

**Buckingham County, Virginia**

**Ordinance No. \_\_\_\_\_ of 2021**

**AN ORDINANCE TO PROTECT THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE RESIDENTS AND NATURAL ENVIRONMENT OF THE COUNTY OF BUCKINGHAM BY EXERCISING THE RIGHT OF LOCAL SELF-GOVERNANCE, AND BY RECOGNIZING THE FUNDAMENTAL RIGHTS OF RESIDENTS AND ECOSYSTEMS OF THE COUNTY TO BE FREE FROM TOXIC TRESPASS, AND BY APPLYING A COMMON-SENSE BURDEN OF PROOF OF SAFETY AND ENVIRONMENTAL JUSTICE TO CORPORATIONS SEEKING TO ENGAGE IN METALLIC MINING WITHIN THE COUNTY**

**Section 1—Name**

This Ordinance shall be known and may be cited as: “Ordinance Requiring an Assessment of the Compatibility of Metallic Mining with the Right to Freedom from Toxic Trespass.”

**Section 2—Authority**

This Ordinance is enacted pursuant to the inherent, unalienable, and fundamental right of the residents of the County of Buckingham to democratic self-governance, and their corresponding right to be free from their government serving corporate special interests rather than the people, and by authority granted to the government of the County of Buckingham by all relevant Federal and State laws and their corresponding regulations, including, without limitation, the following:

The Declaration of Independence, which declares that the people are born with “certain unalienable rights” and that governments are “instituted among people to secure those rights”;

The Ninth Amendment to the United States Constitution, which declares, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”;

The Fourteenth Amendment to the United States Constitution, which declares in part, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...”;

The Virginia Constitution, Article 1, Section 1, which declares that all people “...are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the

enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety”;

The Virginia Constitution, Article 1, Section 2, which does not declare that corporations have any rights, but does declare “That all power is vested in, and consequently derived from, the people...”;

The Virginia Constitution, Article 1, Section 3, which declares that “government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; ...and whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it...”;

The Virginia Constitution, Article 1, Section 4, which declares that “no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community...” and thus, corporations, as sets of men, shall not enjoy special legal privileges under the law;

The Virginia Constitution, Article XI, Section 1, which declares that “...it shall be the Commonwealth’s policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth”;

Common law, which recognizes well-settled rules governing the tort of trespass, and which requires injunctive, compensatory, and punitive relief to be assessed for unauthorized intrusions.

### **Section 3—Findings and Purpose**

In support of the enactment of this Ordinance, the people of the County, find and declare that:

Corporations engaged in metallic mining activities in locations outside Buckingham County have damaged and harmed – and continue to damage and harm – lives, properties, livelihoods, pursuit of happiness, and quality of life.

Corporations engaged in metallic mining have also damaged and harmed – and continue to damage and harm – ecosystems. Those ecosystems are essential for thriving human and natural communities, for both present and future generations.

Damages and harms to residents and ecosystems include toxic trespass, loss of water, property devaluation, devastation of mountains, natural features, complex natural communities, hydrological systems, and other ecosystems. In addition, a small number of multinational industrial mining corporations – run by a handful of corporate directors and managers – have used accumulated corporate wealth gained from years of destructive corporate mining to fund legislative campaigns, lobby elected representatives, and enact statewide preemptive laws that strip almost all community decision-making.

The people of Buckingham County find that county, state, and federal governments have failed to protect and preserve the health, safety, and welfare of residents and ecosystems within the County, and the fundamental right of residents of the County of Buckingham to local control and self-government. The people of Buckingham find that the State's entire environmental regulatory structure has legalized continuing corporate assaults on life, liberty, and people's basic rights, contrary to the common-sense understanding of the purpose of the rule of law.

In addition, having examined the legacy of regulatory laws and agencies in Virginia and the United States, the people clearly understand that, if the local, state or federal government permits metallic mining corporations to inflict harm upon people and nature, it will not be the exception, but a normal governmental practice.

The people of the County of Buckingham find that metallic mining in Virginia is incompatible with the protection and preservation of the health, safety, and welfare of the natural community within Buckingham County.

The people of the County find that metallic mining – backed by preemptive state laws that empower small numbers of corporate directors and managers to override the wishes and values of majorities of residents – destroys the authority and ability of people within the County of Buckingham to govern their communities democratically.

As a community in the path of metallic mining corporations that are seeking resources from under people's homes and within people's communities, the people of the County of Buckingham find it necessary to take action to prevent the creation of yet one more sacrifice zone, where some people are expected to suffer damages for the benefit of others. As we do so, we call for changes in corporate laws and constitutional interpretations regarding legal privileges conferred upon a corporate few, so that people in communities across this nation can take logical steps towards ensuring that natural communities are not subjected to long-term destruction and denial of fundamental rights.

In order to protect the health, safety, and welfare of the residents of Buckingham County, the soil, groundwater and surface water, the people's cultural heritage, the environment and its flora and fauna, rural quality of life, and democratic self-government within the County, the people of Buckingham County find it necessary to require corporations intending to engage in metallic mining within the County, to demonstrate with documentation described below, that metallic mining would be required to demonstrate that at least once, sometime, somewhere, at least one metallic mine did not cause harm. Additionally, Buckingham County will hold strictly liable those corporations, persons, and governmental agencies that are culpable for the deposition of toxic and potentially toxic substances in the bodies of residents and the ecosystems of the County, should they engage in or facilitate metallic mining that results in toxic trespass. The people also find it necessary to assert the people's inherent power and right of self-government against competing claims to "rights" asserted by mining corporations.

#### **Section 4—Interpretation**

Anyone interpreting, implementing, or applying this Ordinance shall give priority to the findings and purposes stated in Section 3 over such accounting and business terms characterized as “economy,” “efficiency,” and “scheduling factors.”

#### **Section 5—Definitions**

The following terms have the meanings defined in this section wherever they are used in this Ordinance.

Corporation: Any business organized under the laws of any state of the United States or under the laws of any country. The term also includes any limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers. The term also includes any business entity in which one or more owners or partners is a corporation or other entity in which owners, directors, officers and/or managers possess limited liability attributes.

County: Buckingham County, Virginia, its residents, the County Board of Supervisors, or its representatives or agents.

Culpable Parties: Persons owning or managing corporations that engage in metallic mining activities and that introduce or remobilize previously introduced, toxic or potentially toxic chemicals or substances, including radioactive materials, that exceeds that which would have been there if the mine had not existed in the County.

Deposition: The placement of a toxic substance or potentially toxic substance within the body of a person or ecosystem. The act of deposition shall be assumed if a toxic substance or potentially toxic substance is detected within the body of a person or ecosystem.

Hazardous substance: Any substance which, because of its quantity, concentration, or physical, chemical, radioactive or infectious characteristics may (1) cause or significantly contribute to an increase in mortality or increase in morbidity in either an individual or the total population; or (2) pose a substantial present or potential hazard to human health or the environment.

Independent Lab: A state certified laboratory chosen by Buckingham County, capable of testing for the presence of substances associated with the processes and the resulting waste products of metallic mining.

Mineral Estate: Any interest held in subsurface mineral resources, which include, but is not limited to, interests held in deposits of metallic elements.

Mining: Any commercial activity in which mineral resources are extracted from the ground and processed.

Natural Community: As used in this ordinance, the term means human and non-human beings living in community, and includes but is not limited to individual people, assemblies of people, as well as their natural environment, including but not limited to flora, fauna, watersheds, aquifers, minerals, atmosphere, and the natural genetic makeup of all living organisms within the community.

Ordinance: Ordinance Requiring an Assessment of the Compatibility of Metallic Mining with the Right to Freedom from Toxic Trespass

Person: A natural person, or an association of natural persons that does not qualify as a corporation under this Ordinance.

Metallic Mining: The extraction of rocks and soils for the purpose of obtaining metals.

Metallic Mining Corporation: Any corporation engaged in, or planning to engage in, metallic mining activities.

Substantially Owned or Controlled: A person, corporation, or other entity substantially owns or controls another person, corporation, or other entity if it has the ability to evade the intent of this Ordinance by using that person, corporation, or other entity to conduct metallic mining operations within the County of Buckingham.

Toxic Substances and Potentially Toxic Substances: The phrase includes, but is not limited to, chemicals or chemical compounds, radioactive ores, particulate matter, or gases, used in or resulting from metallic mining that have been found to cause adverse effects to animals, humans, or ecosystems.

Toxic Trespass: The intentional, unwitting, involuntary or neglectful deposition of toxic or potentially toxic substances within a human or non-human body or ecosystem.

## **Section 6—Statements of Law – Rights of Buckingham County Residents, Communities and Ecosystems**

**Section 6.1. Right to Self-Government.** All residents of the County of Buckingham possess the fundamental and unalienable right to a republican form of governance – a form of governance that recognizes that all power is inherent in the people, that all free governments are founded on the people’s authority, and that corporate entities and their directors and managers cannot enjoy special privileges or powers under the law that render community majorities subordinate to them.

**Section 6.2. Right to a Healthy Environment.** All residents of the County of Buckingham possess a fundamental and unalienable right to a healthy environment, which includes the right to unpolluted air, water, soils, flora, and fauna.

**Section 6.3. Right to Self.** All residents of the County of Buckingham possess a fundamental and unalienable right to the integrity of their bodies, and to be free from unwanted trespass upon or within their bodies by chemicals and toxins as well as by radioactive substances that are associated with metallic mining.

**Section 6.4. Right to Livelihood and Home.** All residents of the County of Buckingham possess a fundamental and unalienable right to their livelihood, homes and land, and a right to enjoy those homes and land uncompromised by harms associated with metallic mining.

**Section 6.5. Right to Cultural Heritage** All natural persons whose primary residence is within Buckingham County, Virginia, possess a fundamental and unalienable right to their communities' cultural heritage within the County. Residents' right to their own histories shall include a right to the preservation of historic buildings, unaltered rural historic districts and landscapes, relationships, and lands that residents of the County of Buckingham consider important to the preservation of their cultural heritage, including but not limited to burial sites and artifacts.

**Section 6.6. Right to Water.** All natural persons whose primary residence is within Buckingham County, Virginia possess a fundamental and unalienable right to access, use, consume, and preserve water drawn from the sustainable natural water cycles that provide water necessary to sustain life within the County.

**Section 6.7. Rights of Ecosystems.** Ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, the James River watershed, and other water systems, as well as forests, mountains, piedmont and meadow, possess unalienable and fundamental rights to exist, persist, flourish, regenerate and be restored by culpable parties.

**Section 6.8. People as Sovereign.** The County of Buckingham shall be the governing authority responsible to, and governed by, the residents of the County. Use of the "County of Buckingham" political subdivision by the sovereign people of the County to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a subdivision of the Commonwealth that is subordinate to them in all respects at all times. The people at all times enjoy and retain an unalienable and inalienable right to self-governance in the community where they reside.

## **Section 7—Statements of Law – Scope of Corporate Powers Within the County of Buckingham**

### **Section 7.1. Required Documentation Prior to Issuance of Permits for Metallic Mining**

7.1.1 It shall be unlawful for any corporation to engage in metallic mining activities within the County of Buckingham prior to the submission of all reports from all state and

federal environmental and health agencies as well as judicial findings in court cases related to at least one metallic mine that is similar in scope and purpose to what is proposed for Buckingham County, and which had operated in the United States for at least ten years and has subsequently not been operational for at least ten years. Any information contained in these reports indicating that toxic trespass, as defined by this ordinance, has resulted from that mining activity shall disqualify an applicant from receiving a metallic mining permit.

7.1.2 Applications for metallic mining permits shall not be reviewed or acted upon until a full and complete Environmental Justice review (guided by NEPA and Article 12, the Virginia Environmental Justice Act) is submitted to Buckingham County. The results of these assessments shall show definitively that no disadvantaged, poor, minority or marginalized community, municipality or neighborhood in Buckingham County would suffer toxic trespass, as defined by this ordinance. Failure to supply this or any of the required reports shall disqualify an applicant from receiving a permit that would allow metallic mining.

**Section 7.2. Toxic Trespass.** (AKA “Poisoning”) The deposition of toxic substances or potentially toxic substances used in or resulting from metallic mining within the body of any resident of the County of Buckingham or into any ecosystem in the County’s jurisdiction, including but not limited to the James River watershed, is declared a form of trespass, and is hereby prohibited.

**Section 7.3. Strict Liability for Deposition of Toxic Substances.** Persons who use, manage, own or represent a corporation that engages in metallic mining activities that result in the deposition of toxic substances and potentially toxic substances shall be strictly liable for the deposition of those substances into the bodies of residents and ecosystems of the County. Culpable parties shall be deemed strictly liable if one of their toxic or potentially toxic substances or chemical compounds is discovered within the body of a County resident. The County’s showing of the existence of that toxic or potentially toxic substance within the body of a resident living in the County, and the County’s showing that the culpable party(s) are responsible for the presence of that substance in the County, shall constitute a *prima facie* showing of causation under a strict liability standard. Current and future damages resulting from the culpable parties’ trespass shall be assumed, and the burden of proof shall be upon the culpable parties for a showing that the toxic and/or potentially toxic substances could not cause harm or contribute to causing harm, either alone or in combination with other factors, or that the culpable parties are not responsible for the trespass of that particular substance into the body of residents of the County. All potential culpable parties are jointly and severally liable for the toxic trespass.

**Section 7.4. Prohibition of Corporate Enablement:** It shall be unlawful for any person to assist a corporation to engage in metallic mining activities within the County of Buckingham in violation of this Ordinance.

**Section 7.5. Prohibition of Corporate Legal Protections.** Within the County of Buckingham, it shall be unlawful for any person to assert Bill of Rights protections for corporate property against the County of Buckingham or its residents or to assert privileges, powers, or protections of the Contracts Clause or Commerce Clause of the United States Constitution, or of similar provisions within the Virginia Constitution, in order to circumvent the requirements of this Ordinance.

**Section 7.6. Future Lost Profits.** Within the County of Buckingham, no person shall assert, in the name of corporate property, claims to “future lost profits,” nor shall speculative profits from yet-to-be-produced materials be considered property interests under the law, and thus, shall not be recoverable by representatives of corporate property seeking those damages.

**Section 7.7. Corporate Violation of Natural Rights.** It shall be unlawful for any person using corporate property, including its directors, officers, owners, legal representatives, or managers to interfere with the rights of ecosystems, including but not limited to the James River watershed, to exist, persist, flourish, regenerate, and be restored.

**Section 7.8. Strict Corporate Liability.** It shall be unlawful for any person to use a corporation to engage in metallic mining in a neighboring municipal or county jurisdiction in a manner that causes harm to the health, safety, and welfare of the residents of the County of Buckingham, or to the ecosystems within the County, including but not limited to the James River watershed. Natural persons using a corporation to engage in metallic mining shall be strictly liable for those harms.

**Section 7.9. Culpable Parties.** Persons owning or managing corporations that engage in metallic mining that result in the deposition of toxic substances and potentially toxic substances within the body of any resident of the County of Buckingham or any ecosystem within the County’s jurisdiction shall be deemed culpable parties, along with the corporation itself, and are also jointly and severally liable for the recovery of trespass damages, compensatory damages, punitive damages, and the instatement of permanent injunctive relief. If more than one corporation manufactured, generated, or introduced the detected toxic or potentially toxic substance, persons owning and managing those corporations, along with the corporations themselves, shall be held jointly and severally liable for those damages, in addition to being subject to injunctive relief.

**Section 7.10. Obligation to Provide Information.** Managers, owners, and representatives of corporations that engage or plan to engage in metallic mining activities within Buckingham County shall provide information about the chemicals used and resulting or potentially resulting harm from those activities.

**Section 7.11. County Government’s Duty to Protect.** It shall be the duty of the County of Buckingham to protect the right of County residents and the natural environment to be free from toxic trespass under the provisions of this Ordinance, and to obtain damages for any violation of that right. If the presence of toxic and/or potentially toxic substances is detected within the body of any County resident, or within any ecosystem in its jurisdiction, the County shall initiate

litigation to recover trespass, compensatory, and punitive damages – and permanent injunctive relief – from all culpable parties. If a significant number of County residents have been similarly trespassed against, the County shall select representative plaintiffs and file a class action lawsuit on behalf of all County residents to recover trespass, compensatory, and punitive damages – and permanent injunctive relief – from all culpable parties.

**Section 7.12. Governmental Liability.** It shall be unlawful for any permit, license, privilege or charter issued by any municipal, county, state or federal legislature, regulatory agency, commission, or board, to any person or any corporation operating under a State-issued charter – or any director, officer, owner, or manager of a corporation operating under a State-issued charter – to violate the provisions of this Ordinance or deprive any County of Buckingham resident or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Virginia Constitution, the United States Constitution, or other laws. This prohibition shall also apply to permits issued to corporations and persons using corporations to engage in metallic mining in a neighboring municipality, county, or state. Accordingly, such permit, license, privilege, or charter used in violation of the provisions of this Ordinance shall not be deemed valid within the County of Buckingham.

**Section 7.13. Governmental Agents.** It shall be unlawful for any employee, agent, or representative of any municipal, county, state or federal legislature, regulatory agency, commission, or board to issue a permit, license, privilege, or charter to any person or any corporation operating under a State charter – or to any director, officer, owner, or manager of a corporation operating under a State-issued charter – that would violate the provisions of this Ordinance, or deprive any resident or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Virginia Constitution, the United States Constitution, or other laws. This prohibition shall also apply to permits issued to corporations and persons using corporations to engage in metallic mining in a contiguous municipality, county, or state.

**Section 7.14. Governmental Agent Liability.** Any governmental agent violating the preceding section of this Ordinance shall be liable to any parties injured by the agent's actions and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of ecosystems shall be paid to the County of Buckingham for exclusive use in restoration of those ecosystems.

## **Section 8—Administration**

This Ordinance shall be administered by the County of Buckingham.

## **Section 9—Enforcement of Mining Compatibility Assessment Requirements**

**Section 9.1:** The County of Buckingham shall enforce this Ordinance by an action brought in a court of competent jurisdiction.

**Section 9.2:** Any person using a corporation, or other entity to violate any provision of this Ordinance shall, upon conviction, be imprisoned to the extent allowed by law.

**Section 9.3:** A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance that is found to be violated.

**Section 9.4:** The County of Buckingham may also enforce this Ordinance through an action in equity brought in the appropriate Court. In such an action, the County of Buckingham shall be entitled to recover all costs of litigation, severally and jointly from culpable parties, including, without limitation, expert and attorney's fees. Such an action to enforce this Ordinance may also be brought by any resident of the County of Buckingham, and that resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

**Section 9.5:** All monies collected for violation of this Ordinance, except fees and costs incurred by the party enforcing the Ordinance, shall be paid to the Treasurer of the County of Buckingham, and used exclusively for the restorations of the health and safety of the community and its ecosystems.

**Section 9.6:** Any person, corporation, or other entity that violates, or is convicted of violating this Ordinance, two or more times shall be permanently prohibited from doing business within the County of Buckingham. This prohibition applies to that person's, corporation's, or other entity's parent, sister, and successor companies, subsidiaries, and alter egos; and to any person, corporation, or other entity substantially owned or controlled by the person, corporation, or other entity (including its officers, directors, or owners) that twice violates this Ordinance, and to any person, corporation, or other entity that substantially owns or controls the person, corporation, or other entity that twice violates this Ordinance.

## **Section 10—Civil Rights Enforcement**

**Section 10.1:** Any person acting under the authority of a permit issued by the Commonwealth of Virginia or its subdivisions, any corporation operating under a State charter or certificate of authority to do business, or any director, officer, owner, or manager of a corporation operating under a State charter or certificate of authority to do business, who deprives any County resident or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Virginia Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation to satisfy that liability, including, without limitation, expert and attorney's fees. These liabilities shall also apply to corporations and persons using corporations to engage in metallic mining in a neighboring municipality, county, or state, and to governmental agencies and agents issuing permits that allow a corporation in a neighboring municipality, county, or state to deprive any County resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Virginia Constitution, the United States Constitution, or other laws. Compensatory and punitive damages paid to remedy the violation of the rights of ecosystems shall be paid to the County of Buckingham and used exclusively for restoration of those ecosystems.

**Section 10.2:** Any County resident shall have standing and authority to bring an action under this Ordinance's civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, and County residents, as recognized by this Ordinance.

### **Section 11—Effective Date and Existing Permits**

This Ordinance shall be effective immediately upon adoption, at which point the Ordinance shall apply to any and all mining corporations, mining corporation employees, directors, officers, representatives and governmental agents making decisions affecting the people and ecosystems within the County of Buckingham, regardless of the date of the applicable permits.

### **Section 12—People's Right to Self-Government**

The foundation for the making and adoption of this law is the people's fundamental and unalienable right to govern themselves, and thereby secure their rights to life, liberty, property, and the pursuit of happiness. Any attempts to use county, state, or federal levels of government – judicial, legislative, or executive – to preempt, amend, alter, or overturn this Ordinance or parts of this Ordinance, or to intimidate the people of the County of Buckingham or their elected officials, shall require the Board of Supervisors of Buckingham County to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and unalienable right to self-government. Such consideration may include actions to separate the County from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Ordinance or other levels of government used to intimidate the people of the County of Buckingham or their elected officials.

### **Section 13—Severability**

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The Board of Supervisors of the County of Buckingham hereby declares that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

### **Section 14—Repealer**

All inconsistent provisions of prior Ordinances adopted by the County of Buckingham are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this \_\_\_\_ day of \_\_\_\_\_, 2021, by the Board of Supervisors of Buckingham County.

By: \_\_\_\_\_

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Attest: \_\_\_\_\_

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