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Title

Ordinance no. : an Ordinance of the City of Irvine Governing the manufacture, distribution, Sale and Recycling of Products Which Utilize Ozone-depleting Compounds.

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF IRVINE
GOVERNING THE MANUFACTURE, DISTRIBUTION,
SALE AND RECYCLING OF PRODUCTS WHICH
UTILIZE OZONE-DEPLETING COMPOUNDS

WHEREAS, available scientific evidence indicates that chlorofluorocarbons ("CFCs") and Halons, when discharged into the environment, deplete the earth's protective ozone layer, allowing increased amounts of ultraviolet radiation to penetrate the earth's atmosphere, thereby posing a long-term danger to human health, life and the environment by increasing such harms as skin cancers, cataracts, suppression of the immune system, damage to crops and aquatic life, and related harms;

WHEREAS, the release of Halons in testing fire extinguishing systems is a primary source of the release of Halons into the earth's atmosphere;

WHEREAS, CFCs are widely used in refrigeration and air conditioning systems in a form commonly known as "Freon";

WHEREAS, there is currently no economically feasible technology available as a substitute for the Freon used in refrigeration and air conditioning systems, and the Halon used in certain fire extinguishing systems;

WHEREAS, the recapturing and recycling of Freon from auto air conditioning units alone could eliminate nearly 20% of all CFC chemicals used nationally;

WHEREAS, the Montreal Protocol On Substances That Deplete The Ozone Layer (an international pact) which was ratified by the United States on April 21, 1988, and which became effective January 1, 1989, calls for reductions in the production, importation and exportation of CFCs to fifty percent (50%) of the worldwide 1986 levels, by 1998, and for a freeze on the production of Halon at 1986 levels beginning January 1, 1992;

WHEREAS, in light of the current and future limitations on the production of CFCs both nationally and internationally, the development and utilization of environmentally safe alternatives to CFCs at this time will create a competitive advantage to those businesses electing to utilize such alternatives prior to the effective date of any comprehensive international, federal, state or local regulation banning the use of CFCs and Halons;

WHEREAS, the release of CFCs and Halons into the atmosphere is a global danger to the environment, thus any reduction in the release of said materials within the City of Irvine will reduce this global danger and will result in a

benefit to the overall health and safety of the public inside and outside the City of Irvine;

WHEREAS, recent discoveries have shown that the reductions in CFC levels set forth in the Montreal Protocol may be insufficient to remedy the global health and safety risk created from the release of CFCs and Halons;

WHEREAS, the City of Irvine encourages the research and development of environmentally safe alternative technologies and products to replace the use of CFCs and Halons;

WHEREAS, the City of Irvine supports all international, federal and state bans on uses of CFCs; however, until such bans have been adopted by the appropriate agencies, responsible action on the part of the City of Irvine is necessary to reduce CFC and Halon use in order to promote the long-term health, safety and welfare of the general public, and the environment; and

WHEREAS, to protect the environment, and the health, safety and welfare of its citizens, the City of Irvine herein, by this Ordinance intends to prohibit the manufacture, sale and distribution of certain products made of or with a blowing agent compound which consists of CFCs,

and to significantly reduce the release of Halons into the earth's atmosphere.

NOW, THEREFORE, the City Council of the City of Irvine does hereby ordain as follows:

Section 1. Title IV of the Code of Ordinances of the City of Irvine is hereby amended to add Division Q to Title IV, which reads in its entirety as follows:

DIVISION Q

OZONE-DEPLETING COMPOUNDS

Sec. IV.Q-101 Definitions.

For purposes of this Division, the following definitions shall apply:

(a) "Chlorofluorocarbons" or "CFCs" shall mean the family of substances containing carbon, flourine and chlorine, and having no hydrogen atoms and no double bonds, and which includes, without limitation, CFC-11, CFC-12, CFC-113, CFC-114 and CFC-115. Examples of products containing or utilizing chlorofluorocarbons are "Freon" used in air conditioning and refrigeration units, degreasers and solvents

used in the cleaning of metals and electronic components and rigid and flexible foam used as packaging material and insulating material, and flexible foam used in car seats, bedding and furniture.

(b) "Halon" shall mean any fully halogenated carbon compound containing bromine, chlorine, or fluorine, and includes, without limitation, Halon-1301, Halon-1211 and Halon-2402.

(c) "Ozone-Depleting Compound" shall mean any CFC, Halon, the chemical compounds of methyl chloroform and carbon tetrachloride or any other chemical compound hereafter designated by the City Council by Amendment to this Ordinance, as being an "Ozone-Depleting Compound."

(d) "CFC Food Packaging" shall mean any container, carton, box, cup, lid, plate, bowl, tray or wrapping of any kind, which is or may be used to contain, package, store, insulate or serve any food and/or beverage, where any CFC has been used in the manufacturing and production of such item.

(e) "Rigid or Flexible Foam Containing or Utilizing an Ozone-Depleting Compound" shall mean any rigid or flexible foam, such as Styrofoam or thermoplastic foam, building insulation, or any other rigid or flexible foam that contains

within any closed cell any Ozone-Depleting Compound or that was produced by using an Ozone-Depleting Compound in any manner during the manufacturing process.

(f) "City" shall mean all territory within the corporate limits of the City of Irvine, County of Orange, State of California.

(g) "City Council" shall mean the City Council of the City of Irvine.

(h) "Person" shall include any natural person, firm, association, partnership or corporation, whether acting as a principal, agent, employee or otherwise, and includes any governmental entity or charitable organization.

(i) "Establishment" shall mean any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, common law trust, society or individual engaged in any profession, trade, occupation and any and every kind of calling carried on for profit or otherwise within the City, including any governmental entity or charitable organization.

(j) "Licensed Health Care Facility" shall mean any health care facility licensed either by the State of California Department of Health Services, pursuant to the provisions of the Health and Safety Code, or by the United States Department of Health and Human Services.

Sec. IV.Q-201 Prohibition on the Manufacture, Sale or Distribution of Products Utilizing Ozone-Depleting Compounds.

(a) Within the City of Irvine, no Establishment shall use any Ozone-Depleting Compound in any process or activity involving the manufacture, production, cleansing, degreasing or sterilization of any substance or product, except as otherwise provided in this section.

(b) Within the City of Irvine, no Establishment shall package any product with Rigid or Flexible Foam Containing or Utilizing an Ozone-Depleting Compound, except as otherwise provided in this section.

(c) Within the City of Irvine, no Establishment shall purchase, obtain, store, sell, distribute or otherwise provide to any Person any CFC Food Packaging Material, except as otherwise provided in this section.

(d) Exemptions:

(1) This Section shall not apply to the study and/or research of the effects of the release of Ozone-Depleting Compounds into the environment and/or the development of alternative technologies, where such compounds are necessary for conducting such study and research.

(2) This Section shall not apply to any Ozone-Depleting Compound used as a coolant in any refrigeration or air conditioning unit or system.

(3) Subsection (a) of this Section shall not apply to any Licensed Health Care Facility operated either for profit or not for profit, including any medical research conducted at such facility, or to manufacturers of any "drug" and/or any medical "device" as the terms "drug" and "device" are defined in Title 21 U.S.C. Sections 321(g)(1) and 321(h) of the Federal Food, Drug and Cosmetic Act, but only if the manufacturer is required to comply with the Good Manufacturing Practice requirements adopted pursuant to Title 21 U.S.C. Section 360j(f). This exemption is valid until such time as safe and effective alternatives to the current uses of Ozone-Depleting Compounds by the Licensed Health

Care Facility or manufacturer of drugs and/or medical devices are available, as determined by the Environmental Program Coordinator and approved by Council. All manufacturers of drugs and/or medical devices that utilize Ozone-Depleting Compounds shall adopt and implement a recycling system whereby any Ozone-Depleting Compound used as a sterilant by such manufacturers shall be recaptured and recycled in accordance with a recycling system approved by the Environmental Program Coordinator. Such approval shall be evidenced by a Certificate issued by the Environmental Program Coordinator.

(4) This Section shall not apply to any Person manufacturing a product or component product under contract with any branch of the United States Armed Forces where applicable military specifications require the use of an Ozone-Depleting Compound. Such manufacturer shall adopt and implement a recycling system whereby any Ozone-Depleting Compound used as a sterilant shall be recaptured and recycled in accordance with a recycling system approved by the Environmental Program Coordinator. Such approval shall be evidenced by a Certificate issued by the Environmental Program Coordinator.

Sec. IV.Q-202 Prohibition on the Use of Ozone-Depleting
Compounds in Building Insulation.

In the construction of any building or structure (commercial, industrial, residential or other), no Person shall install any building insulation which contains or utilizes an Ozone-Depleting Compound. Simultaneous with the filing of a building permit application, the applicant shall submit a written verification certifying that the building insulation to be installed does not contain an Ozone-Depleting Compound.

Sec. IV.Q-203 Disposal of Ozone-Depleting Compounds
Contained in Building Insulation.

No Person shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, renovate or demolish any building or structure which requires removal of existing insulation that contains an Ozone-Depleting Compound without recovering and properly disposing of such insulation in accordance with the procedures adopted by the Environmental Program Coordinator.

Sec. IV.Q-301 Recycling of Ozone-Depleting Compounds Used as Coolants in Refrigeration and/or Air Conditioning Units.

All Establishments that manufacture, repair, service or maintain any refrigeration or air conditioning unit or system, shall adopt and implement a recycling system whereby the Ozone-Depleting Compound used as a coolant in such refrigeration or air conditioning unit or system will not be released into the environment, but will be recaptured and recycled in accordance with a recycling system approved by the Environmental Program Coordinator. Such approval shall be evidenced by a certificate issued by the Environmental Program Coordinator.

Sec. IV.Q-302 Restriction on Sale of Ozone-Depleting Compounds Used as Coolants in Refrigeration and/or Air Conditioning Units.

No Person shall sell any Ozone-Depleting Compound for use as a coolant in a refrigeration or air conditioning unit or system to any Person who does not possess and provide evidence of a certificate of possession and operation of a recycling system.

Sec. IV.Q-303 Disposal of Refrigeration or Air Conditioning Unit or System.

No Person shall dispose of or shall cause the disposal of any refrigeration or air conditioning unit or system either in conjunction with the disposal of another product, or in any other manner, without first recapturing and recycling any Ozone-Depleting Compound used as a coolant in said unit or system, or without first ensuring such coolant will be recaptured and recycled, in accordance with a recycling program approved by the Environmental Program Coordinator.

Sec. IV.Q-401 Permit Required for Testing Fire Extinguishing Systems or Units Which Utilize Halon.

Other than testing or training as may be required by any statute, rule or regulation mandating the release of Halon, no Person shall release Halon in the training of personnel or in the testing of any fire extinguishing system unless the owner or lessee of the premises has obtained a testing permit from the Environmental Program Coordinator in consultation with the appropriate fire suppression authorities.

Sec. IV.Q-402 Reclamation of Halons from Portable Fire Extinguishing Systems or Units.

All Establishments that repair, service or perform maintenance on any portable fire extinguishing system or unit shall adopt and implement a reclamation system whereby any Halons used as the extinguishing agent in any such system or unit shall not be released into the environment, but shall be recaptured and recycled or properly disposed of in accordance with a reclamation system approved by the Environmental Program Coordinator.

Sec. IV.Q-501 Environmental Program Coordinator.

The City Council hereby creates the position of the Environmental Program Coordinator of the City of Irvine. The Environmental Program Coordinator shall report to the City Manager's office and shall oversee and be responsible for (i) the enforcement and administration of the provisions of Title IV, Division Q; (ii) establishing rules and regulations governing the recycling of Ozone-Depleting Compounds from refrigeration and/or air conditioning units or systems; (iii) providing informational assistance to persons seeking to implement a recycling program for Ozone-Depleting Compounds used in air conditioning and refrigeration systems; (iv) creating and implementing an educational program to provide

information to local establishments, industry and residents regarding the dangers and hazards associated with products made from or utilizing Ozone-Depleting Compounds; (v) establishing a program to encourage the development of alternative chemicals and technologies to replace the use of Ozone-Depleting Compounds in existing products; (vi) consulting and cooperating with other local, state and federal governmental agencies regarding the regulation of Ozone-Depleting Compounds and other matters affecting the environment and the health, safety and general welfare of the public; (vii) researching and investigating other environmental problems that affect the health, safety and general welfare of the residents of the City of Irvine for the purpose of seeking a resolution of such environmental problems; (viii) coordinating and consulting with other agencies and departments within the City of Irvine to facilitate the administration, application and enforcement of the provisions of this Division and to address any other environmental issues which affect the health, safety and general welfare of the public; (ix) researching and evaluating the need for and extent of a technical assistance funding mechanism to assist Establishments in the implementation of a recovery and/or recycling system and/or the proper destruction of an Ozone-Depleting Compound, as well as to assist in the development and utilization of safe and effective alternative technologies; (x) such other duties

and responsibilities as may be directed. The Environmental Program Coordinator is authorized to draft regulations for submittal to and approval by the City Council and to take any and all actions reasonable and necessary to enforce the provisions of this Division Q, including, but not limited to, obtaining the proper warrant, when necessary, in order to inspect any Establishment's premises to verify compliance with this Division. Upon adoption of this Ordinance, the City Manager shall take the necessary steps to ensure that the provisions of this Section are implemented in conformance with: (a) Division G of Title II of the City of Irvine Code of Ordinances regarding the City's approval personnel policies, principles and procedures; and (b) Section I.C-209 of Division C of Title I of the City of Irvine Code of Ordinances regarding the City's budget process.

Sec. IV.Q-502 Science Advisory Committee.

The City Council hereby establishes the Science Advisory Committee for the purpose of assisting and providing information to the Environmental Program Coordinator concerning the effects of Ozone-Depleting Compounds and other matters regarding the environment and the health, safety and general welfare of the public. The City Manager shall recommend for approval to the City Council individuals to serve as members of the Science Advisory Committee. The City

Manager or his or her designee shall serve as chairperson of the Committee and shall formulate policies and procedures to govern the operations of the Committee.

Sec. IV.Q-601 Exemption.

Any Person upon submittal of an application, payment of the appropriate processing fee which fee shall be in accordance with a fee schedule adopted by resolution of the City Council and upon a showing that no technically or economically feasible alternative for such Person's use of an Ozone-Depleting Compound is currently available, may apply for an exemption from any section or subsection of this Division. The Environmental Program Coordinator, supported by findings based upon factors including but not limited to those factors identified below, shall recommend to the City Council that the exemption be granted or denied. The City Council may either grant or deny the application, or remand it for further review. The following factors are among those to be considered in submitting and considering any application for an exemption: (1) The technical, practical and economic viability of the alternative; (2) The health, safety and environmental impact of the alternative; (3) The length of time for which the exemption is sought and the length of time needed before a technically and economically feasible alternative can be implemented; (4) The measures

already taken or to be taken by the applicant to minimize and/or eliminate the release of an Ozone-Depleting Compound, including whether and when a reclamation and/or recycling system has been or is to be implemented, as well as the effectiveness of any such system; (5) The hardship that will result to the applicant in the event the exemption is not granted; (6) Whether the applicant's actions are consistent with the spirit and intent of this Division.

Sec. IV.Q-701 Enforcement.

(a) Each and every day a violation of this Division continues to exist shall constitute a separate offense and violation, and each violation shall be punishable in accordance with the provisions of this Section.

(b) Where a violation has occurred, the Environmental Program Coordinator shall cause a notice of violation to be sent to the violator. If the violator disputes the violation, he or she may appeal the notice of violation to the City Manager by filing a written notice of appeal with the City Clerk within fifteen (15) days of service of the notice of violation. If requested by the violator, the City Manager shall provide a hearing on the notice of violation within fifteen (15) days of issuance of the notice of violation. Within fifteen (15) days after a hearing on the

notice of violation, the City Manager, based on evidence presented, shall either confirm, modify or dismiss the notice of violation.

(c) Any violation of the provisions of this Division shall be a misdemeanor.

(d) In addition to the penalties provided in this Section, any condition caused or permitted to exist in violation of any of the provisions of this Division shall be deemed a public nuisance and may be abated by a civil action pursuant to state law and/or by the provisions of Division J of this Title.

Sec. IV.Q-801 Severability.

If any section, subsection, sentence, clause, or phrase of this Division is for any reason held to be invalid or unconstitutional following a decision by a court of competent jurisdiction, such decision shall not effect the validity of the remaining portions of the Division. The City Council hereby declares that it would have passed this Division and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any other portion of this Division is subsequently declared invalid or unconstitutional.