

THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 614

An ordinance establishing the following:

(1) prohibiting, after May 1, 1989, Multnomah County, restaurants, retail food vendors and non-profit food providers from using polystyrene foam food products made with certain cholofluorocarbons (CFCs); (2) prohibiting, after January 1, 1990, Multnomah County's purchase of food and beverage products made from polystyrene foam, unless foam is recycled; (3) prohibiting, after January 1, 1990, restaurants and retail food vendors from using polystyrene foam food products, unless foam is recycled; (4) creating a task force to recommend means to reduce nondegradable disposable plastic products in landfills and litter.

Multnomah County ordains as follows:

SECTION I. FINDINGS

- A. Multnomah County, on January 19, 1989, established a recycling program within County facilities.
- B. Multnomah County, on February 9, 1989, adopted a purchasing policy favoring environmentally sound and reusable, recyclable, recycled, and degradable products.
- C. The Oregon Legislature has established priority in methods of managing solid waste as follows: 1) reduce the amount of solid waste generated; 2) reuse material for the purpose it was originally intended; 3) recycle material that cannot be reused; 4) recover energy; and 5) landfill.
- D. Readily disposable consumer plastic products made from polyethylene, polypropylene and polystyrene foam are used for take-out foods. These products do not decompose over time in the natural environment, and are a notable component of litter.
- E. Ozone depletion occurs when polystyrene foam products use certain chlorofluorocarbons in their manufacturing process. Ozone depletion reduces the earth's protection from ultraviolet radiation. Multnomah County supports international and federal bans on all non-essential use of chlorofluorocarbons. Responsible action to reduce chlorofluorocarbon use and alert the public to the danger posed by these substances should be undertaken at the local level.

F. This ordinance will serve the public interest by reducing the quantity of nondegradable waste in landfills and in litter, as a portion of any alternative packaging will be composed of products that are degradable in whole or in part.

G. Other commonly used food packaging materials are also nondegradable and contribute to litter and landfill problems. The task force established by this ordinance is charged with recommending ways to reduce these products in the waste stream and landfills. It is appropriate to prohibit unrecycled polystyrene foam food packaging first before prohibiting other types of nondegradable food and non-food plastic packaging because:

1. Incremental rather than comprehensive immediate regulation will limit disruption in the food service industry.

2. Polystyrene foam packaging consumes more space in landfills than many other packaging materials, because of its comparatively low density and its present popularity as a packaging material. It is therefore more wasteful of landfill space than other categories of food packaging material.

3. At present, no economically feasible or locally available recycling alternatives exist for polystyrene foam food packaging materials, but may be encouraged by this ordinance.

4. Preliminary steps toward recycling polystyrene foam used for non-food applications, such as packing and shipping materials, are underway and should be supported.

5. Recycling of readily disposable consumer plastic products has not yet been pursued by the plastics industry or major retail users of these products. Such opportunities should be examined and recycling, where feasible, should be pursued.

SECTION II. ORDER

A. On and after May 1, 1989, no restaurant, retail food vendor or non-profit food provider shall serve food, and after June 30, 1989 no food packager shall package meat, eggs, bakery products or other food or beverage in polystyrene foam products manufactured with chlorofluorocarbons (CFCs) which do not reduce the potential for ozone depletion by more than 95 percent, compared with the ozone depletion potential of CFC-12 (dychlorodifluorothane). Compounds banned include: CFC-11, CFC-12, CFC-113, CFC-114, CFC-115, Halon-1211, Halon 1301 and Halon 2402. Food providers may be required to furnish a

written statement from the manufacturer or supplier of polystyrene foam products used by that food vendor, indicating that the chemical compounds used in the products meet the provisions of this ordinance.

B. On or after May 1, 1989, neither Multnomah County nor any food vendor operating in facilities controlled by the County shall use polystyrene foam food products manufactured with the above designated chlorofluorocarbons.

C. On or after January 1, 1990, neither Multnomah County nor any food vendor operating in facilities controlled by the County, nor any restaurant or retail food vendor shall use or serve food to patrons in any polystyrene foam products unless the County, restaurant or vendor has a recycling program for polystyrene foam products used on the premises and for take-out food, and unless the Board of County Commissioners has found there exists in Multnomah County a recycling system actively supported by the plastics industry. Any recycling program operating pursuant to this section must meet the following minimum requirements:

1. The County, restaurant or vendor must collect all polystyrene foam products including take-out products; and

2. The County, restaurant or vendor must document that delivery of these plastic products to a recycling processor is occurring.

3. Further specifications shall be adopted by the Board of County Commissioners upon recommendation by the task force created by this ordinance.

D. On or before May 1, 1989, the Chair of the Board of County Commissioners and the Mayor of the City of Portland shall appoint an 11 member task force composed of persons representing a broad range of community interests and persons having special expertise on issues relevant to the task force's assignments.

1. The charge of the task force is:

- a. To recommend to the Board of County Commissioners and the City Council methods and specific goals, in terms of quality and quantity, for reduction of disposable plastic products in landfills and in the litter stream, using the priorities established by state law, ORS 459.015: 1) to reduce the amount of nondegradable plastics in the waste stream, 2) to reuse nondegradable plastics, 3) to recycle nondegradable plastics 4) to recover energy, and 5) to landfill.

b. To assess the recyclability of plastics, and to recommend a recycling system for these plastics, including collection, transportation, processing, and markets for post-industrial, post-commercial and post-consumer plastics, within the metropolitan area.

c. To support and monitor plastics recycling projects, including research and demonstration projects, and report on their effect on decreasing the amount of municipal solid waste deposited in landfills.

d. To consider public education and promotion, alternative product recycling/energy conversion, financial assistance, and alternative products, such as photo-degradable and biodegradable additives in meeting the goals the task force establishes.

e. To consider a range of solutions, from broader prohibitions on disposable plastic products to fewer prohibitions if recycling and/or alternative plastic technologies provide an effective means of reducing the amount of nondegradable material in landfills and litter.

f. To recommend whether, on or after May 1, 1990, restaurant and food vendors, both for-profit and/or non-profit, shall be prohibited from serving food to patrons in any nondegradable plastic products unless a recycling program for disposable plastic products is in place. Toward this end, the task force shall recommend to the Board of County Commissioners additional standards governing recycling programs for disposable plastics used on premises and for take-out food.

2. The task force shall present a status report, due May 1, 1990, and a final report, due prior to December 31, 1990, to the Board of County Commissioners and the Portland City Council. Each report shall address all elements of the charge specified in Section 1 a - f.

3. The task force will disband on December 31, 1990.

E. The County Sanitarian inspection staff shall determine, in the course of regularly scheduled inspections, whether a restaurant or retail food vendor is using polystyrene foam products in violation of this ordinance. Upon determination that a violation of this ordinance has occurred, the inspector shall notify the vendor and shall refer the matter to the City of Portland Bureau of Environmental Services.

F. The Bureau of Environmental Services Administrator, upon determination that a violation of the ordinance has occurred, shall, in accordance with procedures for enforcement of

Portland Ordinance No.161573, issue a written notice of the violation by certified mail to the vendor or food packager which will specify the violation and appropriate penalty.

1. Violations of this ordinance shall be punishable by fines as follows:

a. A fine not exceeding \$250 for the first violation in a one year period;

b. A fine not exceeding \$500 for the second and each subsequent violation in a one year period.

2. The vendor or food packager shall, upon receipt of a notice of violation, pay to the city the stated penalty or, within, 15 days after receipt of the notice, appeal the violation to the City of Portland Code Hearings Officer for hearing and disposition according to the procedures set forth in Chapter 22.01, Code of the City of Portland, Oregon.

3. The County may institute appropriate legal proceedings in any court of competent jurisdiction to enforce any provisions of this ordinance or the provisions of any order of the City of Portland Code Hearings officer, including, but not limited to, suit or action to obtain judgment for any civil penalty imposed by an order of the Code Hearings Officer under Section F of this ordinance.

G. The County Sanitarian is authorized to negotiate on behalf of the County an intergovernmental agreement with the City of Portland for assessment of penalties for violation of this ordinance as described above.

H. The Board of County Commissioners, or its appointee, may exempt a food vendor or food packager from the requirements of this ordinance for a one year period, upon a showing by the applicant that compliance with this ordinance would cause undue hardship. The phrase 'undue hardship' shall be construed to include, but not be limited to:

1. situations where there are no acceptable alternatives to polystyrene foam products for reasons which are unique to the vendor or packager;

2. situations where compliance with the requirements of this ordinance would deprive a person of a legally protected right. If a request for exemption is based upon a claim that a legally protected right would be denied if compliance were required and such request for exemption is denied, review of the denial shall only be by writ of review as provided for in

ORS 34.010 to 34.100, and not otherwise.

I. Definitions. As used in this ordinance the following terms have the following meanings:

1. "Chlorofluorocarbons" and "CFCs" are the family of substances containing carbon, fluorine and chlorine.

2. "Customer" and "patron" means any person purchasing food or beverages from a restaurant or retail food vendor.

3. "Degradable" means material capable of being broken down by micro-organisms into simple substances or basic elements.

4. "Food vendor" means any restaurant or retail food vendor.

5. "Food packager" means any person, located within Multnomah County, who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.

6. "Food served to patrons" means food or beverages which are served on the vendor's premises without preparation, or are prepared on the vendor's premises by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. "Food served to patrons" does not include any raw uncooked meat or eggs. The food may be eaten either on or off the vendor's premises.

7. "Non-profit food provider" means a recognized tax exempt organization which provides food as a part of its services.

8. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

9. "Recycled" describes a type of material that is separated from the solid waste stream and utilized as a raw material in the manufacture of a new product or new economic use. It includes the meaning found in ORS 459.015 ((17)(c)), that is, a process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

10. "Restaurant" means any establishment located within Multnomah County, selling food to be eaten by customers. Restaurant includes a sidewalk food vendor.

11. "Retail food vendor" and "vendor" means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, located within Multnomah County, which sells food to customers.

12. "Reuse" means the process by which a product is reclaimed or reprocessed into another useful product. It includes the meaning found in ORS 459.015 (17)(d), that is, to return a commodity into the economic stream for use in the same kind of application as before without change in its identity.

J. If any part or provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable.

SECTION III. ADOPTION

This ordinance, being necessary for the health, safety and general welfare of the people of Multnomah County, shall take effect on the thirtieth day after its adoption, pursuant to Section 5.50 of the Charter of Multnomah County.

ADOPTED this 6th day of APRIL, 1989, being the date of its second reading before the Board of County Commissioners of Multnomah County.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By Gladys McCoy
Gladys McCoy
Multnomah County Chair

REVIEWED:

Laurence Kressel, County Counsel
for Multnomah County, Oregon

By John DuBay