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ORDINANCE NO. 2020-09

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY
MUNICIPAL CODE, TITLE 8 (HEALTH AND SAFETY),
ADDING CHAPTER 8.11 (NUISANCE – POLYSTYRENE FOAM)**

Annotated to show deletions and additions to the code sections being modified. Deletions are bold ~~lined through~~ and additions are bold underlined.

WHEREAS, Chapter 2, Section 2.1 and 2.2., of the City of Lincoln City Charter provides:

2.1 Powers of the City

The city has all powers which the constitutions, statutes and common law of the United States and of this state expressly or impliedly grant or allow municipalities as fully as though this charter specifically enumerated each of those powers.

2.2 Construction of Charter

In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state Constitution; and

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. *City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop*, 20 Or. App. 293; 531 P 2d 730, 734 (1975); *LaGrande/Astoria v. PERB*, 281 Or 137, 142 (1978), *aff'd on reh'g* 284 Or 173 (1978); and

WHEREAS, the City Council directed city staff to prepare an ordinance on the ban of polystyrene foam; and

THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

SECTION 1. Lincoln City Municipal Code, Title 8 (*Health and Safety*), Chapter 8.11 (*Nuisance – Polystyrene Foam*), is hereby added as follows:

**Chapter 8.11
NUISANCE - POLYSTYRENE FOAM**

Sections:

8.11.010 Polystyrene Foam Declared Nuisance.

8.11.020 Definitions.

1 8.11.030 Polystyrene Foam Banned Food Packaging.

2 8.11.040 Enforcement.

3 8.11.050 Exemptions.

4
5 8.11.010 Polystyrene Foam Declared Nuisance.

6
7 The manufacture of polystyrene foam of all types has been identified as a major
8 contributor to the depletion of the earth's ozone layer and thus is a long-term
9 menace to the public health. Polystyrene foam products used for prepared food
10 packaging are hereby declared a public nuisance.

11
12 8.11.020 Definitions.

13 As used in this ordinance, the following terms have the following meanings:

14
15 A. Chlorofluorocarbons are the family of substances containing carbon,
16 fluorine and chlorine.

17
18 B. Food Vendor means any restaurant, retail food vendor, or nonprofit
19 food provider.

20
21 C. Nonprofit Food Provider means a recognized tax exempt organization
22 which provides food as a part of its services.

23
24 D. Person means any natural person, firm, corporation, partnership, or
25 other organization or group however organized.

26
27 E. Restaurant means any establishment located within the City of Lincoln
28 City selling prepared food to be eaten by customers. Restaurant includes
29 Mobile Food Units and Street Vendors.

30
31 F. Retail Food Vendor, Vendor means any store, shop, sales outlet or other
32 establishment, including a grocery store or a delicatessen, located within the
33 City of Lincoln City, which sells prepared food. Retail Food Vendor includes
34 Mobile Food Units and Street Vendors.

35
36 8.11.030 Polystyrene Foam Products used for Prepared Food Packaging are
37 banned.

38
39 A. No restaurant, retail food vendor or nonprofit food provider or other
40 person shall serve prepared food, sell, give away, deliver or provide in any

1 way, prepared food in any polystyrene foam products, nor sell, give away,
2 deliver or provide in any way, polystyrene foam products intended for use
3 as disposable food containers, when such polystyrene foam containers are
4 manufactured with chlorofluorocarbons (CFCs) which do not reduce the
5 potential for ozone depletion by more than ninety-five percent (95%),
6 compared to the ozone depletion potential of CFC-12
7 (dychlorodifluorothane). Compounds banned include: CFC-11, CFC-12, CFC-
8 113, CFC-114, CFC-115, Halon-1211, Halon-1301 and Halon-2402.

9
10 B. Food Vendors may be required to furnish a written statement from the
11 manufacturer or supplier of polystyrene foam products used by that Food
12 Vendor, indicating that the chemical compounds used in the manufacture of
13 the vendor's polystyrene foam products do not violate the provisions of this
14 ordinance.

15
16 **8.11.040 Enforcement.**

17
18 Violations of this ordinance shall be deemed a Class C violation and shall be
19 subject to citation and punishable as set forth in Section 1.16 of the Lincoln City
20 Municipal Code.

21
22 **8.11.050 Exemptions.**

23
24 The prohibitions of this ordinance do not apply to raw food products, including
25 packaged raw meat, (e.g. beef, poultry, seafood or pork) and other raw food
26 products that have not been prepared by a Food Vendor.

27
28 **SECTION 2. Findings Adopted.**

29
30 The findings contained in the Whereas Clauses of this Ordinance, as well as the competent
31 substantial evidence in the whole record of this legislative proceeding are incorporated into this
32 section by reference as if fully set forth herein, and are adopted in support of this legislative
33 action.

34
35 **SECTION 3. Severability.**

36
37 The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity
38 of one section, subsection, paragraph, or clause shall not affect the validity of the remaining
39 sections, subsections, paragraphs and clauses.

40

1 **SECTION 4. Ordinance Delayed Effective Date.**

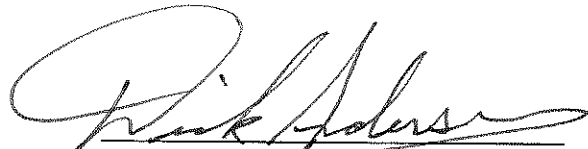
2
3 Pursuant to Chapter IX, Section 9.3, this ordinance takes effect on April 13, 2021.

4
5 **SECTION 5. Codification.**

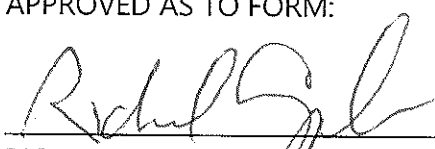
6
7 Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and
8 the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word,
9 and the sections of this Ordinance may be renumbered, or re-lettered, provided that any
10 Whereas clauses and boilerplate provisions (i.e. Sections 2-5) need not be codified and the City
11 Recorder is authorized to correct any cross-references and any typographical errors.

12
13 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section
14 9.2 of the City of Lincoln City Charter on the 23rd day of March, 2020 (First Reading) and on the
15 13th day of April, 2020 (Second Reading).

16
17 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 13th day of April, 2020.

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22 
23 DICK ANDERSON, MAYOR

24 ATTEST:
25
26
27 
28 CATHY STEERE, CITY RECORDER

29
30
31 APPROVED AS TO FORM:
32
33 
34 RICHARD APPICELLO, CITY ATTORNEY
35
36