

PROHIBITION OF CHLOROFLUOROCARBON-PROCESSED FOOD PACKAGING

BE IT ORDAINED by the Council of the City of Berkeley, as follows:

Section 1. FINDING AND PURPOSE

The Council finds and declares as follows:

A. Available scientific evidence indicates a strong probability that the family of substances known as chlorofluorocarbons ("CFCs"), when discharged into the atmosphere, degrade the earth's protective layer of ozone, allowing increased amounts of ultraviolet radiation to penetrate the atmosphere, posing an acute and immediate danger to human health, life, and the environment. Available scientific evidence indicates the strong possibility that the resulting increase in ultraviolet radiation may already have caused an increase in the incidence of skin cancers and other serious illnesses.

B. One source of the CFCs currently being released into the atmosphere is the use of these substances as blowing agents in the manufacture of some of the polystyrene foam packaging products used in the food services industry. There are substitutes for these products currently available which do not use CFCs in their manufacture.

C. The people and the City of Berkeley support international, federal, and state bans on all uses of CFC not deemed absolutely essential. Until such bans are in effect, responsible action to reduce CFC use and alert the public to the danger posed by these substances must be undertaken at the local level.

D. It is the intent of the Council to reduce the amount of CFC-processed products purchased and used by the City and people of Berkeley and thereby to reduce the health hazards created by the manufacture of these products.

Section 2. DEFINITIONS

A. "Chlorofluorocarbons", are the family of substances containing carbon, fluorine and chlorine, having no hydrogen atoms and no double bonds.

B. "CFC-processed food packaging" means any food packaging which uses CFCs as blowing agents in its manufacture.

C. "Customer" means anyone purchasing food or beverages from a Restaurant or Retail Food Vendor.

D. "Person", "anyone" means any natural person, firm,

corporation, partnership, or other organization or group however organized.

E. "Supplier" means anyone selling, or otherwise supplying food packaging to a Restaurant or Retail Food Vendor.

F. "Food vendor" means any Restaurant or Retail Food Vendor.

G. "Prepared food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed. "Prepared food" does not include any raw uncooked meat product or fruits or vegetables which are not chopped, squeezed, or mixed.

H. "Restaurant" means any establishment located within the City of Berkeley, selling prepared food to be eaten on or about its premises by customers. Restaurant includes a sidewalk food vendor.

I. "Takeout Food" means prepared foods or beverages requiring no further preparation to be consumed and which are generally purchased in order to be consumed off the retail food vendor's premises.

J. "Retail Food Vendor" means any store, shop, sales, outlet, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the City of Berkeley, which sells takeout food.

K. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on a Restaurant's or Retail Food Vendor's premises.

Section 3. PROHIBITED FOOD PACKAGING

A. Restaurants

1. Except as provided in Sections 6 and 7, no Restaurant shall provide prepared food to its customers in any CFC-processed food packaging, nor shall any restaurant purchase obtain or keep any CFC food packaging for such purpose.

2. As to any food packaging obtained after the effective date of this ordinance, each Restaurant shall obtain from each of its suppliers a written statement signed by the supplier, or by a responsible agent of the supplier, stating that the supplier will supply no CFC-processed food packaging to that vendor, that the supplier will note on each invoice for food packaging supplied to that vendor that the packaging covered by the invoice is not CFC-processed and the identity of the packaging's manufacturer.

3. All contracts between a Restaurant and a supplier entered into after the effective date of this ordinance shall include provisions that the supplier will supply no CFC-processed food packaging; that the supplier will state on each invoice for food packaging supplied that the packaging is not CFC-processed; and the identity of the packaging's manufacturer; and that failure to comply with such provisions shall constitute a material breach of the contract.

4. Restaurants shall retain each supplier's written statement for one year from the date of receipt of any food packaging from that supplier.

B. Retail Food Vendors

1. Except as provided in Sections 6 and 7, no Retail Food Vendor shall sell takeout food in any CFC-processed takeout food packaging, nor shall any Retail Food Vendor purchase, obtain or keep any CFC-processed packaging for this purpose.

2. All Retail Food Vendors shall segregate, in their warehouses or other storage areas, food packaging used in their takeout food operations from other food packaging. Takeout food packaging containers or boxes shall be labelled as such and shall indicate that they contain food packaging which is not CFC-processed.

3. As to any takeout food packaging purchased after the effective date of this ordinance, each retail food vendor shall comply with the requirements of Section 3A(2) and (4) of this ordinance.

4. All contracts for the purchase of takeout food packaging entered into after the effective date of this ordinance shall comply with the provisions of Section 3A(3).

Section 4. REGULATIONS APPLICABLE TO ALL FOOD VENDORS

A. It shall be unlawful for any supplier to make any misstatement of material fact to any food vendor or to the City Manager or his or her agents regarding the use or non-use of CFCs in the manufacture of any food packaging supplied to any food vendor.

B. Food vendors shall state that they are in compliance with this ordinance on their annual business license renewal forms.

Section 5. INSPECTION OF DOCUMENTS

All statements and documents required by this ordinance shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone

having custody of such documents to fail or refuse to produce such documents upon request by the City Manager or his or her designated representative.

Section 6. EXEMPTIONS

The City Manager or his or her authorized representative may exempt an item or type of packaging from the requirements of this ordinance, upon a showing that the item or type has no acceptable non-CFC-processed equivalent and that imposing the requirements on that item or type would cause undue hardship. Said documentation shall include a list of suppliers contacted to determine if non-CFC-processed substitutes are available.

Section 7. EXISTING CONTRACTS EXEMPTED

Food packaging required to be purchased under a contract entered into prior to September 22, 1987 is exempt from the provisions of this Ordinance.

Section 8. CITY OF BERKELEY: PURCHASES PROHIBITED

The City of Berkeley shall not purchase any CFC-processed food packaging, nor shall any City-sponsored event utilize such packaging.

Section 9. CITY MANAGER'S POWERS

The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this ordinance, including, but not limited to, inspecting any vendor's premises to verify compliance.

Section 10. LIABILITY AND ENFORCEMENT

A. Anyone violating or failing to comply with any of the requirements of this Ordinance shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code.

B. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Ordinance.

C. The remedies and penalties provided in this section are cumulative and not exclusive.

Section 11. SEVERABILITY

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 12. ORDINANCE VOIDED BY SUPERSEDING FEDERAL LAWS AND REGULATIONS

This Ordinance shall be void upon the enactment or adoption of any law or regulation restricting the use of CFCs as blowing agents in the manufacture of plastic foams.

Section 13. EFFECTIVE DATE

The provisions of this Ordinance shall become effective on September 1, 1988.

Section 14. POSTING

Copies of this Ordinance are hereby ordered published by posting with the vote thereon for two (2) days at ten (10) prominent places in the City of Berkeley as designated by Chapter 1.08 of the Berkeley Municipal Code.

At a regular meeting of the Council of the City of Berkeley, held on the fourteenth day of June, 1988, this Bill was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Chandler, Dean, Goldfarb, Jelinek, Shirek, Skinner, Wainwright, Weekes and President Hancock.

Noes: None.

Absent: None.

ATTEST: EDYTHER CAMPBELL
City Clerk and Clerk of the Council

In effect: September 1, 1988

At a regular meeting of the Council of the City of Berkeley, held on the twenty-first day of June, 1988, this Ordinance was finally adopted by the following vote:

Ayes: Councilmembers Chandler, Dean, Goldfarb, Jelinek, Shirek, Skinner, Wainwright, Weekes and President Hancock.

Noes: None.

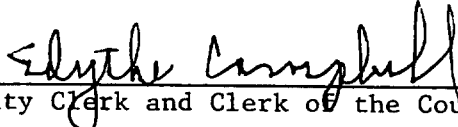
Absent: None.

ATTEST: EDYTHE CAMPBELL
City Clerk and Clerk of the Council

Approved this 21st day of June, 1988

LONI HANCOCK
Mayor and President of the Council

This is to certify that the foregoing is a true and correct copy of Ordinance No. 5867-N.S., and the same was finally adopted on June 21, 1988, and that it was duly and regularly posted as provided by law.

ATTEST: 
City Clerk and Clerk of the Council