

ORDINANCE TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT
AND TO PROMOTE ENVIRONMENTAL JUSTICE

WHEREAS, the [city/town/village] of [name of city/town/village] seeks to promote the health and welfare of those who live, work, do business, and visit within the [city/town/village], and to protect the quality of the urban environment for the benefit of current and future generations;

WHEREAS, patterns of racial, ethnic, and economic inequality in the United States result in the geographic concentration of environmentally hazardous land uses and sources of pollution that disproportionately burden the health of low income and/or minority communities, which outcome is known as environmental injustice, and which has been addressed in federal and state policy through Presidential Order 12898, State of [name of State] [Executive Order/Constitution]; and

WHEREAS, the United States Environmental Protection Agency has recognized the importance of local governments exercising local police power to protect local populations from excess levels of pollution, and that the Agency does not have the authority to make local permitting or land use decisions; and

WHEREAS, a strong economy is fostered by protection of human health and the environment, and the basic right of equal protection; and

WHEREAS, it is the role of the [Mayor/Council] to achieve an appropriate balance between environmental protection and economic development, and the risk levels established by this ordinance are selected to strike that balance; and

WHEREAS, to protect human health and the environment for the benefit of all populations, municipal decision-makers need accurate information about the impacts of proposed action, including those on the determinants of health and the environment, and how these will be impacted by municipal decision making; now, therefore,

BE IT ORDAINED by the Council of the [city/town/village] of [name of city/town/village], [name of state] that:

this ordinance to protect public health and the environment and to promote Environmental Justice is hereby adopted.

Article 1. Definitions

The following words and phrases shall mean:

- a. applicant: any person, corporation, partnership, firm, or any other entity making an application to the [city/town/village] of [name of city/town/village] pursuant to this ordinance.
- b. community: a group of people living in a localized area who share common political, economic, and/or social interests.

- c. cumulative impact: the incremental impact of the action which, if viewed separately, may be insignificant, but when added to past, present, and reasonably foreseeable future action, can have significant impact on the environment and determinants of health.
- d. determinant of health: according to the U.S. Department of Health and Human Services, a factor that contributes to a person's current state of health, which may be biological, socioeconomic, psychosocial, behavioral, and/or social in nature, which includes, but is not limited to, impacts on the natural and/or built environment, exposure to toxic substance and other physical hazards, physical barriers, aesthetic elements, availability of resources to meet daily needs, social norms and attitudes, exposure to crime, violence and social disorder, social support and social interactions, exposure to mass media and technology, socioeconomic conditions, quality schools, transportation options, public safety, and residential segregation.
- e. disproportionate impact: low income and/or minority communities are at greater risk of developing chronic health problems due to environmental hazards and/or experiencing environmental racism than other communities.
- f. EJ Checklist: an informational document covering specific environmental impact information that must be submitted by an applicant in addition to that required in an Environmental Community Impact Statement.
- g. EJ community: a community in which there are health and quality of life concerns relative to perceived risks to the health of those living, residing, and/or working in that community that may be the result of environmental factors, designated through a transparent process approved by the [appropriate authority] and using the best available information as well as the available relevant expertise.
- h. EJ Community Impact Assessment: an assessment issued by an applicant to the [city/town/village] of [name of city/town/village], which allows a Proposed Project to operate in the community in which it is located.
- i. Environmental Justice: the fair treatment and meaningful involvement of all people regardless of race, color, culture, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
- j. host community benefit: a site-specific agreement to ensure that a particular project, facility, development, and/or redevelopment create opportunities for local workers and communities.
- k. inherently beneficial: a project, facility, development, and/or redevelopment that has been declared by courts of competent jurisdiction or by legislation to be universally considered of value to the community; these include, but are not necessarily limited to child care facilities, lower income or subsidized housing, group homes for the disabled, schools, hospitals, homes for the elderly, assisted living facilities, places of worship, and renewable energy facilities. Not included are certain public facilities of non-residential or industrial nature, such as sewage treatment plants, cell tower installations, or facilities that result in a substantial displacement of existing residents or small businesses.
- l. interested party: any person or legal guardian of a person who owns property, lives, works, or attends a school, house of worship, daycare, elder care, and/or special needs facility, and/or regularly visits a public park or playground in a community in which the Proposed Project is located.
- m. Proposed Project: any development or redevelopment initiative seeking a permit within a community in the [city/town/village] of [name of city/town/village].

n. public trust: the principle that certain natural and cultural resources are to be preserved for public use, and that the government owns and must protect and maintain these resources for the public's use. The environment is subject to a public trust that must be protected and administered for the benefit, safety, and well-being of all future and present residents of the [city/town/village] of [name of city/town/village], regardless of race, color, culture, national origin, or income.

Article 2. Declaration of Policy

1. The [appropriate authority] is committed to develop laws, policies, and plans within the jurisdiction of the [city/town/village] to protect interests of all citizens and residents, to foster healthy communities, to create and maintain a healthy and viable environment for future and current generations, and to become a model of economic and environmental sustainability.
2. It is the fiduciary duty of the [city/town/village] to prevent harm to public health and the environment as effective governance requires monitoring, consultation with those who are affected, and appropriate action.
3. In order to effect this goal, the [city/town/village] shall create a process by this ordinance in order to assess whether new activities requiring approval will increase impacts in already impacted areas.
4. By instituting this action, the [city/town/village] shall provide expedited approvals to those activities requiring approval that will not increase impacts where they are already too great, and shall thus realize the aim of creating jobs and economic development appropriate to EJ communities.

Article 3. Scope

This ordinance shall apply in those communities as identified being an EJ community within the jurisdiction of the [city/town/village] of [name of city/town/village].

Article 4. Assessment

1. Each application for approval of a Proposed Project to the [appropriate authority] or entity designated by the [Mayor/Council], expected to result in an increase in impact to the community in which that Proposed Project is located, shall include preparation and submission of an EJ Community Impact Assessment pursuant to the standards and criteria in this ordinance and the principles of Environmental Justice.
2. The EJ Community Impact Assessment shall accompany the Proposed Project throughout the review process and shall be an official part of the record subject to such public hearing and notice as authorized by law.
3. Each EJ Community Impact Assessment shall satisfy the informational requirements set forth in this ordinance, including those items identified in the EJ Checklist, in order for an application of a Proposed Project to be declared complete.
2. The EJ Community Impact Assessment shall include and provide a detailed statement and analysis of the environmental and public health impacts of the Proposed Project in relation to the current conditions of the site, consisting of:
 - a. both positive and negative impacts;
 - b. any material, cumulative, adverse impacts;
 - c. any reasonable alternatives;

- d. any potentially irreversible environmental and public health impacts, and commitment of resources;
 - e. any negative environmental and public health impacts;
 - f. host community benefits.
4. In the event that the [appropriate authority] determines that no increase in impact to a community is expected or a de minimis amount is expected, the [appropriate authority] shall make a statement available to the public on how this determination was made.

Article 5. Public Notice

1. The [appropriate authority] shall, at the applicant's expense, provide written notice by United States mail to:
- a. any community council, hospital, school, library, and/or daycare located within [distance in miles] of the Proposed Project;
 - b. all readily ascertainable addresses within [distance in miles] of the Proposed Project.
2. This written notice shall be mailed within [number of days] following the determination that the Impact Assessment is complete.
3. The [appropriate authority] shall make all comprehensive information submitted by the applicant available to the public within [number of days] after the notice is mailed.
4. The [appropriate authority] shall give notice and provide comprehensive information through the website of the [city/town/village] of all projects that are subject to the provisions of this ordinance.
5. The [appropriate authority] shall place a public announcement of the notice in local newspapers, and include it in radio announcement. Additionally, the notice shall be recorded in the public calendar and be announced during public meeting of the [Council].

Article 6. Public Participation

1. Any interested party may submit information, comments, and/or questions relating to either the Proposed Project or the community in which the Proposed Project is located, to the [appropriate authority], which shall consider all such information in making a determination as to whether or not an EJ Community Impact Assessment will be approved.
2. Any interested party shall have [number of days] from the date the notice is mailed to provide additional written information relating to Environmental Justice factors, the EJ Community Impact Assessment, and/or the EJ Checklist. This period may be extended at the discretion of the [appropriate authority].
3. The applicant and any interested party shall have a reasonable opportunity during normal business hours to examine any information that has been submitted concerning a Proposed Project.
4. The [appropriate authority] shall maintain a public list of all information, comments and/or questions that have been received by interested parties, and post a response to the comments and questions within [amount of days] of submission.
5. The [appropriate authority] shall independently examine possible alternative to ensure a good faith effort has been made and will seek independent advisory assistance, if needed and as available. Information, comments and/or questions by an interested parties on alternatives, shall be given close consideration by the [appropriate authority].

Article 7. Administrative Review

1. If the applicant fails to submit an EJ Community Impact Assessment that is reasonably complete, subject to the right of the applicant to be excused from an informational requirement that is unduly burdensome or not relevant to the decision at issue, the [appropriate authority] may dismiss a permit application or terminate the initiative without prejudice.
2. If in response to the [appropriate authority]'s evaluation of good faith effort to examine alternatives the applicant fails to select an alternative which, as identified by the [appropriate authority or an interested party, appears to be practicable and feasible, reasonably affordable, and/or less harmful to public health and the environment, it shall be subject to rejection of a permit application, even if otherwise authorized by governing law; or
3. The [appropriate authority] may condition its approval on the applicant on such mitigation measures as will lessen harm to the environment, taking into account all reasonable costs and benefits of same, if authorized by governing law.
4. The [appropriate authority] may determine a Proposed Project as inherently beneficial upon request of the applicant as to be excused of the requirement of an EJ Community Impact Assessment, notwithstanding the applicant shall still be required to address:
 - a. determinants of health;
 - b. permanent displacement of existing residents;
 - c. dislocation of a significant number of small businesses.
5. The applicant shall request a designation of a Proposed Project being inherently beneficial no later than when notifying the [appropriate authority] of the plans at hand, filing for a permit, seeking public financing, or whichever comes sooner.
6. The [appropriate authority] shall consider all evidence submitted by the applicant and any interested party.
7. The [appropriate authority] will inform the applicant of either approving, conditionally approving, or declining an EJ Community Impact Assessment within [number of days] of its receipt, and shall issue its written findings and conclusions taking into consideration the relevant Environmental Justice factors and determining compliance with this ordinance.
8. An EJ Community Impact Assessment will be conditionally approved in the event that the [appropriate authority] determines that a Proposed Project will pose a material, cumulative, and/or adverse impact on the public health or environment of a community in which a Proposed Project is located, and that the conditions in an EJ Community Impact Assessment will prevent such a material, cumulative, and/or adverse impact.
9. The [appropriate authority] shall provide written notice by United States mail to the applicant.

Article 8. Appeal

1. The [appropriate authority] shall provide alternative dispute resolution to an applicant and any interested party.
2. The applicant and any interested party may file an appeal in writing with the [appropriate authority] requesting a hearing within [number of days] of the mailing of the findings and conclusions by the [appropriate authority].

Article 9. Enforcement

1. Whenever on the basis of any information the [appropriate authority] determines that any person has violated or is in violation of this ordinance, the [appropriate authority] may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both.
2. Any order issued under this ordinance may include a revocation of any development or redevelopment permit that is in conjunction to an EJ Community Impact Assessment under this ordinance, and shall state with reasonable specificity the nature of the violation.
3. Any penalty assessed in the order shall not exceed [amount in dollars] per day of noncompliance. In assessing the penalty, the [appropriate authority] shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.
4. If a violator fails to take corrective action within the time period specified in the compliance order, the [appropriate authority] may assess a civil penalty of not more than [amount in dollars] for each day of continued noncompliance with the order and the [appropriate authority] may revoke any development or redevelopment permit issued to the violator that is in conjunction to an EJ Community Impact Assessment under this ordinance.
5. Any compliance order issued under this ordinance shall become final upon the date of issuance unless, not later than [number of days] after the order is issued, the person or persons named therein submits a written request for a hearing to the [appropriate authority]. No later than [number of days] after receipt of such request, the [appropriate authority] shall conduct a hearing.
6. In connection with any proceeding under this section, the [appropriate authority] may seek the issuance of subpoenas by the [appropriate authority] for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.
7. No later than [number of days] after the conclusion of the hearing, the [appropriate authority] shall issue a revised order incorporating any relevant information obtained at the hearing, or shall rescind the previously issued order. A revised order shall become final upon the date of issuance.
8. In the absence of appropriate corrective action, upon consultation with the [appropriate authority], the [appropriate authority] may commence a civil action for appropriate relief, including a temporary or permanent injunction.
9. Any person who knowingly violates the requirement of this ordinance in that an EJ Community Impact Assessment be obtained before operating a Proposed Project, or knowingly omits material; information or makes any false material representation in an application under this ordinance, commits a misdemeanor of the first degree and shall, upon conviction, be subject to a fine of not more than [amount in dollars] for each day of violation or imprisonment not to exceed [number of days], or both.

Article 10. Public Danger

1. If, upon consultation with the [appropriate authority], the [appropriate authority] finds that imminent danger to the public exists in relation to any apparent violation of this ordinance, the [appropriate authority] may immediately commence a civil action for appropriate relief, including a temporary or permanent injunction.
2. In any EJ community, the [appropriate authority] is required to redress impacts related to public health and the environment with targeted remedial action and resources.

Article 11. Severability

If any provision of this ordinance is determined by a court of competent jurisdiction to be unlawful, ultra vires, or unenforceable, it is the intention of the [city/town/village] that the remaining portions shall continue in full force and effect and be severed from the portion struck down by the court.

Article 12. Issuance

This ordinance shall take effect upon final approval and publication in accordance with the laws of the State of [name of State].

Article 13. Citation

This ordinance shall be cited as: Environmental Justice Ordinance.

By the BU Research for Environmental Agencies Directed Study Group (Fall 2016)
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