

# Implementing the Precautionary Principle: A Tool for Georgia's Local Governments

This Model Precautionary Principle Ordinance for Georgia's Local Governments has been prepared by Emily Franzen and Laurie Fowler of the River Basin Center, Institute of Ecology, University of Georgia at the request of, and with research assistance from, ECO-Action. There is an accompanying Background Information Paper on the Precautionary Principle, written by Franzen and Fowler, that is accessible at [www.eco-act.org](http://www.eco-act.org).

## Model Precautionary Principle Ordinance for Georgia's Local Governments

Note: *Italicized* text should be interpreted as comments, instructions, or information to assist the local government in tailoring the ordinance. This text would not appear in a final adopted ordinance. **Bold** text in **[brackets]** indicates terms that need to be written specifically for the local jurisdiction, such as the jurisdiction name. Definitions are not included, but may need to be added to the appropriate portion of the local code if they are not elsewhere used or if they are used in a different context.

### Section 1. FINDINGS.

The **[jurisdiction's governing body]** finds and declares that:

- A. Every resident of **[the jurisdiction]** has an equal right to a healthy and safe environment. This requires that our air, water, earth, and food be of a sufficiently high standard that individuals and communities can live healthy, fulfilling, and dignified lives. The duty to enhance, protect and preserve **[the jurisdiction's]** environment rests on the shoulders of government, residents, citizen groups and businesses alike.
- B. Historically, environmentally harmful activities have only been stopped after they have manifested extreme environmental degradation or exposed people to harm. In the case of DDT, lead, and asbestos, for instance, regulatory action took place only after disaster had struck. The delay between first knowledge of harm and appropriate action to deal with it can be measured in human lives cut short.
  - *Each jurisdiction should tailor the language of this subsection to better describe specific problems or issues the community faced in the past or now faces that could have been or could be prevented through implementation of the precautionary approach. For example, if the jurisdiction has a solid waste facility within its limits, it may wish to specifically mention the facility, any risks it currently poses to the community, and any environmental or human health problems it has caused in the past. Later in the ordinance, the jurisdiction should list specific principles that should be instituted to apply the precautionary approach to the operation of the facility.*
- C. **[The jurisdiction]** should strive to be a leader in making choices based on the least environmentally harmful alternatives, thereby challenging traditional assumptions about risk management. The following **[jurisdiction]** ordinances apply a precautionary approach to specific **[jurisdiction]** purchases and activities: **[insert any/all jurisdiction**

**ordinances that use/apply the precautionary principle].** Internationally, this model is called the Precautionary Principle.

- *Before adopting this ordinance, the jurisdiction should review all its ordinances and policies related to the environment, public health, pesticide use, transportation, construction, land use, planning, water, energy, health care, recreation, purchasing, and public expenditure, etc. to determine if the precautionary principle has been implemented in some way in the jurisdiction's ordinances already. These ordinances can then be listed in this subsection as examples of ways the jurisdiction has already instituted the precautionary principle.*
  - *Listing existing ordinances and policies in this way illustrates how adoption of the precautionary principle ordinance is a continuation and fulfillment of the policy of precaution in the jurisdiction. It serves to discount criticisms that adoption of the precautionary principle is an abrupt policy change that differs drastically from past policies related to environmental protection and public health.*
  - *Examples of existing ordinances that implement the precautionary approach in some way include an integrated pest management ordinance or policy, and a policy or ordinance directing local government officials to consider precaution when purchasing items, such as pesticides and cleaners, for the local government.*
  - *If a local government has no existing policies or ordinances regarding the precautionary principle, it may wish to list one or more of precautionary-based ordinances and policies mentioned above in the "Background" section as evidence of a national trend toward implementation of the precautionary principle. The jurisdiction may also wish to include a purpose statement explaining its reasoning for adopting this new approach to scientific research and uncertainty in its "Findings" section.*
- D. Science and technology are creating new solutions to prevent or mitigate environmental problems. However, science is also creating new compounds and chemicals that are already finding their way into mother's milk and causing other new problems. New legislation may be required to address these situations, and the Precautionary Principle is intended as a tool to help promote environmentally healthy alternatives while weeding out the negative and often unintended consequences of new technologies.
- E. A central element of the precautionary approach is the careful assessment of available alternatives using the best available science. An alternatives assessment examines a broad range of options in order to present the public with different effects of different options considering short-term versus long-term effects or costs, and evaluating and comparing the adverse or potentially adverse effects of each option, noting options with fewer potential hazards. This process allows fundamental questions to be asked: "Is this potentially hazardous activity necessary?" "What less hazardous options are available?" and "How little damage is possible?"
- F. The alternatives assessment is also a public process because, locally or internationally, the public bears the ecological and health consequences of environmental decisions. A government's course of action is necessarily enriched by broadly based public participation when a full range of alternatives is considered based on input from diverse

individuals and groups. The public should be able to determine the range of specific reasonable alternatives to be examined. For each alternative the public should consider both immediate and long-term consequences, as well as possible impacts to the local economy. This form of open decision-making is in line with:

- the *Georgia Open Records Act*, O.C.G.A. § 50-18-70 *et seq.*, which requires public records be open and available for inspection by any interested member of the public;
  - the *Georgia Open Meetings Act*, O.C.G.A. § 50-14-1 *et seq.*, which requires all meetings of government bodies be open to the public (excluding the Georgia General Assembly);
- *The jurisdiction should also list any existing ordinance(s) that require public disclosure of government records/material in this subsection and describe the types of information to which this ordinance(s) gives citizens access.*
- G. **[The jurisdiction]** looks forward to the time when **[the jurisdiction's]** power is generated from renewable sources, when all our waste is recycled, when our vehicles produce only potable water as emissions, when **[list important local water bodies]** is/are free from toxins, and the oceans are free from pollutants. The Precautionary Principle provides a means to help us attain these goals as we evaluate future laws and policies in such areas as transportation, construction, land use, planning, water, energy, health care, recreation, purchasing, and public expenditure.
- H. Transforming our society to realize these goals and achieving a society living respectfully within the bounds of nature will take a behavioral as well as technological revolution. The Precautionary approach to decision-making will help **[the jurisdiction]** speed this process of change by moving beyond finding cures for environmental ills to preventing the ills before they can do harm.

## **Section 2. THE [JURISDICTION] PRECAUTIONARY PRINCIPLE.**

- *The Georgia Zoning Procedures Law (“ZPL”), found at O.C.G.A. § 36-66-1 et seq., requires that all ordinances considered “zoning ordinances” be adopted pursuant to the procedures set forth in the ZPL. The Georgia Supreme Court has held that any ordinance that divides a governmental unit into zones or districts and applies different standards to such zones or districts is considered a zoning ordinance. City of Walnut Grove v. Questco, Ltd., 564 S.E. 2d 445 (2002). If an ordinance is not adopted pursuant to the ZPL procedures and is later found to be a “zoning ordinance,” the ordinance could be struck down as invalid.*
- *The precautionary principle stated below is comprehensive and is meant to encompass all aspects of local government decision-making. This includes decisions regarding zoning and planning. Therefore, it is possible that a court could consider this model ordinance to be a “zoning ordinance.” Because of this concern, it is advised that all local governments adopt this model ordinance in accordance with the ZPL. The procedural requirements under the ZPL include advertising and conducting public hearings regarding the proposed ordinance.*

The following shall constitute **[the jurisdiction's]** Precautionary Principle policy. All officers, boards, commissions, and departments of **[the jurisdiction]** shall implement the Precautionary Principle in conducting **[the jurisdiction's]** affairs:

The Precautionary Principle requires a thorough exploration and a careful analysis of a wide range of alternatives. Based on the best available science, the Precautionary Principle requires the selection of the alternative that presents the least potential threat to human health and **[the jurisdiction's]** natural systems. Public participation and an open and transparent decision making process are critical to finding and selecting alternatives.

Where threats of serious or irreversible damage to people or nature exist, lack of full scientific certainty about cause and effect shall not be viewed as sufficient reason for **[the jurisdiction]** to postpone cost effective measures to prevent the degradation of the environment or protect the health of its citizens. Any gaps in scientific data uncovered by the examination of alternatives will provide a guidepost for future research, but will not prevent protective action being taken by **[the jurisdiction]**. As new scientific data become available, **[the jurisdiction]** will review its decisions and make adjustments when warranted.

Where there are reasonable grounds for concern, the precautionary approach to decision-making is meant to help reduce harm by triggering a process to select the least potential threat. The essential elements of the Precautionary Principle approach to decision-making include:

1. Anticipatory Action: There is a duty to take anticipatory action to prevent harm. Government, business, and community groups, as well as the general public, share this responsibility.
2. Right to Know: The community has a right to know complete and accurate information on potential human health and environmental impacts associated with the selection of products, services, operations or plans. The burden to supply this information lies with the proponent, not with the general public.
3. Alternatives Assessment: An obligation exists to examine a full range of alternatives and select the alternative with the least potential impact on human health and the environment including the alternative of doing nothing.
4. Full Cost Accounting: When evaluating potential alternatives, there is a duty to consider all the reasonably foreseeable costs, including raw materials, manufacturing, transportation, use, cleanup, eventual disposal, and health costs even if such costs are not reflected in the initial price. Short-and long-term benefits and time thresholds should be considered when making decisions.
5. Participatory Decision Process: Decisions applying the Precautionary Principle must be transparent, participatory, and informed by the best available information.

### **Section 3. THREE YEAR REVIEW.**

No later than three years from the effective date of this ordinance, and after a public hearing, the **[appropriate local government body]** shall submit a report to the **[jurisdiction's governing body]** on the effectiveness of the Precautionary Principle policy.

- *The jurisdiction should decide which local government body is appropriate to develop such a report. For example, a local government could charge a committee of the jurisdiction's governing body or member of the jurisdiction's executive branch with this duty. In the alternative, the jurisdiction could create a new body to develop the report. In San Francisco, the Commission on the Environment, a body that sets policy for the San Francisco Department of the Environment and advises the Mayor and Board of Supervisors on environmental matters, is charged with this duty.*
- *The jurisdiction should also decide upon the time frame for the review. Here, three years is recommended, but the jurisdiction may prefer a shorter or longer period that better suits the needs and desires of the community.*

#### **Section 4. LIST OF ALL ENVIRONMENTAL ORDINANCES AND RESOLUTIONS.**

The **[appropriate government body]** shall produce and maintain a list of all **[the jurisdiction's]** ordinances and resolutions which affect or relate to the environment and shall post this list on **[the jurisdiction's]** website.

- *Again, the jurisdiction should decide which local government body should have this responsibility. In San Francisco, that body is the Department of the Environment.*

#### **Section 5. [THE JURISDICTION'S] UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

The **[jurisdiction's governing body]** encourages all **[the jurisdiction's]** employees and officials to take the precautionary principle into consideration and evaluate alternatives when taking actions that could impact health and the environment, especially where those actions could pose threats of serious harm or irreversible damage. This ordinance does not impose specific duties upon any **[jurisdiction]** employee or official to take specific actions. In adopting and undertaking the enforcement of this ordinance, **[the jurisdiction]** is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury nor may this ordinance provide any basis for any other judicial relief including, but not limited to a writ of mandamus or an injunction. In adopting this ordinance, the **[jurisdiction's governing body]** does not intend to authorize or require the disclosure to the public of any proprietary information protected under the laws of the State of Georgia.