resources for sustainable economic development that attracts environmentally friendly business. Investment into education and green job/trade training programs will attract clean industries, thus combatting dirty industries that result in the disproportionate concentration of pollutants in particular communities. An ordinance will therefore promote social justice through economic sustainability.

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