

Mount Vernon Environmental Justice Act of 2017

By Council Member Thomas

A Local Law

To amend the administrative code of the city of Mount Vernon, New York, in relation to requiring city agencies to develop and implement policies and programs to ensure nondiscriminatory compliance with environmental, energy, health and safety laws.,

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The Council finds that policy development, decision-making and actions of the city should reflect fairness in the distribution of environmental burdens and benefits, and that actions taken to protect City residents from shouldering an unjust share of environmental burdens or to assure that City residents receive an equitable share of environmental benefits reflect an appropriate exercise of the City's police power.

The Council further finds that all city residents are entitled to equal protection of their health, safety and welfare and that those aims cannot be achieved without protection of our natural resources and environment throughout the city.

Therefore, the Council finds that it is the best interests of the City to enact an environmental justice law designed to improve equity and address unintentional adverse impacts upon communities or groups resulting from environmental policy development, decision-making and actions of the city.

Part 2, General Legislation of the administrative code of the city of Mount Vernon is amended by adding a new Chapter 77 to read as follows:

Chapter 77

Environmental Justice

§ 77-1 Definitions.

§ 77-2 Advisory Board on environmental justice.

§ 24-193 Health, environmental research, data collection and analysis assessing disproportionate impact.

§ 24-194 Determination of affected and non-affected areas.

§ 24-195 Petitions relating to environmentally disadvantaged and advantaged communities.

§ 24-196 Study of affected and non-affected areas.

§ 24-197 Moratorium.

§ 24-198 Endorsement.

§ 24-199 Interagency environmental justice working group.

§ 24-199a Agency strategies.

§ 77-1. Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) "Advisory board" shall mean the Advisory Board on Environmental Justice.

(2) "Commissioner" shall mean the Commissioner of the Department of Planning and Community Development.

(3) "Department" shall mean the Department of Planning and Community Development.

(4) "Environmental benefits" shall mean access to funding, open space, enforcement, technical assistance, or training including, but not limited to, grants, environmental benefits packages and supplemental environmental projects, environmental quality improvement initiatives, distribution of environmental funding from the City and other governmental entities, open space purchases, greening initiatives and full access to the waterfront and to all of the usual

benefits associated with residence near a waterfront and any other beneficial resources disbursed by the City of Mount Vernon, its agencies, and its offices.

(5) "Environmental justice" shall mean the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies and the equitable distribution of environmental benefits.

(6) "Environmental justice population" shall mean a neighborhood whose population is made up twenty five percent minority or susceptible populations.

(7) "Equal protection" shall mean that no group of people, because of race, ethnicity, class, gender, handicap or status as a susceptible or vulnerable individual bears an unfair share of environmental pollution from industrial, commercial, state and municipal operations or shall be denied reasonable access to the environmental benefits resulting from a city program or policy or have limited access to natural resources, including green space ,open space and water resources as a result of city agency policies, decisions or actions.

(8) "Low Income" shall mean an income below the median annual household income for New York State, according to federal census data.

(9) "Meaningful Involvement" shall mean the right to participate in partnership with government in environmental decision-making including needs assessment, planning, implementation, enforcement, and evaluation, and shall mean that neighborhoods are enabled and administratively assisted to participate fully through education and training and encouraged to develop environmental stewardship.

(10) "Minority" shall mean individuals who identify themselves on federal census forms as non-white or Hispanic.

(11) "Neighborhood" shall mean a census block group as defined by the U.S. Census Bureau but not including people who live in college dormitories or people under formally authorized, supervised care or custody (i.e. in federal or state prisons)

(12) "Supplemental environmental project" shall mean the performance of environmentally beneficial projects in the settlement of environmental enforcement cases as set forth in the State Department of Environmental Conservation "Interim Policy on Supplemental Environmental Projects".

(13) "Vulnerable individual" shall mean an individual with a physical disability, a person sixty-five years of age or older and a person under the age of sixteen.

(14) "Management," when used in connection with solid waste, including hazardous waste, shall mean treatment, storage, disposal, combustion, recycling or other handling of solid waste, but does not include any activities that take place in a materials recovery facility or any other facility that prepares, transfers, or utilizes non-hazardous recyclable materials for purposes other than energy recovery.

(15) "Permitted facility," shall mean any facility that is permitted pursuant to the resource conservation recovery act, the clean air act, the clean water act; the emergency planning and community right-to-know act of 1986, or any facility subject to reporting under the Mount Vernon community right-to-know act, that

generates, treats, stores or disposes of a hazardous waste as defined in section 3001 of the solid waste disposal act, or any facility that is subject to section 112 or 129 of the clean air act, or subject to sections 307 or 311 of the federal water pollution control act.

(16) "Protected area" shall mean any affected area protected by local community designation and supported by Department of Planning and Community Development analysis.

(17) "Release" shall have the same meaning as used in section 101(22) of the comprehensive environmental response, compensation and liability act, as amended by the superfund amendments and reauthorization Act of 1986

(18) "Toxic chemicals" shall mean:

(a) All hazardous substances as defined in section 101(14) of the comprehensive environmental response, compensation and liability act of 1980;

(b) All materials registered pursuant to the federal insecticide, fungicide and rodenticide act;

(c) All chemicals subject to section 313 of the emergency planning and community right-to-know act of 1986;

(d) All contaminants identified for testing or treatment pursuant to the safe drinking water act;

(e) All chemicals listed by the national toxicology program, also known as "NTP," as known or probable human carcinogens; and

(f) All materials subject to the requirements concerning material safety data sheets for hazardous chemicals under the occupational safety and health

act of 1970.

§ 77-2. Advisory board on environmental justice.

a. There shall be established an advisory board on environmental justice.

b. The advisory board on environmental justice shall consist of four members who shall include the commissioner of Planning and Community Development or a designee, the commissioner of Public Works or a designee; the commissioner of Buildings or a designee, the superintendent of the Board of Water Supply or that person's designee; and one member from the general public with interest or expertise in environmental justice issues. The Mount Vernon City Council President and the Mount Vernon Mayor shall jointly make the appointments.

c. The environmental justice advisory board shall hold its first meeting no later than thirty days from the effective date of this local law and a chairperson and a secretary shall be elected by its members. The advisory board must meet at least quarterly, keep a record of its proceedings, and determine the rules of its own proceedings with special meetings to be called by the chairperson upon his or her own initiative or upon receipt of a written request signed by at least one member of the board. Written notice of the time and place of such special meetings shall be given by the secretary to each member at least two weeks before the date fixed by the notice for such special meeting. Two members of the environmental justice advisory board shall constitute a quorum to transact the business of such board at both regular and special meetings and a decision made by the affirmative vote of three or more members shall constitute a

decision of the board.

d. The environmental justice advisory board may conduct such hearings and meetings at any place or places within the city designated by the board for the purpose of obtaining necessary information or other data to assist it in the proper performance of its duties and functions as it deems necessary. The environmental justice advisory board may delegate to any member of the environmental justice advisory board the power and authority to conduct such hearings and meetings.

e. The environmental justice advisory board shall expire, and the terms of office of all of its members shall terminate ten years from the effective date of this section except, based upon the progress of the measureable improvements in environmental health and environmental quality protection for environmental justice populations in their communities, where reauthorization is recommended by a majority of the environmental justice advisory board to the council and the council concurs and independently enacts legislation reauthorizing the board for another ten year term. However the individual terms of each member shall be two years.

f. Duties of the environmental justice advisory board. The environmental justice advisory board shall develop a procedural process for identifying environmental inequities, including an unjust distribution of environmental benefits and environmental burdens and recommendations for assuring that environmental burdens are not further distributed in a manner that increases the environmental burdens on communities already hosting a disproportionate share

of pollution generating activities and that benefits are equitably distributed.

g. The Environmental Justice Advisory Board shall establish a Working Group.

The Working Group shall:

(i) Provide guidance to City agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(ii) Coordinate with, and provide guidance to each city agency, to develop or revise environmental justice strategies and conduct and coordinate research, as required by this act, in order to ensure that the administration, interpretation and enforcement of programs, activities, and policies are undertaken in an equitable and consistent manner;

(iii) Assist in coordinating the data collection, maintenance and analysis required under this local law;

(iv) Examine existing data and studies on environmental justice;

(v) Hold public meetings and otherwise solicit public participation and consider complaints;

(vi) Develop interagency model projects on environmental justice that evidence cooperation among city agencies.

(vii) Examine all actions of the city related to the distribution of environmental benefits, including but not limited to, access to funding, open space, enforcement opportunities, technical assistance, or training including, but not limited to, grants, environmental benefits packages and supplemental

environmental projects, environmental quality improvement initiatives, distribution of environmental funding from the City and other governmental entities, open space purchases, greening initiatives and full access to city-owned lands in the watershed and the waterfront, including access to all of the usual benefits associated with residence near a waterfront and any other beneficial resources disbursed by the City of Mount Vernon. Examine all actions of the city related to distribution of environmental benefits to ensure that no environmental justice population, community or neighborhood shall be denied reasonable access to the environmental benefits resulting from a city program or policy or have limited access to natural resources, including green space, open space and water resources as a result of city agency policies, decisions or actions. Where any inequity is detected or where complaints about inequitable distribution of environmental benefits are made, the advisory board will fully investigate such inequity and, where substantiated, shall take immediate steps to make recommendations to the city council and mayor to remedy such inequities.

(xiii). Examine all actions of the city related to the distribution of environmental burdens to ensure that all environmental justice populations, communities or neighborhoods are meaningfully involved in the decision-making process and to ensure that no environmental justice population, community or neighborhood is denied equal protection of the law, that no environmental justice population receives a disproportionate share of permitted facilities, hazardous releases and toxic chemicals and that no group of people, because of race, ethnicity, class, gender, handicap or status as a susceptible or vulnerable

individual bears an unfair share of environmental pollution from industrial, commercial, state and municipal operations. Where any inequity is detected or where complaints about inequitable distribution of environmental burdens are made, the advisory board will fully investigate such inequity and, where substantiated, shall recommend immediate steps to remedy such inequities.

(h) Public participation. The working group shall:

(i) Hold public meetings and otherwise solicit public participation, as appropriate, for the purpose of fact-finding with regard to implementation of this act and prepare for public review a summary of the comments and recommendations provided; and

(ii) Receive, consider, and in appropriate instances, conduct inquiries concerning complaints regarding environmental justice and the implementation of this Act by city agencies.

(j) Annual reports.

(a) Commission reporting requirement. On or before October 1 of 2014 and each October 1, thereafter, the commission shall submit to the mayor and the council and make available on the city's official website, an annual report disclosing the commission's accomplishments, findings and recommendations for the previous year, the final environmental justice strategies enacted and annual progress made in implementing those strategies.

§ 77-3. Health, environmental research, data collection and analysis assessing disproportionate impact. To the extent permitted by other applicable law and privacy protections, the commissioner of the Department of Planning and

Community Development, or the head of such other agency as the mayor may direct, shall collect, maintain and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin or income. To the extent practicable and appropriate, city agencies shall use this information to determine whether City programs, policies and activities have disproportionately adverse health, environmental or economic effects on minority populations and low-income populations. Where such information is independently collected by other governmental agencies or private contractors, the commissioner may rely upon such information if it contains sufficient detail to be subject to analysis at the local level.

(1) In connection with the development and implementation of agency strategies, the commissioner, or the head of other such city agency as the mayor may direct, shall collect, maintain and analyze information on the race, national origin, and income level, and other accessible and appropriate information, for areas surrounding facilities or sites if such facilities or sites become the subject of a significant city, state or federal environmental, administrative or judicial action.

(2) Impact from city facilities. The commissioner, or head of such other city agency as the mayor may direct, shall collect, maintain and analyze information on the race, national origin and income level, and other accessible and appropriate information, for areas surrounding city facilities that are:

(a) subject to the reporting requirements of the federal emergency planning and community right-to-know act as mandated in executive order no. 12856; and (b) expected to have a substantial environmental, health or economic effect on

surrounding populations.

(3) Information sharing. In carrying out the responsibilities set forth in this section, each agency, to the extent practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among agencies and with community organizations. Except as prohibited by other applicable law, information collected or maintained pursuant to this section shall be made available to the public.

(4) Public comment. Through public hearings and other public forums, city agencies shall provide minority populations and low-income populations with the opportunity to participate in the development and implementation of measures pursuant to this section.

§ 77-4. Determination of disproportionately impacted areas.

(1) Determining health, environmental, economic effects. Within six months from the date this law takes effect, the commissioner shall determine the most appropriate level to measure health-related affected and non-affected areas, including census blocks, census tracts or other appropriate geographic unit. The commissioner shall determine the most appropriate level to measure environmentally affected and non-affected areas, including consideration of census blocks, census tracts, or other appropriate geographic units. The commissioner, in consultation with the Department of Buildings, Office of Aging, Department of Assessment, and the City Clerk's Office, shall determine the most appropriate level to measure economically affected and non-affected areas,

including consideration of census blocks, census tracts, neighborhoods, communities or other appropriate geographic units.

(2) Compilation of list. The commissioner shall consider and utilize all appropriate and available data compiled pursuant to any health, environmental or economic regulatory authority and other sources, including but not limited to, available data on the presence of statistically significant incidences of respiratory morbidity or mortality by zip code or any other appropriate level including census blocks, census tracts, or other geographic units , lead-based paint exposure and toxic chemical exposure from mobile vehicles or permitted or unpermitted air sources. For each appropriate geographic unit the commissioner shall calculate and compile in a database:

a. the total weight of each toxic chemical released into the ambient environment, and whenever possible, shall adjust the estimates to account for the severity of health issues, toxicity of the chemicals and level of economic development;

b. the total weight of toxic chemicals released into waterways and land, and whenever possible, shall adjust the estimates to account for the severity of health issues, toxicity of the chemicals and level of economic development.

(3) City of Mount Vernon Right To Know. The commissioner shall review the methodology used to compile and summarize information collected under Section 313 of the Emergency Planning and Community Right-to-Know Act, and the Mount Vernon city right to know law and publish for public comment, any proposed changes to the methodology necessary to calculate and compile the

information required in subsection two of this section.

§ 77-5. Petitions relating to environmentally disadvantaged and advantaged communities.

(1) Any person residing in any part of the city or a protected area in a community in which a new facility for the management of solid waste, including a new facility for the management of hazardous waste, is proposed for construction, may submit a petition to the appropriate entity to protest against the proposed facility being issued a local permit or operating in that community. A petition under paragraph (1) shall be submitted in accordance with the following subparagraphs:

(a) In the case of a facility for the management of hazardous waste, the petition shall be submitted to the commissioner.

(b) In the case of a facility for the management of municipal solid waste, the petition shall be submitted to the commissioner or, in appropriate cases, as determined under regulations implementing this section, to the Department of Public Works.

(2) The department or other authorized agency shall disapprove the petition if it is established that:

(a) the proposed facility will be located in a non-affected community, and the proposed facility will not adversely affect the health of such community; or

(b) there is no reasonable alternative location within the City for the proposed facility that poses fewer risks to human health and the environment than the proposed location, according to standards for assessing the degree of

risk to human health and the environment promulgated in regulations by the commissioner for purposes of this section; and the proposed facility either: (i) will not release contaminants; and (ii) will not engage in any activity that is likely to increase the cumulative impact of contaminants on residents of environmentally disadvantaged communities; and (iii) the project represents a clear economic benefit to the community.

(3) If the aforementioned conditions have not been established, the department shall approve the petition and recommend that a review be undertaken to ascertain whether additional facility siting is appropriate in the neighborhood.

(4) Where the review concludes that additional facility siting in that neighborhood is appropriate, the petitioner shall be invited to participate on a community based Environmental Monitoring and Citizen Enforcement Council specific to that facility in order to ensure that the facility adheres strictly to its permit condition.

(5) Where the review concludes that additional facility siting is not appropriate, that decision remains subject to judicial review.

§ 77-6. Study of affected and non-affected areas. (1) Within 24 months from the date this law takes effect, the commissioner, in consultation with the Department of Building, Department of Public Works, Board of Water Supply, Office of Aging, Department of Assessment, and the City Clerk's Office, shall evaluate and determine the most appropriate designation of environmentally affected and non-affected areas, either census blocks, census tracks,

neighborhoods, communities or other appropriate geographic unit. The commissioner, in consultation with the Mayor's Office, shall evaluate and determine the most appropriate designation of economically affected and non-affected areas, either census blocks, census tracts, neighborhoods, communities or other appropriate geographic unit, and shall issue for public comment a report identifying the nature and extent, if any, of acute and chronic impacts on human health, the environment or economy in affected areas as compared to less affected areas. Such impacts shall include, but not be limited to, cancer and non-cancer health effects, birth defects, infant mortality rates, respiratory diseases, including morbidity and mortality, as well as adverse environmental quality impacts upon air, water, land, retail, institutional, commercial and industrial sites.

(2) For each designated geographic unit, the report shall seek to: (a) isolate the impacts of environmental pollution and uncontrolled releases from the effects of other factors such as health care availability, substance abuse or diet; (b) rank the relative risks posed by the toxic chemicals present in affected areas and by the varied sources of toxic chemicals, both individually and cumulatively, if possible; (c) suggest measures to remedy the impacts of pollution in high population density areas; (d) evaluate the levels below which release of toxic chemicals, either individually or cumulatively, if possible, must be reduced to avoid adverse impacts on human health; and (e) determine the economic impacts on such areas; as a result of the report in communities where the commissioner has determined that adverse health, environmental or economic

impacts exist; the Department of Planning and Community Development shall also make this information readily available to members of the community by providing information directly to the affected communities in the affected areas about the release of toxic chemicals, the potential effects of such exposure and potential economic impacts.

§ 77-7. Moratorium. (1) If the report finds toxic chemical emissions and environmental pollution in quantities sufficient to cause significant adverse effects on human health, the environment or the economy in an affected area, such area shall be designated as a protected area, and there shall be a moratorium on the siting or permitting of any new toxic chemical facility in any affected area.

(2) A new toxic chemical facility may be sited or permitted in such an affected area during this period only if:

(a) the need for the activity is considered overwhelming by the city and if facility approved by the appropriate governing entity;

(b) the owner or operator of the facility demonstrates to the department that the facility will develop a plan to maintain a comprehensive pollution prevention program; and

(c) the facility demonstrates to the appropriate governing entity that it will minimize uncontrolled and fugitive releases into the environment to the maximum extent practicable.

(3) The moratorium shall continue in effect in such a protected area until the commissioner determines, based upon findings of fact adequate to support the action taken and upon petition of any interested party, that the levels of

environmental pollution will not cause or exacerbate significant adverse effects on human health, the environment or the economy, and that such levels have been maintained at the affected area for such time period as the commissioner determines is sufficient to restore healthful air quality levels.

§ 77-8. Endorsement. If the report does not find significant adverse impacts of environmental pollution on human health in a proposed area, and if a petitioner requests an advance designation for a proposed area, there shall be a Department endorsement on the siting or permitting of any new facility. A new facility may still be placed on the moratorium list if:

(1) The activity, as determined by the Department, could adversely affect health in such a manner that health effects will not be known or detected until a future date; an endorsement may continue in effect in such an area unless and until the commissioner determines, upon petition of any interested party, that healthful air quality levels have not been maintained at the area due to the activities of the covered facility.

§ 77-9. Agency strategies. Each city agency shall develop an agency-wide environmental justice strategy that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies or activities on minority populations and low-income populations.

a. Each strategy developed shall identify programs, policies, planning, public participation processes, and rulemaking and enforcement activities related to human health or the environment that should be revised to:

b. .Promote enforcement of all health and environmental statutes in areas

with minority populations or low-income populations;

c. Ensure greater public participation;

d. Improve research and data collection relating to the health of, and environment of, minority populations and low income populations; and

e. Identify differential patterns of use of natural resources among minority populations and low-income populations.

f. Each strategy developed shall include, where appropriate, a timetable for undertaking identified revisions.

g. The term of each member shall be two years where, upon the conclusion of a term, members shall continue to serve until a successor is appointed. A member who is appointed after a term has begun shall serve only for the rest of the term or until a successor is appointed unless such member shall be reappointed for a second term.;

(i) A member may not be appointed to more than two consecutive terms;

(ii) The commission shall meet at the times and places that the chairman determines;

§3. This local law shall take effect ninety days after its enactment except that the Commissioner of Planning and Community Development, in consultation with the Mayor, shall take such measures as are necessary for its implementation, including the promulgation of rules prior to such effective date.