

ORDINANCE NO. 2019-XX

AN ORDINANCE of the City Council of the City of Bainbridge Island, Washington, promoting the City's Comprehensive Plan and the Sustainability Plan contained within; establishing Rights of Nature for the Natural Communities and Ecosystems of Bainbridge Island and Puget Sound; asserting, protecting, and promoting the fundamental rights of Bainbridge Island residents, both present and future, to clean air, clean water, clean soil, and a sustainable future.

WHEREAS, built on the right of local community self-governance, this ordinance establishes the legal rights of nature, which includes ecosystems and natural communities for Bainbridge Island and the surrounding marine environment of the Salish Sea they are connected to, in order to secure, protect, and promote our unalienable rights and the right of future generations to live in a climate system capable of sustaining human societies with access to clean air, clean water, and clean soil; and

WHEREAS, a number of specific examples show the destruction of the environment upon which all living things ultimately depend: the loss of 60% of animal populations since 1970, the accelerated nature of global warming, unabated deforestation practices ongoing around the world, dangerous concentrations of CO₂ present in the atmosphere, the destruction of entire marine ecosystems; regionally, Salish Sea marine water quality continues to deteriorate, and some species, like Chinook salmon and Southern Resident orcas, are dangerously below federal recovery goals and are not improving; and

WHEREAS, in response to the catastrophic consequences of exploiting the natural world for profit, the worldwide, national, and local environmental communities are urging governments to adopt a new paradigm base upon recognition that both individual human beings and ecosystems and natural communities have fundamental environmental rights which should be recognized by laws, that the health of the world's populations and ecosystems depend on the full protection of these rights, and that corporate rights can no longer be allowed to take precedence over these rights to human and environmental health and well-being; and

WHEREAS, in the last fifty years, national and state governments have attempted to address the escalating environmental crisis by adopting specific environmental protection laws, such as the Clean Water Act, Clean Air Act, National Environmental Policy Act, California Environmental Quality Act, and Washington State Environmental Policy Act that limit pollution and resource consumption, but those laws have proven inadequate to provide long-term protection of our rights to clean air, water, soil, sustainable food systems, and the rights of natural ecosystems to exist and flourish; and

WHEREAS, the inadequacy of these laws results, in part, from the underlying legal assumption that the natural world is "property," which may be used by its owners – largely corporations and governments – for their own, private, short-term economic benefit, generally with minimal regard for the health of the environment; and

WHEREAS, as declared in the City’s Comprehensive Plan, serving also as the City’s Sustainability Plan, preserving and protecting the environmental resources and natural amenities of Bainbridge Island and Puget Sound is a foundational component for the Vision of our City; and

WHEREAS, Guiding Principle 6 mandates that policy action and direction nurture Bainbridge Island as a sustainable community by meeting the needs of the present without compromising the ability of future generations to meet their own needs, therefore articulating the City’s commitment to promoting Intergenerational Equity on Bainbridge Island; and

WHEREAS, there are numerous specific examples of policy statements and laws based on this new paradigm that recognize the rights of the natural world to exist, persist, thrive, and naturally evolve, including: the Constitution of Ecuador, amended to include the rights of nature in 2008; the City of Toledo’s Lake Erie Bill of Rights in 2019, and the laws of other local governments in California, Colorado, Oregon, Maine, Maryland, New Hampshire, New Mexico, Ohio, Pennsylvania, and New York, all which have adopted similar measures; and

WHEREAS, locally, the City of Bainbridge Island has adopted the following resolutions to implement the City’s Comprehensive Plan, promote Intergenerational Equity, and emphasize Bainbridge Island’s commitment to local, national, and global environmental causes and concerns: Resolution No. 2016-21, declaring the second Monday in October as Indigenous Peoples Day in the City of Bainbridge Island; Resolution No. 2017-13, declaring the month of April to be Celebrate Trees! Earth Month Bainbridge Island; No. 2017-18, adopting the *Bainbridge Island Community Forest Plan*; Resolution No. 2017-20, affirming the City of Bainbridge Island’s commitment to meet or exceed goals established in the *Paris Climate Agreement*; Resolution No. 2019-12, affirming the importance of the Southern Resident orca whales to the identity and values of Bainbridge Island and the broader Salish Sea region; and

WHEREAS, the City is committed to fully implementing its Comprehensive Plan to further effectuate rights of natural communities and ecosystems of the City of Bainbridge Island.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 4 of the Bainbridge Island Municipal Code is hereby created to read as follows:

Chapter 4.01 GENERAL PROVISIONS

4.01.010 Title

This chapter shall be known as the Community Bill of Rights in the City of Bainbridge Island.

4.01.020 Findings

The City Council finds and declares:

A. With the exponential growth in human population and its increasing per capita resource consumption, the planet cannot sustain our current way of life, which is destructive to the natural elements upon which all species depend – the air, water, climate, soil, and other fundamental elements of the world.

B. These rights are not sufficiently safeguarded by the existing body of national and international environmental policies and laws, which are grossly inadequate to avert the mounting environmental crisis.

C. While progress is being made in some areas, many key indicators of Salish Sea Puget Sound ecosystem health are not showing improvement. Worse yet, some key indicators, such as resident orca and Chinook salmon populations, remain in a perilous state.

D. The inadequacy of the current framework of state, national, and international policies and laws necessitates a reexamination of the underlying societal and legal assumptions about our relationships with the environment and a renewed focus on effectuating these rights.

4.01.030 Purpose

This chapter is created and exists for the purpose of securing the right of natural ecosystems and natural communities on Bainbridge Island and those connected to the Salish Sea, as well as codifying Bainbridge Island's commitment to achieving sustainability, among other things: (1) asserting the city's commitment to preserve and protect our natural environment and all of its components and ecosystems, including, but not limited to, the air, water soil, and climate upon which all living things depend; (2) promoting sustainable management of groundwater supply, energy production and distribution transportation, waste disposal, and sustainable systems of food production and distribution; and (3) to the full extent legally possible, subordinating the short-term, private, financial interest of corporations and others to the common, long-term interest of achieving environmental and economic sustainability.

4.01.040 Rights of Bainbridge Island Residents and the Natural Environment

A. All residents of Bainbridge Island possess a fundamental right to a healthy environment, which includes, but is not limited to: clean water from sustainable sources; clean indoor and outdoor air; a sustainable food system; a stable, healthy climate system that supports a flourishing biodiverse land and marine environment; comprehensive waste and water disposal systems that do not degrade the environment; and a sustainable energy future based on renewable energy sources.

B. Ecosystems and natural communities within Bainbridge Island possess the fundamental right to naturally exist, flourish, regenerate, evolve, and be restored.

C. All residents of Bainbridge Island possess a fundamental right of self-government, which includes, but is not limited to, the following rights: first, the right to a system of local government founded on the consent of the people of the municipality; second, the right to a

system of local government that secures their rights; and third, the right to alter any system of local government that lacks consent or fails to secure and protect the people's rights, health, safety, and happiness.

D. All residents of Bainbridge Island possess the fundamental right to enforce this law free of interference from corporations, other business entities, and governments. That right includes the right of residents to be free from ceiling preemption, because this law expands right-protections for people and nature above those by less-protective state, federal, and international law.

4.01.050 Annual Report

At least once during every 12 month period, City staff shall prepare a written report to the City Council and community on the state of the environment in and around Bainbridge Island, including the Puget Sound environment, that includes the following:

1. An assessment of the state of the Puget Sound, drawing from the annual report prepared by the Puget Sound Partnership and other sources, such as the Puget Sound Keepers;
2. An assessment of impacts and contributions to water quality, primarily but not limited to stormwater, as it impacts Bainbridge Island and the larger Puget Sound ecosystem;
3. A sub-report prepared by the City's Climate Change Advisory Committee in conjunction with City staff on the state of the Earth's atmosphere, climate change, and Bainbridge Island's progress in doing its part to not only reduce its greenhouse gas emissions but to also show leadership in addressing climate change;
4. A sub-report by the City's Environmental Technical Advisory Committee in conjunction with city staff on the state of the Island's groundwater resources, including updates on development of a groundwater management plan and implementation of that plan; and
5. An overall summary of Bainbridge Island's progress in meeting the environmental stewardship goals and policies of the city's comprehensive plan.

4.01.055 Sustainability Test

The city shall take all necessary steps to fulfill the purpose of this chapter, including, but not limited to, an evaluation by city staff, the Planning Commission, and the Climate Change Advisory Committee, and all city projects, plans, activities, and legislation for consistency with the environmental sustainability goals and policies contained in the city's comprehensive plan, and for consistency with this chapter. Any inconsistencies shall be resolved within 6 months of identification.

4.01.060 Annual Hearing

The City Council shall annually review the report, conduct a public hearing, assess the city's progress in effectuating and enforcing the comprehensive plan, Salish Sea recovery actions identified in the biannual State of the Sound report, and the policies and provisions of this

chapter. The City Council shall provide direction to staff to ensure compliance with the comprehensive plan's provisions and with the fundamental rights of the people and natural communities of Bainbridge Island and Salish Sea secured herein.

4.01.070 Compliance Assurance

A. The city, or any resident of Bainbridge Island, may commence enforcement of this chapter only after:

1. The city or resident provides a notice letter to the alleged violator that describes the violative action(s) and necessary steps to remedy the violations(s);
2. Within 60 days of receipt of the notice letter, the violator neither remedies the violations nor agrees to mediate the issue; and
3. Within 120 days of receipt of the notice letter, the violator has not remedied the violation, either as stated in the notice letter or as agreed to in mediation.

B. The city or resident providing a notice letter shall also publish the notice letter, or at minimum the city or resident's name, contact information, date of letter, alleged violator's name, and a summary of the alleged violation and proposed remedy, in the principal newspaper or media source for Bainbridge Island, daily or as frequently as possible, for a least three weeks beginning within 30 days of providing the letter to the alleged violator. The city (if it did not provide the letter) and any resident may request to be informed of proceedings in resolving the alleged violation, and have a right to join in mediation.

C. Any business entity or government that willfully violates and provision of this law must be subject to a civil penalty in the amount of \$10,000 per day of violation.

D. Any business entity or government that willfully violates any provision of this law must be liable for any damages to an ecosystem or natural community caused by the violation. Damages must be measured by the cost of restoring the ecosystem or natural community to its state before the injury, and must be paid to the city to be used exclusively for the full and complete restoration of the ecosystem or natural community.

E. Governments and business entities engaged in activities that violate the rights and provisions of this law must be strictly liable for all harms and rights violations resulting from those activities.

F. Ecosystems and natural communities within Bainbridge Island may enforce or defend this law through an action brought in the name of the ecosystem or natural community as the real party in interest.

G. The city or any resident of Bainbridge Island may enforce or defend this law in any appropriate court. Any resident, and any ecosystem or natural community, has the right to intervene in any action concerning this law in order to enforce or defend it, and in such an action, the city must be deemed not to adequately represent their particularized interests.

Section 2. To the extent that any provision of the Bainbridge Island Municipal Code is inconsistent with the provisions of this ordinance, this ordinance shall govern.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. This ordinance shall take effect and be in force five days from and after its passage, approval, and publication as required by law.

PASSED by the City Council this ____ day of _____, 2019.

APPROVED by the Mayor this ____ day of _____, 2019.

Kol Medina, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK:	October 10, 2019
PASSED BY THE CITY COUNCIL:	_____, 20__
PUBLISHED:	_____, 20__
EFFECTIVE DATE:	_____, 20__
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