



City of Cambridge

7.

IN CITY COUNCIL

December 18, 1989

COUNCILLOR WALTER J. SULLIVAN

ORDERED: That all items currently pending before the City Council with the exception of those items currently listed under "Unfinished Business" and not acted upon by the end of the 1989 legislative session be placed in the files of the City Clerk without prejudice, subject to recall by any member.

In City Council December 18, 1989.
Adopted by the affirmative vote of nine members.
Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:-

Joseph E. Connarton, City Clerk.

C. Daehay

**An Ordinance Regulating Food and Beverage
Packaging and Promoting
Environmentally Acceptable Packaging**

SECTION 1. Legislative Purpose.

The City of Cambridge finds that discarded packaging from food and beverage items constitutes a significant and growing portion of the waste in Cambridge's waste stream. Residences and commercial businesses in Cambridge generated 47,000 tons of solid waste in 1987-- one-half ton of waste per person per year. As other cities and towns in the Northeast are discovering, the costs of disposing of solid wastes have greatly increased in the past five years, and will continue to do so in the foreseeable future.

WHEREAS food and beverage packaging materials represent a substantial fraction of Cambridge's waste stream and of its disposal costs, and

WHEREAS plastic packaging is rapidly replacing other packaging material, and most plastic packaging used for foods and beverages is nondegradable, nonreturnable, and nonrecyclable, and

WHEREAS the two main processes used to dispose of nondegradable, nonreturnable, and nonrecyclable food and beverage packaging are landfilling and incineration, both of which should be minimized for environmental and public health reasons, and

WHEREAS Cambridge endorses an integrated system of solid waste management that addresses the Commonwealth of Massachusetts' stated hierarchy which places source reduction and recycling ahead of safe, "environmentally sound" combustion and landfilling, and

WHEREAS there exist many simple ways by which businesses can significantly help reduce or recycle the waste they generate, which will result in economic savings to Cambridge as well as proving environmentally beneficial.

THEREFORE, The City Council finds that the minimization of nondegradable, nonreturnable, and nonrecyclable food and beverage packaging originating at retail establishments within the City of Cambridge is necessary and desirable in order to reduce the City's waste stream, which in turn will reduce the volume of landfilled waste, minimize toxic by-products of incineration, make the waste stream less damaging to the environment, and make our City and neighboring communities more environmentally sound places to live.

The City Council also hereby announces its intention to establish, pursuant to Section 6 of this ordinance, an Advisory Committee on Environmentally Acceptable Packaging, which shall assist in drafting the rules and regulations implementing this ordinance and shall establish an Environmental Practices Recognition Program for

Cambridge.

SECTION 2. Definitions.

As used in this ordinance, the following terms and phrases shall have meanings as defined in this section:

(a) "Packaging" shall mean and include all food-related wrappings, adhesives, cords, bindings, strings, tapes, ribbons, bags, boxes, coverings and containers; and shall further include cups, glasses, and similar containers for drinking out of or for holding liquids, and plates and serving trays, but shall specifically exclude plastic knives, forks and spoons sold or intended for use as utensils.

(b) "Environmentally acceptable packaging" shall mean and include any of the following:

(1) **DEGRADABLE PACKAGING:** Paper or other cellulose-based packaging capable of being decomposed by natural biological or biochemical processes;

(2) **RETURNABLE PACKAGING:** Food or beverage containers or packages that are capable of being returned to a distributor for reuse as the same food or beverage container at least once;

(3) **RECYCLABLE PACKAGING:** Packaging made of materials that are separable from solid waste by the generator or during collection, and can be recycled in an organized fashion in a municipal, state, or private program within the City of Cambridge.

(c) "Food establishment" as used in this ordinance shall mean any person, business, or entity selling food at retail, whether for consumption on premises or not, and shall include, but not be limited, to supermarkets, restaurants, and convenience stores.

(d) "Commissioner" shall mean the Commissioner of Health and Hospitals of the City of Cambridge or the Commissioner's designee.

(e) "Advisory Committee," or "Committee" shall mean the Advisory Committee on Environmental Practices established pursuant to Section 6 of this ordinance.

SECTION 3. Prohibitions.

No person owning, operating or conducting a food establishment within the City of Cambridge shall do or allow to be done any of the following within the City: sell or convey at retail, or possess with intent to sell or convey at retail, any food or beverage that is placed, wrapped or packaged, at any time at or before the time or point of sale, in or on packaging which is not

environmentally acceptable packaging. The presence on the premises of a food establishment of packaging which is not environmentally acceptable packaging shall constitute a rebuttable presumption of intent to sell or convey at retail, or to provide to retail customers, packaging which is not environmentally acceptable packaging; provided, however, that this subparagraph shall not apply to manufacturers, brokers, or warehouse operators, who conduct or transact no retail food or beverage business.

SECTION 4. Enforcement.

The Commissioner shall have the duty and the authority to enforce all provisions of this ordinance and the rules and regulations promulgated hereunder.

SECTION 5. Rules and Regulations.

The Commissioner shall, upon notice and hearing, promulgate such rules and regulations as are necessary to carry out the purposes of this ordinance and protect the health of the public, including the development of exemptions for packaging for which there is no commercially available alternative and for flexible packaging. In promulgating such rules, the Commissioner shall consider the legislative purposes provided in Section 1 of this ordinance and shall consult with the operators of affected food establishments.

SECTION 6. Advisory Committee on Environmentally Acceptable Packaging.

(A) There is hereby established in the City of Cambridge an Advisory Committee on Environmental Practices, consisting of thirteen (13) members, of whom ten (10) shall be appointed by the City Manager no later than three (3) months after enactment of this ordinance. Of these ten persons to be appointed,

one shall be a representative of the restaurant and food-service industry;

one shall be a representative of the retail grocery industry;

one shall be a representative of the packaging industry;

one shall be a representative of solid-waste haulers;

one shall be a representative of the food or beverage processing industry;

one shall be an academic with specialized knowledge of waste-management engineering or related sciences;

two shall be citizens currently involved in recycling activities in the City of Cambridge;

one shall be a person nominated by the Secretary of the Massachusetts Executive Office of Consumer Affairs and Business Regulations; and

one shall be a person nominated by the Secretary of the Massachusetts Executive Office of Environmental Affairs.

An eleventh member shall be the Chairperson of the Cambridge Consumer Advisory Council or his or her designee.

A twelfth member shall be the Commissioner of Health and Hospitals or his or her designee.

A thirteenth member shall be the Commissioner of Public Works or his or her designee.

Of the ten persons appointed by the City Manager, at least seven (7) shall either be residents of Cambridge, operate a place of business within the City of Cambridge, or provide contractual services to the City of Cambridge, including at least five (5) who are residents and citizens of Cambridge.

The Advisory Committee shall hold regular meetings, shall designate the time and place of such meetings to the City Clerk, and shall publish notice of such meetings in a local newspaper at least one (1) week prior to the meeting. A majority of the Advisory Committee shall constitute a quorum.

The appointed members shall serve for renewable terms of two (2) years each, except that the initial appointments of two (2) industry representatives, one (1) citizen involved in recycling, one (1) state nominee, and the one (1) academic specialist shall be for one (1) year in order to stagger subsequent appointments. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as the original appointment. Said members shall serve without compensation.

The charge of the Advisory Committee shall include, but not be limited to, the following:

(i) monitoring industry and governmental actions relating to environmentally acceptable packaging;

(ii) advising the Commissioner of Health on implementation issues;

(iii) assisting in efforts to expand and institutionalize the City's recycling program, including but not limited to curbside recycling and the collection of potentially recyclable materials not presently collected;

(iv) recommending actions other levels of government and industry can take to advance the goals of this ordinance;

(v) encouraging adoption of substantially similar regulations by surrounding municipalities, particularly those municipalities with a border in common with Cambridge.

(B) In order to assist with the Commissioner's responsibilities established pursuant to Section 5 of this ordinance, within twelve (12) months of the enactment of this ordinance the Advisory Committee shall make recommendations to the Commissioner concerning rules and regulations necessary to implement this ordinance. The failure of the Advisory Committee to make such recommendations shall not in any way relieve the Commissioner of the responsibility established pursuant to Section 5 of this ordinance to promulgate any and all rules and regulations necessary to implement this ordinance prior to the effective date established in Section 11.

(C) The Advisory Committee shall establish an "Environmental Practices Recognition Program" to be administered by the Advisory Committee or a subcommittee thereof. The Environmental Practices Recognition Program shall acknowledge and assist Cambridge businesses undertaking beneficial waste management practices. As part of the Environmental Practices Recognition Program, the Advisory Committee shall:

(i) establish a list of environmentally desirable practices that apply to all Cambridge businesses. The environmentally desirable practices list should include, but should not necessarily be limited to, packaging reduction programs, in-house and other recycling programs, business-specific waste reduction programs, business-sponsored environmental education efforts;

(ii) undertake an annual survey of waste management practices of Cambridge businesses, for the purpose of establishing baseline data concerning the waste management practices of Cambridge businesses and in order to determine which Cambridge businesses merit public recognition as a result of their adoption of environmentally desirable practices established under the Environmental Practices Recognition Program;

(iii) establish a system for honoring, rewarding, and otherwise bringing to public attention those Cambridge businesses that have adopted environmentally desirable practices;

(iv) report each year to the City Council and City Manager regarding operation of the Environmental Practices Recognition Program, proposed changes or improvements, information gathered and its implications, businesses honored, and staff and funding needs to operate the program.

(v) undertake any and all educational efforts that the Advisory Committee determines necessary to promote understanding

and awareness of environmentally desirable practices, including but not limited to school environmental programs and the publishing and distribution of brochures and posters.

(D) The City Manager shall provide to the Advisory Committee sufficient administrative personnel and funding to carry out its responsibilities.

SECTION 7. Exemptions.

Notwithstanding any other provisions to the contrary, this ordinance shall not apply to:

(a) any flexible packaging of 10 mils or less in thickness unless disapproved by the Commissioner pursuant to rules and regulations promulgated under Section 5 above;

(b) any packaging used at hospitals or nursing homes in connection with patient or client care;

(c) any paper, cellophane or other cellulose-based packaging that is coated with plastic;

(d) any packaging which is not environmentally acceptable, but for which there is no commercially available alternative as determined by the Commissioner by rule promulgated pursuant to Section 5 above. In determining whether there are commercially available alternatives, the Commissioner shall consider the following: (1) the availability of other environmentally acceptable packaging for affected products; (2) the economic consequences to manufacturers, suppliers, retailers and other vendors or requiring environmentally acceptable packaging when available; (3) the competitive effects on manufacturers, suppliers, retailers and other vendors involved in the sale of product brands or labels available only in packaging that is not environmentally acceptable packaging. Every rule creating an exemption under this paragraph shall be reviewed annually by the Commissioner to determine whether current conditions continue to warrant the exemption.

SECTION 8. Penalties.

Each violation of any provision of this ordinance or of any rule or regulation promulgated pursuant to Section 5 hereof shall be a misdemeanor punishable by a fine of \$50. Each day on which a violation occurs shall constitute a separate violation of the applicable provision, rule, or regulation.

SECTION 9. Effect on Licensing of Food Establishments.

A violation of Section 3 of this ordinance shall be sufficient grounds for the revocation, suspension, denial or non-renewal of any license for the food establishment at which the violation occurs.

SECTION 10. Severability.

If any provision of this ordinance or rule or regulation promulgated hereunder , or the application thereof to any person or entity shall be adjudged unconstitutional or invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application which is directly involved in the controversy in which such judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this ordinance or the application thereof to other persons, entities, or circumstances.

SECTION 11. Effective Date.

This ordinance shall take effect October 1, 1991.

Statement of Cambridge City Councillor Francis H. Duehay in Introducing two ordinance to protect the environment.

1. An Ordinance to Regulate Food and Beverage Packaging and to Promote Environmentally Acceptable Packaging
2. An Ordinance to Promote the Recycling of Used Motor Oil.

I am introducing this evening two proposed ordinances, each designed to protect our environment from a serious source of pollution. One addresses problems resulting from excessive packaging, especially in the food and beverage industry, and from the use of packaging materials that are environmentally damaging. The other ordinance addresses the improper disposal of used motor oil, which threatens our water supply.

By failing to address these problems we impose needless and unacceptable costs of disposal and cleanup on our citizens, we endanger their health, and we risk contamination and loss of our water supply. By taking action, on the other hand, we can save taxpayers' dollars and provide a secure and livable environment for the future.

I shall comment now on each of these ordinances in turn. I refer first to the packaging ordinance.

Our society is producing an ever-increasing mountain of waste, a growing proportion of which is generated by the food and beverage industry. Much food-and-beverage packaging is made of plastics and other environmentally damaging materials. Fifty percent of all supermarket items are packaged entirely in plastic.

According to a recent article in the New York Times plastics now constitute about 7% of the municipal solid waste stream by weight, up from 3% in 1970. However, they constitute a disproportionately large disposal problem because they take 30% of the space in landfills and they constitute 40 - 50% of our litter.¹

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JBF

Furthermore, when plastic packaging is placed in landfills it has been found to leach hazardous chemicals into groundwater. When it is burned in incinerators these chemicals escape into the air and remain in the ash.

By taking local action Cambridge will join a groundswell of activity to minimize and limit food and beverage packaging waste. Nearly 350 legislative initiatives have been taken at the federal, state and local levels to curb certain types of food and beverage packaging.²

The proposed ordinance would prohibit the sale of food or beverages not packaged in an "environmentally acceptable" manner. Items sold by Cambridge restaurants, grocery and convenient stores, schools and other retail food establishments would have to be packaged according to criteria established by an advisory committee. Such criteria might include biodegradability, returnability and recyclability.

The ordinance would go into effect October 1, 1991. Prior to that time the Advisory Committee would meet regularly and produce detailed recommendations. Those recommendations would form the basis for regulations to be promulgated by the Department of Health and Hospitals just before the ordinance is scheduled to go into effect.

The Advisory Committee, based on a highly successful model currently being used in Minneapolis, MN, is conceived as a broadly based group representing all affected sectors, whose consensus-based decisions would therefore be widely acceptable. The committee would include, for example, representatives from the restaurant and retail grocery business along with others from consumer and environmental groups.

1. John Holusha, "Doubts are Voiced on 'Degradable' Plastic Waste," New York Times, 25 October, 1989, D9.

The committee's mandate also includes support for public education and voluntary efforts towards "environmentally aware shopping" through establishment of an Environmental Practices Recognition Program.

The ordinance also provides exemptions where there are no commercially acceptable alternative types of packaging and for reasons of health and public policy.

I refer now to the used-motor-oil ordinance.

Oil is toxic to people, animals and plants, and used motor oil currently constitutes the largest single component of hazardous waste in the state.³ The Department of Environmental Protection (DEP) estimates that Massachusetts residents generate 6.25 million gallons of used motor oil each year, and most of this oil is discarded improperly into the trash, down storm drains, and onto the ground. John DeVillars, Massachusetts Secretary of Environmental Affairs, says that such improperly discarded oil "has gummed up our sewage treatment plants, fouled our beaches, and further threatened public drinking water supplies."⁴

A survey by the Charles River Watershed Association showed that "two thirds of the towns and cities in the Charles River vicinity alone have uncovered pollution problems due to discarded motor oil."⁵

The Metropolitan Area Planning Council (MAPC) noted in June, 1989, that "... 40 communities [statewide] have lost water supplies to chemical or bacterial contamination, representing over 47 million gallons per day in capacity. Of those supplies contaminated, only about 25% have been restored to use through treatment or remediation. [In the MAPC region petroleum products and road salt constitute a major source of contamination, second only to volatile organic compounds.] Nearly every contamination incident docu-

mented has been caused by an inappropriate high-risk land use [near] a water supply source."⁶

Although Massachusetts General Law Chapter 21, Section 52A requires motor-oil retailers to accept used oil from their customers, it has not been enforced during the 16 years that it has been on the books. Moreover, it imposes requirements that customers bring proof of purchase and bring no more than two gallons when returning used motor oil to their retailers for recycling. These requirements pose serious impediments to consumer participation.

Local action is therefore needed. Leadership on this issue is especially important in Cambridge because we draw water from reservoirs located within five other towns as well as from the Fresh Pond Reservoir. Cambridge must show willingness to control illegal disposal of used motor oil within its own borders if it is to win the cooperation of Belmont, Lexington, Lincoln, Waltham and Weston where our reservoirs lie.

The proposed ordinance would overcome some limitations of the state law and establish a more comprehensive used-oil return program for Cambridge and its residents.

It provides first for annual collection from retailers of information about the sale, return and disposition of motor oil in the city. Such information is now lacking; once available, it will enable us to analyze and monitor the problem and to plan an appropriate response. When provided to DEP these data will also encourage the state to enforce Section 52A.

The ordinance establishes an Oil Recycling Committee to investigate ways in which Cambridge might promote and enforce the recycling of used motor oil, including possible centralized collection. Within 18 months the Committee will propose a compre-

hensive program for Cambridge, based on its investigations and data from the retailers' reports.

Finally, the ordinance makes disposal of motor oil by dumping it onto the ground, pouring it into a sewer or storm drain, or placing it in commercial or residential rubbish or garbage an infraction punishable by fine.

2. Ibid.

3. Daniel T. Sullivan, information from research conducted by Karen Jankowski for Charles River Watershed Associaton. Transcript from electronic bulletin board, July 14, 1988.

4. "Sellers of Oil Must Provide for its Return," article by Larry Tye, The Boston Globe, August 25, 1989.

5. Daniel T. Sullivan, Op. Cit.

6. Cambridge Reservoir Watershed Protection Plan: Technical Memo #3: Land Use, Potential Sources of Contamination, and Zoning, June, 1989, p. 1.

11.

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Comm. from Councillor Duehay transmitting two proposed amendments to the General Ordinances to be referred to the Ordinance Committee for hearing and report as follows:

1. ORDINANCE TO REGULATE FOOD AND BEVERAGE PACKAGING AND TO PROMOTE ENVIRONMENTALLY ACCEPTABLE PACKAGING AND
2. ~~ORDINANCE TO PROMOTE THE RECYCLING OF USED MOTOR OIL.~~

*12/28/89 - Placed on file
without prejudice*

In City Council,

October 30, 1989

REFERRED TO THE ORDINANCE COMMITTEE
FOR HEARING AND REPORT.

*Copy sent to Ad. Comm.
10/31/89 @w.*