

1. Transportation, Sustainability And Energy Committee Agenda

Documents: [TRANSPORTATION AGENDA 03-19-2014.PDF](#)

2. Cemetery Rules And Regulations

Documents: [CEMETERY RULES AND REGULATIONS.PDF](#)

2.I. Evergreen Cemetery Memo

Documents: [EVERGREEN CEMETERY MEMO.PDF](#)

2.II. Foam Code

Documents: [FOAM CODE.PDF](#)

2.III. GPWG Foam Report - Majority

Documents: [GPWG FOAM REPORT MAJORITY.PDF](#)

2.IV. Polystyrene Minority Report

Documents: [POLYSTYRENE MINORITY REPORT.PDF](#)

2.V. Bag Fee Ordinance

Documents: [BAG FEE ORDINANCE.PDF](#)

2.VI. GPWG Bag Final Majority Report

Documents: [GPWG BAG MAJORITY REPORT.PDF](#)

2.VII. GPWG Minority Report

Documents: [GPWG MINORITY REPORT.PDF](#)

CITY OF PORTLAND, MAINE
Transportation, Sustainability and Energy Committee

Transportation, Sustainability and Energy Committee

DATE: 3/19/2014

TIME: 5:30 PM

LOCATION: City Hall
City Council Chambers

AGENDA

- 1 Approval of January 15, 2014 Meeting Minutes
- 2 Action Items: (Public Comment will be taken on these items)
 - A Evergreen Cemetery and the Use of the Chapel- Ordinance Change
 - B Green Packaging Task Force- Polystyrene
 - C Green Packaging Task Force- Plastic Bags

Councilor David A. Marshall, Chair
Councilor Jon Hinck, Vice Chair
Councilors Cheryl Leeman and Kevin Donoghue

Chapter 7 CEMETERIES*

*Cross reference(s)--Streets, sidewalks and other public places, Ch. 25.

State law reference(s)--Cemetery corporations, 13 M.R.S.A. § 1031 et seq.

Art. I. In General, §§ 7-1--7-20

Art. II. Lot Ownership, §§ 7-21--7-45

Art. III. Care of Lots, §§ 7-46--7-65

Art. IV. Interments, §§ 7-66--7-85

Art. V. Plants, Shrubs and Flowers, §§ 7-86--7-105

Art. VI. Monuments, Tombs, Mausoleums and Other
Structures, §§ 7-106--7-122

Art. VII. Rules of Conduct, §§ 7-123--7-139

ARTICLE I. IN GENERAL

Sec. 7-1. Purpose and intent.

For the mutual protection of lot owners and the cemeteries as a whole, the rules and regulations in this chapter are hereby established for all municipal cemeteries. All lot owners and persons visiting the cemeteries shall abide by such rules and regulations as herein enacted and as hereafter amended, which are intended to assist in maintaining our cemeteries as peaceful and beautiful areas as well as reverent symbols of respect for the dead.

(Code 1968, § 502.1; Ord. No. 591-75, § 1, 11-3-75)

Sec. 7-2. Hours.

~~Cemetery offices will be open from 7:00 a.m. to 3:30 p.m. Monday through Friday, except holidays. The cemeteries themselves will be open from 7:00 a.m. to 6:30 p.m. each day, except from November first to April first when they will be open from 7:00 a.m. to 4:30 p.m. The Cemetery Office will be open from 8:00 AM to 4:30 PM during Standard Time and will be open from 7:00 AM to 3:30 PM during Daylight Savings Time Monday-Friday except Holidays.~~

The Cemetery grounds will be open from 7:00 AM to 6:30 PM during Standard Time and will be open from 7:00 AM to 4:30 PM during Daylight Savings Time 7 days a week.

(Code 1968, § 502.2(a)(1); Ord. No. 591-75, § 1, 11-3-75)

Sec. 7-3. Employees.

- (a) Cemetery employees shall not work on Saturdays, Sundays and holidays except that Saturday employment may be permitted by the superintendent of cemeteries for an additional charge as established by the city council or that employment may be required at times as determined by the department head.
- (b) Cemetery employees are not permitted to do any work for lot owners or other persons except upon order of the superintendent of cemeteries but are required to be civil and courteous to all persons visiting the cemeteries.

(c) No gratuity shall be accepted by any cemetery employee.
(Code 1968, § 502.2(a)(2), (a)(3), (a)(5); Ord. No. 591-75, § 1, 11-3-75)

Sec. 7-4. Fees.

All fees or charges for services are payable at the cemetery offices, except that interment charges may be payable through any reputable funeral director and any foundation charges for monuments or marker emplacement may be payable through any reputable monument dealer.
(Code 1968, § 502.2(a)(4); Ord. No. 591-75, § 1, 11-3-75)

Sec. 7-5. Use of Wilde Memorial Chapel.

Wilde Memorial Chapel located at Evergreen Cemetery is open to the public for a reasonable fee, as set from time to time by the Superintendent of Cemeteries. Any fee charged pursuant to this section shall be used to cover maintenance costs, the cost of utilities, and to provide necessary staff to facilitate the use of the Chapel. ~~Wilde Memorial Chapel located at Evergreen Cemetery is open to the public without charge.~~ Applications for use of the chapel must be made at least twelve (12) hours prior to time desired. ~~The remains of any persons dying from any contagious disease cannot be brought into the chapel for funeral services.~~

(Code 1968, § 502.10)

Sec. 7-6. Correction of errors.

The cemeteries reserve the right to correct any errors that may be made by them in making interments, disinterments or removals, or in the description, transfer or conveyance of any lot. Errors of lot owners in failing to specify proper interment position, or of monument dealers in failing to clearly specify monument or marker foundation positions will be cause once work is in progress by the cemeteries for a fair additional charge in the event a change is requested.

(Code 1968, § 502.9)

Sec. 7-7. Enforcement.

The superintendent of cemeteries is hereby empowered to enforce the rules and regulations of this chapter and to exclude from the cemeteries any person deliberately violating such rules and regulations. The superintendent shall have charge of the grounds and buildings within city cemeteries and shall have supervision and control of employees and all persons visiting the cemeteries, whether lot owners or otherwise.

(Code 1968, § 502.11)

Sec. 7-8. Reserved.

Sec. 7-9. Reserved.

Sec. 7-10. Reserved.

Sec. 7-11. Reserved.

Sec. 7-12. Reserved.

Sec. 7-13. Reserved.

Sec. 7-14. Reserved.

Sec. 7-15. Reserved.

Sec. 7-16. Reserved.

Sec. 7-17. Reserved.

Sec. 7-18. Reserved.

Sec. 7-19. Reserved.

Sec. 7-20. Reserved.

ARTICLE II. LOT OWNERSHIP

Sec. 7-21. Prospective purchasers to visit cemeteries.

Persons desiring to purchase lots should visit the cemeteries where the superintendent of cemeteries or designee will aid them in making a selection. Special rules relating to such lots will be explained and a copy of this chapter will be made available to prospective purchasers.

(Code 1968, § 502.3(a))

Sec. 7-22. Details of purchase.

The purchase price must be paid in full at the time of purchase and receipt for such purchase price will be given to the purchaser at that time. Within ten (10) days thereafter a deed will be sent to the purchaser by the director of finance. A description of lots contained in such deeds shall be in accordance with cemetery plots which are kept on file in the cemetery offices. It shall be the duty of the lot owner to notify the respective cemetery office of any change in address after purchase.

(Code 1968, § 502.3(b))

Sec. 7-23. Lots not subdivided or sold jointly.

Lots of various sizes are available in the cemeteries and, therefore, no lots will be subdivided.

(Code 1968, § 502.3(c))

Sec. 7-24. Purchasers-rights in roads, drives or paths.

No easement or right of interment is granted to any lot owner in any road, drive or path within the cemeteries, but such road, drive or path may be used as a means of access to the cemetery or buildings so long as it shall be devoted to such purpose.

(Code 1968, § 502.3(d))

Sec. 7-25. Rights reserved to cemeteries.

The right to enlarge, reduce, replot or change the boundaries or grading of the cemeteries, or a section or sections thereof, from time to time, including the right to modify or change the location of, or remove or regrade roads, drives, or walks, or any part thereof, is hereby reserved. The right to lay, maintain and operate, or alter or change, pipe lines or gutters for sprinkler systems and drainage purposes is also expressly reserved, as well as is the right to use cemetery property, not sold to lot owners, for cemetery purposes, including interment of the dead, or for anything necessary, incidental, or convenient thereto. The cemeteries reserve to themselves, and to those lawfully entitled thereto, a perpetual right of ingress and egress over lots for the purpose of passing to and from other lots.

(Code 1968, § 502.3(e))

Sec. 7-26. Cemeteries not responsible for loss or damage.

All reasonable precautions will be taken to protect lot owners and the property rights of lot owners within the cemeteries from loss or damage, but the cemeteries will not be responsible for loss or damage from causes beyond their reasonable control, and especially from damage caused by the elements, an act of God, common enemy, thieves, vandals, strikers, malicious mischief-makers, explosions, unavoidable accidents, invasions, insurrections, riots, or order of any military or civil authority, whether the damage be direct or collateral, other than is hereby provided.

(Code 1968, § 502.3(f))

Sec. 7-27. Terms of agreement with lot owners.

The deed, perpetual care bond and this chapter constitute the sole agreement between the cemeteries, the city and lot owners. The statement of any employee or agent, unless confirmed in writing by an authorized representative of the cemeteries or the city shall in no way bind the cemeteries or the city.

(Code 1968, § 502.3(g))

Sec. 7-28. Repurchase or exchange of lots by superintendent.

The superintendent of cemeteries shall have the authority to purchase outright, or by exchange for other lots on behalf of the city, any unoccupied lot at such price as may be agreed upon by the owner and the superintendent.

(Code 1968, § 502.3(h))

Sec. 7-29. Transfer of lots.

Transfer of lots will not be recognized without the consent of the superintendent of cemeteries, and transfer deeds may be obtained at the offices of the cemeteries.

(Code 1968, § 502.3(i))

Sec. 7-30. Lost or destroyed deeds.

A lost or destroyed deed will be replaced by ~~a new deed~~ a copy of the deed upon request upon payment of one dollar (\$1.00).

(Code 1968, § 502.3(j))

Sec. 7-31. Descent of title.

The laws of the state govern the descent of title to cemetery lots, as well as other matters relating to their ownership. It is important that, on the decease of an owner of a lot, the heirs or devisees of such person should file in the office of the respective cemetery full proof of ownership for the purpose of correcting the record. Notarized statements as to relationship and certified copies of wills are normally sufficient.

(Code 1968, § 502.8)

Sec. 7-32. Reserved.

Sec. 7-33. Reserved.

Sec. 7-34. Reserved.

Sec. 7-35. Reserved.

Sec. 7-36. Reserved.

Sec. 7-37. Reserved.

Sec. 7-38. Reserved.

Sec. 7-39. Reserved.

Sec. 7-40. Reserved.

Sec. 7-41. Reserved.

Sec. 7-42. Reserved.

Sec. 7-43. Reserved.

Sec. 7-44. Reserved.

Sec. 7-45. Reserved.

ARTICLE III. CARE OF LOTS*

*State law reference(s)--Care and maintenance of cemeteries, 13
M.R.S.A. § 1305.

Sec. 7-46. RESERVED

~~There are the following four (4) types of perpetual care which may be obtained from the city for the permanent maintenance of lots in cemeteries: (Classes 2nd, 3rd and 4th apply only to Evergreen Cemetery)~~

~~(a) 1st class. 1st class perpetual care includes keeping the turf even and in good condition, the grass properly cut, and the trees and shrubs, as duly authorized, trimmed.~~

~~(b) 2nd class. 2nd class perpetual care embraces any or all divisions in first class care, as well as the proper care and cleaning of all granite, stone, marble, or bronze structures on the lot at the time care is assumed, as well as any future erections expressly specified, but does not include replacement of any such structures.~~

~~(c) 3rd class. 3rd class perpetual care assumes the same care as 2nd class care and, in addition, includes replacement of structures as described above when necessary.~~

~~4th class. 4th class perpetual care includes all divisions in 1st class care and the care of any tombs, vaults or mausoleums, such as the pointing of joints, keeping walls in place, and the structure as a whole in a suitable and sanitary condition.~~

Sec. 7-47. Perpetual care required; may be purchased.

All lots sold after August 19, 1970, must include perpetual care consisting of keeping the turf even and in good condition, the grass properly cut, and the trees and shrubs, as duly authorized, trimmed. ~~except in cases of Sections 00, MM and LL (a) in Forest City Cemetery and Section SG in Evergreen where such requirement is optional,~~ Perpetual care may be purchased to cover any lots previously sold without care.
(Code 1968, § 502.4(b); Ord. No. 441-70, § 1, 7-20-70)

Sec. 7-48. Nature of care provided by cemeteries without cost.

The general care of the cemeteries is the responsibility of the city by and through its superintendent of cemeteries and includes reasonable and practical care of the unsold areas of the cemeteries, such as park and lawn areas, roads, shrubs and trees, which have been established by the cemeteries. In no case shall it mean the maintenance, repair or replacement of any memorial, tomb or mausoleum erected or placed upon a lot, nor the performing of any special or unusual work in the cemeteries.
(Code 1968, § 502.4(c))

Sec. 7-49. Additional care may be purchased.

(a) *By agreement.* Lot owners desiring additional care of their lots may arrange for such care with the superintendent of cemeteries who shall give an estimate of the cost of the work desired. This care may be provided for ~~by annual payments made by the lot owner or~~ by the establishment of a trust fund under such agreement as may be determined between the superintendent and the lot owner. The limitations of this type of care may vary according to the capabilities of the individual cemeteries.

By bequest. In addition to the foregoing, the superintendent of cemeteries is authorized to accept testamentary bequests for additional lot care including, but not limited to, trust funds, upon his determination that the purpose of the bequest can be financially and lawfully implemented. In the event that it

cannot be so implemented, the superintendent shall notify the estate's representative to that effect.

(Code 1968, § 502.4(d); Ord. No. 16-90, 6-18-90)

Sec. 7-50. Investment of trust and care funds.

All care funds held by the city, whether trust or perpetual care will be invested by the city as provided by law and will be expended only as provided by the trust or perpetual care agreement.

(Code 1968, § 502.4(e))

Sec. 7-51. Semi-active cemeteries.

Semi-active cemeteries of the city will be maintained as prescribed by the parks authority.

(Code 1968, § 502.4(f))

Sec. 7-52. Who may provide care for lots.

No person except a lot owner, ~~his or her authorized representative,~~ or an employee of the cemeteries, acting under the direction of the superintendent of cemeteries, is permitted to enter the cemeteries for the purpose of caring for lots without special permission of the superintendent of cemeteries secured in advance. The Management reserves the right to give authorization to any workmen, other than employees of the cemetery, before they may do work in any cemetery. Burial Right holders may have certain work done in accordance with these Rules and Regulations at their own expense upon application to the Management; prices to be agreed upon and paid before said work is done.

All outside workers must submit a Certificate of Insurance for review before commencing any work in the cemetery.

(Code 1968, § 502.4(g))

Sec. 7-53. Lot boundaries not to be defined.

No new lot or grave shall be defined by a fence, rail, curb, hedge, trees or shrubs for the purpose of describing its corners or boundaries.

(Code 1968, § 502.4(h))

Sec. 7-54. Reserved.

Sec. 7-55. Reserved.

Sec. 7-56. Reserved.

Sec. 7-57. Reserved.

Sec. 7-58. Reserved.

Sec. 7-59. Reserved.

Sec. 7-60. Reserved.

Sec. 7-61. Reserved.

Sec. 7-62. Reserved.

Sec. 7-63. Reserved.

Sec. 7-64. Reserved.

Sec. 7-65. Reserved.

ARTICLE IV. INTERMENTS*

*State law reference(s)--Disposal of bodies, 13 M.R.S.A. § 1032.

Sec. 7-66. Funerals in charge of cemeteries.

All funerals entering the cemeteries ~~shall be under the direction of a funeral director who~~ shall abide by the rules and regulations of the respective cemetery, and ~~funeral directors~~ upon arrival at a cemetery must present to the superintendent of cemeteries the necessary burial permit from the city clerk.
(Code 1968, § 502.5(b))

Sec. 7-67. Previous notices required for interments, etc.

The right is reserved by the cemeteries to insist upon at least ~~twenty-four~~ thirty-six (2436) hours' notice of any interment and at least one (1) week's notice of any disinterment or removal. The cemeteries reserve the right to postpone

interment/disinterment time due to acts of nature, God, civil and national emergencies.

(Code 1968, § 502.5(i))

Sec. 7-68. Times for interments.

The cemeteries will be open for interments from 8:00 a.m. to ~~4:30~~2:00 p.m., Monday through Friday. Requests for openings ~~prior to 10:00 a.m.~~ on Mondays must reach the cemetery offices before noon on Friday. Any services extending beyond or scheduled after these hours, or Saturday interments, will require an additional charge above the regular interment fee. No interments will be made on Sundays or legal holidays, except on proclamation of an emergency.

(Code 1968, § 502.5(a))

Sec. 7-69. Interments to be authorized by lot owners.

All orders for interments in lots must be signed by the owner of the lot, or his or her authorized representative. When this is impossible because of absence from the city, telegraphic ? permission will be accepted in lieu of signed authorization.

(Code 1968, § 502.5(d))

Sec. 7-70. Number of interments in single grave.

No interment of two (2) or more bodies shall be made in one (1) grave, except in the case of mother and child, or two (2) infants, buried in one (1) casket. Further variation may be made in the case of cremations within family lots subject to the placing of markers and upon prior approval of the superintendent of cemeteries. One body and one cremains or 2 cremains will be allowed in a single full size grave.

(Code 1968, § 502.5(e))

Sec. 7-71. Location within lot to be designated by owner.

When an interment is to be made in a lot, the location of such interment shall be designated by the lot owner, or his or her authorized representative. Should he or she fail or neglect to make such designation, the cemeteries reserve the right to make the interment in a location designated by the superintendent of cemeteries. The cemeteries shall not be

responsible for errors from telephone information lacking precise and proper instructions as to the particular space, size of grave, and location in a lot, where interment is desired.
(Code 1968, § 502.5(f))

Sec. 7-72. Caskets opened only when.

Once a casket containing a body is within the confines of a cemetery, it shall not be opened except by a funeral director or his or her assistants or on an order signed by a court of competent jurisdiction.
(Code 1968, § 502.5(c))

Sec. 7-73. Graves opened only when.

Once an interment has been made, graves will be opened only by officials and employees of the cemeteries in the sole and exclusive judgment of the superintendent of cemeteries that such opening is proper, necessary, and duly authorized or when the cemetery is directed to make a disinterment by an ~~order~~ **order** of a court of competent jurisdiction and a certified copy of such order has been filed with the superintendent of cemeteries. In all cases the responsibility of the cemetery shall be limited to opening of the grave only and the actual disinterment must be made by the person authorized to do so.
(Code 1968, § 502.5(g))

Sec. 7-74. Outside containers required.

In order to maintain a high standard of care and to eliminate sunken graves caused by the collapse of wooden boxes, all burials must be made in outside containers constructed of natural stone, or of metal, or of reinforced concrete, or approved synthetics. All such containers must be made and installed so as to meet the specifications established by the superintendent of cemeteries. Outside containers may be procured from any source provided they meet the established specifications. Cement liners may be purchased and installed through the cemeteries, if so desired.
(Code 1968, § 502.5(h))

Sec. 7-75. Reserved.

Sec. 7-76. Reserved.

Sec. 7-77. Reserved.

Sec. 7-78. Reserved.

Sec. 7-79. Reserved.

Sec. 7-80. Reserved.

Sec. 7-81. Reserved.

Sec. 7-82. Reserved.

Sec. 7-83. Reserved.

Sec. 7-84. Reserved.

Sec. 7-85. Reserved.

ARTICLE V. PLANTS, SHRUBS AND FLOWERS*

*Cross reference(s)--Vegetation generally, Ch. 29.

Sec. 7-86. Responsibility of cemeteries.

The cemeteries will undertake to maintain, to the extent practicable, the planting of trees and shrubs to preserve its landscape features, but will not undertake to maintain individual plantings, or urns of plants, except when so contracted to do so by special arrangement.

(Code 1968, § 502.6(a))

Sec. 7-87. Plantings; permission may be granted.

No individual beds of shrubbery or flowers shall be permitted on the grounds of the cemeteries, except by special permission of the superintendent of cemeteries, and request for such permission should be accompanied by a scaled sketch of the proposed planting, showing the location and name of the proposed plantings.

(Code 1968, § 502.6(b))

Sec. 7-88. Care of evergreens where authorized.

In the monumental sections of the cemeteries where certain areas allow the planting of evergreens, dwarf Alberta spruce and dwarf arborvitae are the only evergreens allowed. All evergreens and shrubs must be kept trimmed to within six (6) inches of the lot borders. The cemeteries will, to the extent practicable, trim all evergreens properly placed on lots. Any trees or shrubs exceeding the six (6) inch mark will be severely cut back or removed.

(Code 1968, § 502.6(c))

Sec. 7-89. Plantings on single lots, etc.

No shrubs or evergreens will be permitted on a single grave lot. No plantings of any shrubs or trees will be permitted at individual headstones or flush markers. Plantings on two (2) grave or larger plots must first be approved by the superintendent of cemeteries. Planting of annuals is allowed in certain sections of the cemetery. Please contact Office for details.

(Code 1968, § 502.6(d))

Sec. 7-90. Floral displays on graves.

Only one (1) floral display is permitted on a grave at any one (1) time. Exceptions to this rule will be permitted during one (1) week prior to and one (1) week following Memorial Day and at the time of interment. No glass jars, unsightly metal receptacles or breakable flower containers shall be placed on lots. True floral containers, recessed holders and rustic baskets are recommended.

(Code 1968, § 502.6(e))

Sec. 7-91. Regulations covering Memorial Park or nonmonumental areas.

In the Memorial Park or nonmonumental sections of the cemeteries, the primary aim is to create a beautiful expanse of park-like grounds, bordered by appropriate shrubs, trees and gardens. Within such areas all markers shall be flush with the surface. No individual plants within the burial areas will be

permitted. Only one (1) floral display shall be permitted on a grave at any one (1) time, with the exceptions as set forth under section 7-90. Except for recessed containers, all plant and flower holders shall be placed upon the individual marker. In the absence of a marker, permission may be granted for the placement of memorial flowers or plants above ground on the normal location of a marker space. Cooperation of lot owners in this area will permit better maintenance and opportunities to improve the appearance and quality of the turf within these areas.

(Code 1968, § 502.6(f))

Sec. 7-92. Right of cemeteries to remove flowers and plants.

The cemeteries shall have the right to remove all floral designs, flowers, weeds, trees, shrubs, plants, or herbage of any kind from the cemeteries as soon as, in their judgment, they become unsightly, dangerous, detrimental, or diseased, or when they do not conform to the standard maintained in the cemeteries.

(Code 1968, § 502.6(g))

Sec. 7-93. Cemeteries not responsible for flowers and plantings.

The cemeteries shall not be responsible for floral pieces, baskets or frames in which or to which floral pieces are placed or attached beyond their acceptance for services held in the cemeteries, and shall not be responsible for frozen plants or herbage of any kind, or for plantings damaged by the elements, thieves, vandals or by other causes beyond their control. The cemeteries reserve the right to prevent the removal of any flowers, floral designs, trees, shrubs, plants or herbage of any kind without prior approval.

(Code 1968, § 502.6(h))

Sec. 7-94. Removal of unsightly vases, urns.

The cemeteries reserve the right to remove from lots vases or urns not properly painted or otherwise cared for or not filled with plants by June thirtieth.

(Code 1968, § 502.6(i))

Sec. 7-95. Reserved.

Sec. 7-96. Reserved.
Sec. 7-97. Reserved.
Sec. 7-98. Reserved.
Sec. 7-99. Reserved.
Sec. 7-100. Reserved.
Sec. 7-101. Reserved.
Sec. 7-102. Reserved.
Sec. 7-103. Reserved.
Sec. 7-104. Reserved.
Sec. 7-105. Reserved.

**ARTICLE VI. MONUMENTS, TOMBS, MAUSOLEUMS AND
OTHER STRUCTURES***

*State law reference(s)--Mausoleums and vaults, 13 M.R.S.A. § 1341 et
seq.

Sec. 7-106. One monument per lot permitted; one marker per grave permitted.

The owner of any lot shall have the right to erect thereon any proper stone or monument upon authorization by the superintendent of cemeteries. Only one (1) monument shall be permitted on a lot which must be located in the center or center rear, unless special permission is granted by the superintendent for placing it otherwise. Only one (1) individual marker per grave is allowed in any of the cemeteries. In certain areas, however, a monument and individual headstones are permitted.
(Code 1968, § 502.7(a))

Sec. 7-107. Site and plans of structures to be approved.

Tombs, vaults or mausoleums can be constructed only in such places and be of such design as shall be approved by the superintendent of cemeteries. Complete plans and specifications must be furnished when request for permission to build is made.
(Code 1968, § 502.7(b))

Sec. 7-108. Single apartments required.

No bodies shall be placed in tombs, vaults or mausoleums except in hermetically sealed, single apartments in a manner satisfactory to the superintendent of cemeteries.
(Code 1968, § 502.7(c))

Sec. 7-109. Materials, size and design of structures.

No monument or other structure on a lot above ground shall be constructed of any other material than cut marble, granite, natural stone, or real bronze. In general, no monument or marker shall exceed a base size from end to end of sixty (60) percent of the width of the lot. However, in certain areas of the cemeteries, the specific design of particular sections has been planned to accept a certain type or size marker. These sections are familiar to local monument dealers, and more detailed information may be had at the offices of the cemeteries concerning such requirements or specifications.
(Code 1968, § 502.7(d))

Sec. 7-110. Foundations required; by whom constructed.

No stone, monument, tomb, vault or other superstructure shall be erected until a suitable foundation is laid. All foundations for monuments shall be not less than four (4) feet in depth. Deeper foundations will be used when deemed advisable by the superintendent of cemeteries. As a guarantee of good work, for the general welfare of the cemeteries, and for protection to lot owners, the cemeteries reserve the right to construct all foundations for such structures. The superintendent of cemeteries may, however, if deemed advisable, authorize under his supervision the construction of such foundation by other qualified contractors.
(Code 1968, § 502.7(e))

Sec. 7-111. Perpetual care required.

All tombs, mausoleums or vaults constructed after August 19, 1970, shall have such provision made for perpetual care as is adequate in each case.
(Code 1968, § 502.7(f))

Sec. 7-112. Reserved.

Sec. 7-113. Reserved.

Sec. 7-114. Reserved.

Sec. 7-115. Reserved.

Sec. 7-116. Reserved.

Sec. 7-117. Reserved.

Sec. 7-118. Reserved.

Sec. 7-119. Reserved.

Sec. 7-120. Reserved.

Sec. 7-121. Reserved.

Sec. 7-122. Reserved.

ARTICLE VII. RULES OF CONDUCT*

*Cross reference(s)--Offenses and miscellaneous provisions, Ch. 17.

Sec. 7-123. Trespass.

No person other than a cemetery employee on authorized duties shall enter any cemetery after the hours or times specified in section 7-2 and any person so entering shall be guilty of trespass.
(Code 1968, § 502.2(b)(1); Ord. No. 591-7, § 1, 11-3-75)

Sec. 7-124. Malicious mischief.

No person shall destroy, mutilate, deface, injure or remove any tomb, monument, gravestone, marker or other structure placed within any cemetery, or any fence, railing, or other work for the protection or ornamentation of any tomb, monument, gravestone, marker or other structure aforesaid, or any cemetery lot within any cemetery.

(Code 1968, § 502.2(b)(3); Ord. No. 591-75, § 1, 11-3-75)

Sec. 7-125. Manner of travel by pedestrians.

Persons visiting the cemeteries shall use only the avenues, walks and alleys provided, and no person shall walk upon or across lots or lawns unless necessary and where such avenues, walks or alleys are not provided. The city expressly disclaims responsibility for any injury sustained by any person violating this section.

(Code 1968, § 502.2(b)(2); Ord. No. 59175, § 1, 11-3-75)

Sec. 7-126. Manner of travel by vehicles.

Motor cars and vehicles must be kept under complete control at all times. When meeting a funeral cortege, they must stop until the procession passes. They must not pass a funeral cortege, either stopped or in motion. Mufflers must not be opened, nor the horn sounded within the cemeteries, and all such vehicles shall comply with the following rules:

- (a) Maximum speed limit: Fifteen (15) miles per hour.
- (b) No vehicle may be driven or parked across or upon any grave, lot or lawn.
- (c) Parking or leaving any vehicle on any road or drive in such a way as to prevent any car or vehicle from passing is prohibited and a violation of this section will be cause for the removal of such vehicle by the superintendent of cemeteries at the owner's expense.

Making a complete or partial reverse turn of any vehicle on any road or drive is forbidden.

(Code 1968, § 502.2(b)(4); Ord. No. 591-75, § 1, 11-3-75)

Sec. 7-127. Commercial vehicles prohibited.

No commercial vehicle shall be permitted within the limits of any cemetery except those directly involved in the business of the cemetery. The words "commercial vehicle" as used in this particular subsection shall mean a motor vehicle which bears a "Com" license plate as issued by the state or motor vehicle bearing commercial plates issued by any other state.
(Code 1968, § 502.2(b)(5); Ord. No. 591-75, § 1, 11-3-75)

Sec. 7-128. Alcoholic beverages prohibited.

No person shall be in possession of or consume any alcoholic beverage within any cemetery.
(Code 1968, § 502.2(b)(6); Ord. No. 591-75, § 1, 11-3-75)

Cross reference(s)--Alcoholic beverages generally, Ch. 3.

Sec. 7-129. Commercial enterprises prohibited.

No person shall sell or offer for sale, hire, lease or rent any object, merchandise, property, service or other thing in any cemetery nor shall any person engage in any commercial enterprise in any cemetery except such as is directly involved in the business of the cemetery.
(Code 1968, § 502.2(b)(7); Ord. No. 591-75, § 1, 11-3-75)

Sec. 7-130. Solicitations prohibited.

Solicitations, charitable, political or otherwise are prohibited in any cemetery.
(Code 1968, § 502.2(b)(8); Ord. No. 591-75, § 1, 11-3-75)

Cross reference(s)--Peddlers and solicitors generally, Ch. 19.

Sec. 7-131. Litter.

No person shall deposit in any cemetery any garbage, sewage, refuse, waste, vegetables, foodstuffs, boxes, tin cans, paper, or other litter or waste material or obnoxious material, except in containers designed for such purposes.
(Code 1968, § 502.2(b)(9); Ord. No. 591-75, § 1, 11-3-75)

Cross reference(s)--Garbage, wastes and junk generally, Ch. 12.

Sec. 7-132. Disorderly conduct prohibited.

No person shall behave in a loud, indecent or disorderly manner in any cemetery or except as provided by section 7-138, create any unnecessary disturbance therein.

(Code 1968, § 502.2(b)(10); Ord. No. 591-75, § 1, 11-3-75)

Cross reference(s)--Offenses against public peace, § 17-16 et seq.

Sec. 7-133. Sports, games prohibited.

No person shall conduct or participate in any sport, game or contest in any cemetery, except ice skating.

(Code 1968, § 502.2(b)(11); Ord. No. 591-75, § 1, 11-3-75)

Cross reference(s)--Parks, recreation and public buildings, Ch. 18.

Sec. 7-134. Minors prohibited in cemeteries; exception.

Children under fifteen (15) years of age are not permitted within the cemeteries, except when accompanied by their parents, guardian or other adult person or by a written note of permission signed by a parent or guardian, giving their telephone number or address.

(Code 1968, § 502.2(b)(12); Ord. No. 591-75, § 1, 11-3-75)

Sec. 7-135. Unleashed animals prohibited.

No person shall cause or permit any animal or dog owned by him or her, in his or her custody, or under his or her control, to go at large within any cemetery unless on the walkways and roadways only and held in leash by a responsible person, the leash not to exceed eight (8) feet in length, except as otherwise provided in section 5-15.1 of this Code for control of dogs in city-owned cemeteries.

(Ord. No. 176-96, § 8, 3-4-96)

Editor's note--Pursuant to the adoption of § 5-15.1 of this Code, § 7-135, which prohibited unleashed animals in cemeteries, has been deleted, treated as repealed by said § 5-15.1. Formerly, § 7-135 derived from § 502.2(b)(13) of the city's 1968 Code as amended by Ord. No. 591-75, § 1, adopted Nov. 3, 1975. Subsequently, Ord. No. 176-96, § 8, adopted Mar. 4, 1996, enacted similar new provisions as herein set out.

Sec. 7-136. Unauthorized items removed from lots.

~~The placing of boxes, shells, toys, ornaments, chairs, settees or similar unauthorized items upon lots will not be permitted, and the superintendent of cemeteries reserves the right to remove any such unauthorized items.~~ The use of shells, stones, lawn ornaments, statues, , glass containers, solar lights, shepherds crooks, tin cans and other similar items is strictly prohibited. No Lawn ornament of any kind as defined by the Superintendent of Cemeteries or his/her designee shall be allowed. The Superintendent reserves the right to remove without notice any planting or object that is in violation of these regulations, or in the opinion of the Management is a hazard to its employees or injurious to the general appearance of the cemetery.

(Code 1968, § 502.2(b)(14); Ord. No. 591-75, § 1, 11-3-75)

Sec. 7-137. Signs prohibited.

No sign, notice or advertisement of any kind except directional, identification signs placed by cemetery personnel shall be permitted in any cemetery and the superintendent of cemeteries shall remove same.

(Code 1968, § 502.2(b)(15); Ord. No. 591-75, § 1, 11-3-75)

Cross reference(s)--Signs and billboards generally, § 14-366 et seq.

Sec. 7-138. Firearms, fireworks, weapons, etc., prohibited.

The bringing of firearms into any cemetery, except by a military escort, is prohibited. The discharging of, or carrying, offensive weapons of any type, or the hurling of rocks or pellets, or the discharging of fireworks therein is strictly prohibited. This is not to be construed as prohibiting ceremonial volleys with blank charges by properly supervised honor guards as a tribute to a deceased person if such ceremonial undertaking has been previously scheduled with the superintendent of cemeteries.

(Code 1968, § 502.2(b)(16); Ord. No. 591-75, § 1, 11-3-75)

Cross reference(s)--Fire prevention and protection, Ch. 10; weapons generally, § 17-41 et seq.

Sec. 7-139. Fishing prohibited.

In cemeteries containing natural or artificial ponds, the act of fishing or carrying tackle is prohibited.
(Code 1968, § 502.2(b)(17); Ord. No. 591-75, § 1, 11-3-75)



Michael J. Bobinsky
Director of Public Services

To: Members of the Transportation, Sustainability and Energy Committee
From: Troy Moon, Environmental Programs and Open Space Manager
Subject: Cemetery Ordinance Updates
Date: 3/14/2014

It has been some time since language in Chapter 7 of the City Code has been reviewed and we have found a number of areas that need to be updated based on changes in cemetery operations and management that have occurred over time.

Beginning in 1970 the city began requiring fifty percent of the purchase price of graves, to be placed into a perpetual care fund. The city stopped selling stone insurance at this time. We also want to strike the language referencing the different levels of stone insurance.

We would like to add language which would permit the City to charge a reasonable fee for use of the chapel for funerals in order to cover costs related to holding such events in the building. There has been some confusion about this over the years and administrations have treated this differently. Corporation Counsel has reviewed the records and can find no specific language indicating that we could not charge a fee, and want to clarify that in the ordinance.

Staff will be present to go over these changes and answer any questions.

Sec. 12-206. Reserved.
Sec. 12-207. Reserved.
Sec. 12-207. Reserved.
Sec. 12-208. Reserved.
Sec. 12-209. Reserved.

ARTICLE VIII. POLYSTYRENE

Sec. 12-210. Findings; purposes.

The city council hereby finds as follows:

- (1) Polystyrene foam is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of Portland.
- (2) The City of Portland desires to protect the natural environment.
- (3) There is no economically feasible means of recycling polystyrene foam locally.
- (4) Disposable food service ware made from polystyrene foam constitutes a portion of the litter in Portland's streets, parks and public places that increases city maintenance costs.
- (5) Polystyrene foam is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them.
- (6) The State of Maine has banned the service of food and beverages in polystyrene foam containers at facilities or functions of the State or its political subdivisions (38 M.R.S. §§ 1651-1654).
- (7) The City's goal is to replace polystyrene foam food service ware with reusable, recyclable or compostable alternatives.
- (8) Such alternatives are readily available.

Sec. 12-211. Definitions.

As used in this Article the following terms have the following meanings:

"Food Packager" means any person located within the City of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products;

"Prepared food" means food or beverages which are served at the food vendor's location having been previously prepared elsewhere or are prepared at the vendor's location by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. *"Prepared food"* does not mean raw uncooked meat or eggs. Prepared food may be eaten either on or off premises.

"Polystyrene foam" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term *"polystyrene"* shall not include clear polystyrene known as *"oriented polystyrene."*

"Vendor" means any person, restaurant, store, shop, sales outlet or other establishment, including without limitation, a grocery store, convenience store or a delicatessen located within the City of Portland which sells prepared food.

Sec. 12-212. Prohibitions.

(a) On or after July 1, 2015, no vendor in the City of Portland shall serve or sell prepared food and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam containers.

(b) On or after July 1, 2015, no vendor in the City of Portland who sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.

(c) On or after July 1, 2015, all City facilities, City-sponsored events, and City permitted events are prohibited from

using disposable food service ware made from polystyrene foam. All City departments and agencies shall not purchase or acquire disposable food service ware made from polystyrene foam for use at city facilities.

(d) On or after July 1, 2015, City franchises, contractors and vendors doing business with the City shall be prohibited from using food service ware made from polystyrene foam in city facilities or on city projects within the City.

Sec. 12-213. Exemptions.

(a) The sale and packaging of raw seafood is exempt from the provisions of this Article.

(b) Food vendors that are currently existing or are established in the city by the effective date of the ordinance will be exempted from the provision of this Article prohibiting the use of polystyrene foam for a period of time to be determined by the Public Services Manager or his/her designee on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

(c) Food vendors, city departments, city facilities and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

(d) This Article shall be null and void if and as long as there is developed and maintained an effective city-wide recycling program approved by the city's Director of Public Services for polystyrene foam food and beverage containers.

(e) The provisions of this Article shall be null and void on the day that statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent Maine or federal administrative agency issues and promulgates regulations, preempting such action.

Sec. 12-214. Violations and enforcement.

The Director of Public Services and the Director of Health and Human Services or designees shall have the primary

responsibility for enforcement of this Article. If the Director of Public Services or the Director of Health and Human Services or designees determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article 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.

Sec. 12-215. Severability.

If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, 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 Article are severable.

**Report of the Majority of the Green Packaging Working
Group Recommending a Ban on the Sale of Polystyrene
Foam Food Packaging in Portland**



June 10, 2013

Green Packaging Task Force Membership

Ron Adams – Portland Public Schools

Danny Bouzianis – Dunkin' Donuts

Michele Brooks – Portland Resident

Avery Day / Steven Rosario – American Chemistry Council

Shelley Doak – Maine Grocers Association

Matthew Faulkner – Surfrider Maine

Alexandra Fields – Environment Maine

Martin Fisher – Dart Manufacturing

Richard Grotton – Maine Restaurant Association

Tyler Kidder – University of Southern Maine

Ted Koffman – Maine Audubon Society

John Morin -- ecomaine

Richard Petrone (invited) -- Hutamaki

Curtis Picard – Retail Association of Maine

Cathy Ramsdell – Friends of Casco Bay

Phil Rozenski (invited) – Hylex Poly

Sally Trice – Portland Citizen

Councilor Ed Suslovic, Chair

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AMENDMENT TO PORTLAND CITY CODE
CHAPTER 12 GARBAGE, WASTES AND JUNK
ARTICLE V. POLYSTYRENE
SECTIONS 12-210 THROUGH 12-215

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

*That Chapter 12, Sections 12-210 thru 12-215 of the Portland
City Code is hereby enacted as follows:*

12-210. Findings; purposes.

The city council hereby finds as follows:

- (1) Expanded Polystyrene is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of Portland.
- (2) The City of Portland desires to protect the natural environment.
- (3) There is no economically feasible means of recycling expanded polystyrene locally.
- (4) Disposable food service ware made from polystyrene foam constitutes a portion of the litter in Portland's streets, parks and public places that increases City maintenance costs.
- (5) Expanded polystyrene is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them.
- (6) The City's goal is to replace expanded polystyrene food service ware with reusable, recyclable or compostable alternatives.
- (7) Such alternatives are readily available.

12-211. Definitions.

As used in this Ordinance the following terms have the following meanings:

- (a) "Disposable food service ware" means single-use disposable products used in the restaurant and food

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service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers, also known as clamshells. This does not include straws, utensils or cup lids nor does it include disposable packaging for prepackaged foods.

- (b) "Expanded polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."
- (c) "Food packager" means any person or entity located within the City of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.
- (d) "Prepackaged food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source outside the City of Portland.
- (e) "Prepared food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption on the food vendor's premises or within the city. Prepared food may be eaten either on or off the premises, also known as "takeout food." Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.
- (f) "Recycling Program" means a process whereby used materials are separated from the solid waste stream

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and utilized as a raw material in the manufacture of a new product or for new economic use.

- (g) "Restaurant" means any establishment located within the City of Portland selling prepared food to be eaten by customers. Restaurant includes a sidewalk or other outdoor food vendor.
- (h) "Retail Food Vendor, Vendor" means any establishment located in the City of Portland, or any establishment which provides prepared foods or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food; and any individual, group, or organization that regularly provides food as part of its services.

12-212. Prohibitions.

1. On and after July 1, 2015, no retail food vendor shall serve or sell prepared food in expanded polystyrene disposable food service ware.

2. On and after July 1, 2015, no food packager who offers for retail sale meat, eggs, bakery products or other food shall package that meat, eggs, bakery products or other food in packaging material made of expanded Polystyrene.

3. On and after July 1, 2015, no vendor in the City of Portland who sells tangible personal property at retail shall sell disposable food service ware made from expanded polystyrene.

4. All city facilities, city-sponsored events, and city permitted events are prohibited from using disposable food service ware made from expanded polystyrene. All city departments and agencies shall not purchase or acquire disposable food service ware made from expanded polystyrene for use at city facilities.

5. City franchises, contractors and vendors doing business with the city shall be prohibited from using food service ware made from expanded polystyrene in city facilities or on city projects within the city.

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6. Organizations using city offices or property shall comply with this chapter (e.g., street closure permits, events at city facilities, etc.) and while on city premises, shall not willfully possess, give, receive, lend, offer or expose for sale, use, deliver, furnish, transfer or dispose of any disposable food service ware made from expanded polystyrene.

12-213. Exemptions.

A. Prepackaged food is exempt from the provisions of this chapter.

B. Food vendors that are currently existing or are established in the City by the effective date of the ordinance will be exempted from the provisions of this Article prohibiting the use of polystyrene foam food service ware for a period of time to be determined by the Public Services Manager or his/her designee on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

C. Food vendors, City departments, City facilities and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

D. This Ordinance shall be null and void if and as long as there is developed and maintained an effective city-wide Recycling Program approved by the City's Director of Public Services for polystyrene foam food and beverage containers.

E. The provisions of this ordinance shall be null and void on the day that statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent Maine or federal administrative agency issues and promulgates regulations, preempting such action.

12-214. Violations and Enforcement.

The Director of Public Services and the Director of Health and Human Services or designees shall have the primary responsibility for enforcement of this ordinance. If the Public Services Director or the Director of Health and Human Services or designees determine that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred.

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Subsequent violations of the Ordinance shall be subject to the penalties set forth below.

Violations of this Ordinance shall be punishable by fines as follows:

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

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

12-215. Severability.

If any part or provision of this Ordinance or the application thereof to any person or circumstances 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.

Summary

In June, 2012 the City Council ordered the Transportation, Sustainability and Energy (TS&E) Committee to consider an order to ban the sale of polystyrene foam containers and take whatever further action the committee deemed appropriate. Based on that order, TS&E asked Councilor Suslovic to chair a committee including representatives of industry, businesses, local environmental organizations and Portland citizens to discuss proposed ordinance language. Following the Council order, the committee would first take up a proposed polystyrene ordinance. After completing that work the committee would begin studying ways to reduce the amount of plastic bags used in Portland's retail environment.

This committee, known as the Green Packaging Working Group, held three meetings to discuss ordinance language banning the use of polystyrene foam food packaging. The Town of Freeport's ordinance, which went into effect in 1990, served as the foundation for the group's discussion. Members heard testimony from a Freeport official regarding the efficacy of the ordinance during the last 20 years. Staff also provided examples of ordinances from other communities that have adopted polystyrene bans in order to provide further examples to the group.

The Green Packaging Working Group heard testimony from members that alternatives to polystyrene foam packaging are readily available. A representative from the Portland Schools described how the schools were able to switch from polystyrene foam trays to trays made of paper that could be composted or recycling as part of the local waste management program. A local franchisee shared that Dunkin' Donuts provides customers with paper cups instead of foam cups if they request one, despite company preference for foam. The group also learned from a survey of local establishments conducted by City staff that more than half of the businesses surveyed have already moved away from foam packaging in favor of alternatives.

The Working Group explored the recyclability of various types of packaging. A representative from ecomaine explained that most forms of packaging regularly used in Portland may be recycled in their program. (Portland is a member/owner of ecomaine and participates in the ecomaine recycling program.) This includes paper products including coffee cups, cardboard, pressed paper, metal and foil and most plastic containers. Polystyrene foam is the major exception as it cannot be recycled in Portland. Representatives from the plastics industry explained that there is technology available to recycle polystyrene foam. At this time, however, ecomaine reports that including this material in its offerings is not economically or operationally practical.

Members of the group discussed costs involved with moving away from polystyrene foam containers. The representatives from the Portland Schools and from local business agreed that foam packaging is generally less expensive than packaging made from other materials. Other members noted that many establishments in Portland have already discontinued use of foam packaging based for environmental reasons as well as economic reasons. Portland Schools reported that the use of foam trays was a significant source of complaints from parents and students. Moving to paper trays satisfied these customers and removed the trays from the waste stream, which reduced costs. The group further noted that discussions of unit costs for packaging disregard larger, external costs related to cleaning up litter,

damage to the water quality of Casco Bay and our urban streams and impact to wildlife that inadvertently ingest foam litter.

At the conclusion of the Green Packaging Working Group's third meeting, members endorsed ordinance language to prohibit sale of polystyrene foam food packaging in Portland. The group also endorsed amendments that would suspend the ordinance if the State of Maine enacts a ban on this product or if the City adopts a comprehensive and effective recycling program for polystyrene foam packaging. The vote was not unanimous and Chair Suslovic invited those opposed to submit a minority report to further explain their position.

Report

In June, 2012, Superintendent James Morse announced that Portland Public Schools would no longer use polystyrene foam trays when serving meals. He argued that using single use trays that could not be recycled went against City and School Department goals to reduce waste and adopt more environmentally sustainable practices. Following this announcement, food service staff began issuing lunches on paper trays that are manufactured in Maine and can be recycled or composted at facilities located in Portland. This change has pleased students, teachers and community members who had long championed a move away from foam trays. Student activists concerned about waste reduction and environmental issues had regularly focused their attention on the trays. In 2008, a group of Lyman Moore Middle School students addressed the Energy and Environmental Sustainability Committee (predecessor to the Transportation, Sustainability and Energy Committee) requesting support in their efforts to eliminate the use of foam in the school department. More recently, the Waste Reduction Group – a coalition of City staff, school staff and community members focused on reducing lunch room waste – worked to find alternatives to foam trays as part of a larger sustainability effort that culminated in Superintendent Morse's announcement and the adoption of a formal sustainability policy by the Portland Board of Education.

Discussions in Portland about the merits of polystyrene foam have always included reference to the Town of Freeport's decision to ban foam food packaging in 1990. Freeport residents led by student activists expressed concern about the widespread use of this foam packaging. They argued that it was not recyclable in their recycling program and constituted a large portion of roadside litter. Ban advocates also indicated that they were concerned about the impact of polystyrene foam litter on the water quality of Casco Bay and about its impacts on wildlife. Opponents of the ban, including franchisees of fast food restaurants and polystyrene foam manufacturers, argued that the ban would not be effective at ending litter and that the town could develop a program to recycle polystyrene foam. After deliberation, the Freeport Town Council voted in July, 1989 to become the first town in Maine to ban the use of polystyrene foam packaging with the ban going into effect on January 1, 1990.

The Freeport ordinance states:

no retail food vendor shall serve or sell prepared food and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam (PSF) containers.

When it took effect, the ordinance required restaurants, coffee shops, take out services and supermarkets to find alternatives to foam when packaging food products. Store managers in Freeport have found suitable alternatives and the businesses who opposed the ban continue to operate successfully. The ban has also not prevented business expansion, as demonstrated by Shaw's Supermarkets decision to build a store in Freeport in 2003. While staff have had to make adjustments, the Freeport supermarket has been able safely package the food items packaged in the store without the use of polystyrene foam.

During their meeting on March 11, the Green Packaging Working Group heard from Freeport Town Engineer Albert Presgraves about Freeport's experience with the polystyrene foam ban. Mr. Presgraves confirmed that local retailers and restaurants have found alternative packaging materials that have successfully met their needs. He did not believe that the town had been forced to take any enforcement action to gain compliance with the ordinance. He felt that most Freeport residents continue to support the prohibition on foam packaging. This local support provides business owners with incentive to use non-foam packaging. It also promotes compliance with the ordinance as residents quickly inform any new business owners about the ordinance if they inadvertently serve food in foam containers.

The majority of the Green Packaging Working Group members feel that Freeport's experience provides a useful model for Portland. As a retail center, food service establishments including coffee shops, fast food restaurants, formal dining and supermarkets play an important role in that town's economy. Local residents as well as tourists attracted to the variety of shopping opportunities dine out regularly. The ban on polystyrene foam food package has not diminished the rich variety of dining choices available in Freeport. Food service establishments have adapted to the ban and are able to operate successfully with alternatives. Restaurants in Portland will be able to do the same.

While Freeport was the first municipality in Maine – and one the earliest in the country -- to prohibit polystyrene foam packaging, communities across the country have followed suit. In California alone, more than thirty five cities and counties have done so. This includes San Francisco, Oakland and San Jose. Seattle has banned foam packaging as has Portland, OR. On the east coast, Suffolk County, NY has adopted a ban. Brookline, MA residents passed a ban in 2012 during their annual town meeting and officials in Somerville, MA endorsed a ban in May, 2013. Mayor Bloomberg has proposed a ban in New York City. More than 100 cities across the country have adopted bans and proposals are currently in front of elected officials around the country.

As part of its work, the Green Packaging Working Group studied some of the ordinances passed in other communities in order to build on the foundation provided by the Freeport model. This exercise led to the inclusion of a number of amendments in the final draft. One of the most significant was explicitly prohibiting the use of polystyrene foam packaging by the City of Portland. The group recognizes that the City and Schools have each developed administrative policies regarding the use of foam, but feels that it is important for the City to lead by example on this issue. Another key addition gleaned from other examples was providing time for merchants to exhaust supplies of packaging they have already purchased. The Working Group regarded this to be an issue of fairness and wished to respond to members of the public who raised concerns about this issue.

The primary reason Freeport and dozens of other communities around the country have chosen to prohibit the use of polystyrene foam packaging is the impact on the environment from the use, disposal and management this material. The Green Packaging Working Group has identified several factors that cause it to recommend prohibiting the use of foam packaging:

- **Litter** – Take out containers constitute a significant portion of the litter found along Portland's streets and in our public spaces. Much of it is polystyrene foam containers, which won't

biodegrade. Over time, foam litter breaks into smaller and smaller pieces and ultimately is washed into catch basins and ultimately into Casco Bay. Banning polystyrene foam food containers will prevent this harmful material from entering the environment.

The Green Packaging Working Group recognizes that banning foam will not, by itself, eliminate litter in Portland. Doing so, however, augments measures recommended by the Solid Waste Task Force in 2011 and that are now being implemented by the City. These include widespread deployment of Big Belly trash compactors in public spaces. These containers have a large capacity and contain waste material so it cannot be strewn by scavengers. The deployment of recycling carts to replace the small, open top bins currently used by the City's recycling program will also reduce litter on our streets. This effort is slated to begin in FY14.

- **Impact on Casco Bay and other waterways** – Plastic marine debris is an enormous problem that reduces water quality and harms wildlife around the world. Polystyrene foam breaks down into smaller and smaller pieces as it degrades. Once it enters our waterways wildlife often mistake these pieces for food and consume them. As polystyrene foam cannot be digested, the animals that eat it eventually die from starvation. The City of Portland is spending millions of dollars to improve the water quality of Casco Bay and its urban streams. Reducing the amount of polystyrene entering the environment is consistent with this effort. Preventing pollution by eliminating a source is a prudent and cost effective approach. Opponents of a ban on polystyrene foam often argue that alternative products cost somewhat more than foam products. While that is true, this argument does not factor in damage to habitat, decreased water quality and costs for environmental clean-ups that stem, in part, from the use of foam packaging.
- **Lack of Recycling Options** – The recycling program offered by the City of Portland and ecomaine is very comprehensive and accepts a wide range of packaging materials made of paper and plastic. This includes paper cups, paper plates, plastic cups, plastic clamshells, cardboard boxes, foil and other metal containers. Polystyrene foam is one of the few commonly used packaging materials that are not recyclable in the local program. The Green Packaging Working Group recognizes that polystyrene foam packaging is technically recyclable but emphasizes that it is not practical or convenient to do so in our region and that few communities around the country offer such a program. Barriers to recycling foam include a lack of reliable markets for postconsumer foam, difficulty in handling foam at the recycling plant and challenging economics for transporting foam due to its low density. (A letter from Kevin Roche, Executive Director of ecomaine regarding these challenges is appended to this report.)
- **Availability and Use of Alternatives To Polystyrene Foam Packaging** – As demonstrated by the experience in Freeport and the adoption of paper serving trays by Portland Schools, alternatives to polystyrene foam packaging are readily available. A recent survey of eateries in Portland

conducted by Portland Public Services staff members bears this out. Of the businesses surveyed, 54% used cardboard and paper packaging to serve their food, 41% used polystyrene foam, 37% used compostable products, 29% used non-polystyrene plastic products and 25% use metal or foil packaging. (Many businesses used more than one type of packaging.) This indicates that many businesses have already begun moving away from foam packaging.

The widespread use (and overuse) of packaging in Portland and around the country is a significant waste of natural resources. Most packaging materials are used only once. A store clerk places a product in the packaging – often multiple layers of it – and gives it to a customer. Once the customer arrives at his or her destination, the packaging almost always ends up in the trash. Some of it might get recycled and a small portion of it might even get re-used in some way. A significant portion of it ends up as litter along the street or in a public space. All of the packaging eventually becomes part of the waste stream and must be managed. Even if the packaging eventually gets recycled or combusted for energy instead of being sent to a landfill or littering the outdoors, it constitutes a poor use of materials and energy used to produce it and transport it to the consumer. The Green Packaging Working group encourages people to take pro-active measures to minimize packaging waste. This includes using a reusable travel mug when getting coffee and requesting that restaurants and take out establishments use as little packaging as possible when preparing food to go.

Banning the sale of polystyrene packaging in Portland would eliminate a pernicious and environmentally damaging form of packaging from our local waste stream. Other forms of packaging pose waste management challenges of their own. The Green Packaging Working Group looks forward to continuing our work by examining ways to address the environmental and waste management challenges presented by the huge quantity of plastic bags distributed to consumers at grocery and retail establishments. We look forward to reporting our findings and recommendations to the City Council.

Order 223-11/12
Passage: 9-0 6/18/12
MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER INSTRUCTING THE TRANSPORTATION, ENERGY AND
SUSTAINABILITY COMMITTEE TO CONSIDER AN ORDINANCE OR
RECOMMENDATION BANNING THE SALE OF NON-RECYCLABLE
POLYSTYRENE FOAM (PSF) CONTAINERS**

ORDERED, that the Transportation, Energy and Sustainability Committee shall consider an ordinance or recommendation to ban the sale of non-recyclable polystyrene foam (PSF) containers within the City of Portland and take subsequent action as the Committee deems appropriate.

**Owner Communities**

Bridgton
Cape Elizabeth
Casco
Cumberland
Falmouth
Freeport
Gorham
Gray
Harrison
Hollis
Limington
Lyman
North Yarmouth
Ogunquit
Portland
Pownal
Scarborough
South Portland
Waterboro
Windham
Yarmouth

Associate Members

Baldwin
Hiram
Naples
Parsonsfield
Porter
Saco
Standish

Contract Members

Andover
Cornish
Eliot
Greenland, NH
Hampton, NH
Jay
Kittery
Limerick
Livermore Falls
Manchester
Monmouth
Newington, NH
North Haven
Old Orchard Beach
Poland
Readfield
Sanford
Stockton Springs
Wayne

June 4, 2013

Mr. Troy Moon
Solid Waste Manager
City of Portland
55 Portland Street
Portland, ME 04101

Dear Troy:

You inquired about what challenges we might be faced with by adding polystyrene foam to our single sort recycling program. I offer the following feedback regarding the challenges associated with recycling polystyrene foam:

- Shipping baled polystyrene foam material is very inefficient due to the weight and density. Baling and/or densification of the polystyrene foam could be a challenge and an added cost. You wouldn't want to ship this material very far to market.
- The marketability of recycling polystyrene foam materials is very limited. Markets would need to be identified and anticipated scrap revenues would need to be determined. Market specifications would also need to be researched to ensure that markets would be willing to accept some residue on the foam containers. There has been very little interest from potential buyers of polystyrene foam and this is a significant concern for the industry.
- We take plastic, metal and glass containers. There would need to be an extensive educational component with polystyrene foam to differentiate foam cups, foam peanuts, foam packaging, clamshells, etc.
- Unlike most of the other plastic, foam easily breaks apart and becomes difficult to manage when in tiny pieces. In comparison, most plastic containers stay intact even when squashed by a loader wheel.
- Sorting of small pieces of foam would be challenging in the MRF. In particular, foam peanuts and broken pieces of foam would go everywhere.
- Collection of polystyrene foam from the source is inefficient without significant compaction or densification.
- Additional equipment would be needed to process polystyrene foam.

This outlines our primary concerns with recycling polystyrene foam. Please feel free to contact me if you have any questions.

Sincerely,

Kevin H. Roche
General Manager

cc: John Morin

Our View: Portland right to cut foam food containers

A proposed city ordinance would address a serious public health and environmental threat.

Posted: March 12, 2013 12:01AM

They used to put lead in gasoline. People liked the way it made their cars run, but the damage all that lead in the environment did to people's health was not worth it.

Most of us grew up with mercury fever thermometers in the bathroom medicine cabinet.

But the cumulative effect of so many thermometers breaking and releasing mercury into the waste stream and water table created too big a threat to health and safety to be tolerated.

We are at a similar point in the history of single-use polystyrene packaging. The popular foam cups and burger boxes are made from petroleum. They contain styrene, which the National Institutes of Health lists as one of the substances that are "reasonably considered to be human carcinogens."

The containers are rarely recycled and end up in landfills, where they will remain virtually forever, or burned in incinerators, releasing toxins into the atmosphere.

There is an alternative. The city of Portland is considering an ordinance that would greatly reduce the use of polystyrene by banning foam cups and containers in the city's eateries. That is a reasonable response to a hazardous pollutant that seems safe only because it is so common.

A number of cities out west have recently banned these containers, but Portland doesn't have to look that far for a model.

The town of Freeport banned foam cups and fast-food containers in 1990. Some of the



The Associated Press Portland might prohibit the city's eateries from using polystyrene cups and containers.

biggest chain restaurants in the nation, along with small, local businesses, have managed to adapt. Businesses in Portland would be able to do the same, and so would consumers.

If more cities follow suit, there will be fewer foam products in the waste stream, reducing a health risk. And as the products disappear, the price for alternatives will decrease and consumers will forget they ever relied on the containers to keep their food and drinks warm.

We've been through this kind of thing before. People liked leaded gas and mercury thermometers, but the convenience wasn't worth the damage those products caused.

We would be better off with less foam, and Portland officials are right to start cutting its use here.

Minority Report in Opposition to Polystyrene Product Ban Proposed by the Green Packaging Working Group Task Force

The members of the Green Packaging Working Group Task Force who represent Maine businesses are strongly opposed to the proposed ordinance to ban polystyrene foam products developed by the Green Packaging Working Group Task Force. The following minority report outlines the basis for this opposition.

I. Executive Summary

The members of the Green Packaging Working Group Task Force who represent Maine businesses are strongly opposed to the proposed ordinance to ban polystyrene foam products developed by the Green Packaging Working Group Task Force for the following reasons:

- The Task Force did not properly account for the financial impact to businesses and consumers that would result from this proposed product ban;
- This proposed product ban will not address what appeared to be the primary concern of the majority of the Task Force – reducing litter;
- The process employed by the Task Force to develop this proposed product ban was flawed, resulting in an indefensible proposal to ban polystyrene products; and
- The Task Force and this draft ordinance misapprehend the nature of polystyrene foam and its impacts.

II. The Task Force Did Not Properly Account for the Financial Impacts of This Proposed Product Ban

Despite repeated requests by members of the Task Force who represent Maine businesses that the Task Force undertake an adequate analysis of the financial impacts of this proposed product ban, these requests were never heeded. The “economic analysis” employed by the Task Force involved telephone conversations with 24 managers at Portland restaurants and stores. There was also heavy reliance on the fact that the Town of Freeport passed a polystyrene product ban and “no business went out of business as a result of that ban.” This is hardly the level of analysis that is needed for a proposed product ban that will have and economic impact on a large number of Portland businesses.

Because the Task Force refused to conduct the proper economic analysis, there is no concrete sense of the number of Portland businesses that would be affected by this proposed product ban. Moreover, there is no understanding of how these businesses would be affected and how these impacts would ultimately be felt by Portland consumers. Further, because the Task Force made very little effort to work with Portland’s business community, business leaders did not have a sufficient avenue for their input into the Task Force process.

In the absence of adequate information, the City of Portland simply cannot act to ban polystyrene foam products and the business minority of the Task Force cannot support this proposed product ban.

III. The Proposed Product Ban Would Not Reduce Litter

Litter is a people problem, not a materials problem.

People litter. Those who would heedlessly toss a polystyrene cup on the ground would be just as likely to do the same with a plastic cup or a paper cup. Changing the form or composition of the container is not likely to change how people dispose of it.

As a result, eliminating polystyrene foodservice products (or any other product or material) would do little more than change the composition of waste that is generated and the litter that is found on our streets and waterways. Banning polystyrene food containers would not reduce the quantity of litter caused by the careless disposal of food containers generally.

In short, there is no environmentally acceptable form of litter. And focusing on one specific packaging type falls short of a comprehensive policy that is needed to address litter.

Unfortunately, too many initiatives to ban or severely limit the use of polystyrene foodservice products represent misguided attempts to deal with solid waste and litter issues, attempts that are usually destined to fail. Bans on specific products simply do not reduce solid waste or litter, for the key to reducing litter is changing human behavior, not changing the color or chemical composition of, say, a coffee cup.

Consider the history of this issue in California:

- In San Francisco, a litter study (subsequently audited) concluded that eliminating all food-related polystyrene would not reduce litter but would simply change the type of litter found. It showed, for example, that paper-cup litter of all kinds (hot, cold and other) increased from 1.82 percent of total litter in 2007 to 2.41 percent in 2008, while polystyrene cups decreased from 1.13 percent to 0.78 percent during the same period.
- The Santa Barbara City Council directed city staff to evaluate the merits of banning polystyrene foodservice products. Staff found that a ban on polystyrene would only be effective and have a net benefit to the environment if the foodservice ware was made from compostable material, and that any benefits could only be realized with a citywide organics collection and composting program – which the city does not have.
- In Carmel, a June 3, 2008 staff report found that since the inception of a 1989 ordinance banning polystyrene foodservice products, “the problem of food packaging waste litter has not improved.”

One noted environmentalist, Jean-Michel Cousteau, the founder of the California-based Oceans Future Society and the son of famed ocean explorer, Jacques Cousteau, wrote in 2005 that:

*California's beaches are a natural treasure and we need the public's help to protect them. But history teaches an important lesson: **bans don't work** [emphasis added.] If a community bans Styrofoam and plastic carry-out containers, coffee cups, picnic ware and similar items, we know what will happen: individuals and businesses will switch to other disposable products, such as glass, aluminum, and wax-covered cardboard. The amount of litter will not change, only its composition. That's why bans are overly simplistic and don't get to the real cause of the problem . . .*

Public education and stricter enforcement of existing litter laws, with appropriate penalties, would help remind both our fellow Californians and the thousands of visitors who come here each year that it is their personal responsibility and civic duty to keep California clean. Unfortunately, there will always be litterbugs among us. Bans have no effect at all on such people. Irresponsible human behavior cannot be addressed by eliminating products in society.

IV. The Process Employed by the Task Force Was Flawed

In July 2012, when the City Council was presented with a proposal to ban the use of polystyrene in food packaging applications, the Council's Transportation, Sustainability & Energy Committee created the Green Packaging Working Group Task Force and charged it with considering the merits of this proposal. At that committee meeting, there was extensive discussion regarding the composition of the Task Force as well as the Task Force's charge.

For months thereafter, the Task Force took no action on this issue; in fact, it did not meet for the first time until March 11, 2013. As soon as the Task Force commenced its work, the result – a polystyrene product ban – was inevitable and the Task Force raced to this result.

The process followed by this Task Force was flawed on numerous counts:

1. **The charge to the Task Force was flawed.** The purpose for creating a Task Force was to weigh evidence and determine whether municipal action was appropriate on this issue. At its first meeting, however, this body was instead charged with drafting an ordinance banning the use of polystyrene foam products, on the flawed assumption that circumstances warranted only this course of action.
2. **No process was created for weighing evidence regarding a proposed polystyrene ban.** The Task Force was so intent on crafting an ordinance to ban polystyrene products that it established no coherent process for discussing and weighing the merits of the proposal itself.
3. **The Task Force never defined its objectives.** In its haste, the Task Force drafted a proposed ordinance without first considering or stating what problem or problems it was attempting to solve. It is prudent to insist that this body first articulate what issue it is trying to address before imposing a solution.

4. **The Task Force did not consider the economic impacts of a product ban on the people and businesses of Portland.** As outlined above, in its rush to push through a polystyrene product ban, the Task Force did not conduct an analysis of the impact that such a ban would have on Portland businesses that use, ship or handle polystyrene products to determine the impacts of any limitations on the use of these products. It also did not hear testimony regarding the costs of such a policy to the many people of Portland who patronize these businesses.
5. **The Task Force Placed Unjustified Reliance on the Town of Freeport's Polystyrene Ban.** Throughout the Task Force's meetings, members repeatedly referenced the Town of Freeport's polystyrene product ban. The Task Force, however, refused to acknowledge that this ban was instituted years ago due to concerns regarding chlorofluorocarbons in polystyrene, an issue that is no longer of concern and irrelevant to the proceedings of the Task Force.

In short, the Green Packaging Working Group Task Force was a vehicle designed to get to one predetermined destination. This was not a deliberative body that examined and weighed all the relevant evidence associated with this issue. Rather, this was a hollow proceeding designed to arrive at an intended result.

V. The Task Force and This Draft Ordinance Misapprehend the Nature of Polystyrene and its Impacts

A. Polystyrene helps reduce food waste

A common misconception is that polystyrene products pose a major problem in municipal landfills. Rather, polystyrene helps solve a major problem in municipal landfills. According to the U.S. EPA and other credible sources, all polystyrene foodservice (foam and non-foam) cups and containers account for less than **1 percent** by weight and volume of the municipal solid waste stream. By contrast, the largest single contributor to total municipal waste is "organics" – i.e., food scraps and yard trimmings – which constitute **20 percent** of the solid waste stream.

Polystyrene food service products have been used safely for more than a half of a century in food contact applications. The reason they have proven so popular for so long **is because they work**. Polystyrene is more effective at preventing food spoilage and contamination than other materials that have been used for this purpose. Another reason to prefer polystyrene over other materials for transporting food and drinks is that, unlike other substances, it does not impart foreign odors or tastes to the food it holds.

In short, polystyrene does not break, does not spill, and does not make food taste funny. In all these ways, it helps limit the amount of food that Americans waste or throw away, thus helping reduce the amount of organic wastes that are currently clogging our landfills.

While some may argue that organic waste breaks down in the environment faster than polystyrene, it is important to note that modern municipal landfills are not composting facilities. In fact, the trend in landfills today, enforced by strict state and federal regulations, is to foster anaerobic environments where nothing breaks down readily, so as to reduce odors, runoff and excessive methane emissions.

B. Polystyrene itself is “greener” than most people realize

Besides helping to reduce food waste, polystyrene has another important advantage over other food-packaging alternatives: it scores well in terms of its environmental footprint as measured over the total life span of the product.

To evaluate sustainability of a foodservice product, the total environmental impact of this product over its entire life span must be analyzed, through a process called Life Cycle Inventory (LCI). LCI measures all the various environmental impacts a product creates, both directly and indirectly, across all phases of the product's life cycle. In this way LCI provides a cradle-to-grave picture of a product's environmental attributes, from raw material extraction and manufacturing to post-use recovery or disposal.

In a peer-reviewed February 2011 study, Franklin Associates, one of the most highly regarded LCI practitioners in North America, found that commonly used cups, plates and sandwich containers made of polystyrene foam use significantly less energy and water than comparable paper-based or corn-based (polylactic: PLA) alternatives, primarily due to polystyrene foam's much lower weight.

That 2011 study compared average-weight polystyrene foam, paperboard and PLA cups used for hot (16 ounce) and cold (32 ounce) drinks, 9-inch dinner plates and "clamshell" sandwich containers. Researchers modeled energy consumption, water use, solid waste (by weight and volume) and greenhouse gas emissions for each product resulting from production, transportation and disposal. Some key findings include:

- Energy use: the manufacturing of polystyrene foam products consumes significantly less energy than the alternatives—half as much as wax-coated paperboard cups and one-third as much as PLA clamshells.
- Water use: the manufacturing of polystyrene foam products likewise uses significantly less water than the alternatives—up to four times less than PLA clamshells.
- Solid waste: Polystyrene foam products create significantly less solid waste by weight than the alternatives—up to five times less than paperboard and PLA products. Comparisons by volume vary widely:
 - Polystyrene foam cups for hot drinks create less waste by volume than the alternatives – significantly less than paperboard cups with corrugated sleeves used for insulation.

- Polystyrene foam cups for cold drinks create similar waste by volume as plastic coated paperboard cups and significantly less than wax coated paperboard and PLA cups.
- Heavy duty polystyrene foam plates produce more solid waste by volume than the alternatives, while lighter duty polystyrene foam plates create similar waste by volume as the paperboard counterparts.
- Polystyrene foam clamshells create slightly more waste by volume than paperboard clamshells and half the waste by volume of PLA clamshells.
- Greenhouse gases: Comparisons of greenhouse gas emissions vary widely depending on assumptions made about the degradation of paperboard products. Specifically, if paperboard products are prevented from degrading after disposal, they store carbon and generate *fewer* greenhouse gas emissions than polystyrene foam products; however, if paperboard products are allowed to degrade to the maximum extent, they instead would generate *more* greenhouse gas emissions than polystyrene foam products.

In general, the study's authors found that lower-weight products with similar functionality—such as polystyrene foam products composed of more than 90% air—generally produce smaller environmental burdens than heavier-weight alternatives. Because paperboard foodservice packaging products are generally heavier than foam products, in most cases they have environmental burdens that are higher than or comparable to corresponding polystyrene foam products.

For example, an average weight 16 oz. hot-beverage cup made of plastic-coated paper weighs almost three times as much as a comparable 16 oz. polystyrene foam cup. (Air comprises approximately 90 -95% of a foam cup or container, while paper comprises 89-95% of a typical plastic-lined paper cup.) Because of this high air content, polystyrene foam also affords exceptional insulation. This, combined with the fact that polystyrene foam cups are stronger than paper cups, discourages other wasteful practices such as “double-cupping” paper cups or requiring insulating cup sleeves.

Finally, it is sometimes argued that polystyrene is not recyclable – **that is not true**. As a thermoplastic, polystyrene can be completely recycled, and both foam and non-foam polystyrene products are technically very easy to recycle, if collected as apart of an integrated solid waste management strategy. Polystyrene manufacturers have cooperated with hundreds of communities in the U.S. and Canada to collect and recycle polystyrene, through curbside as well as drop-off recycling programs.

What limits polystyrene recycling today are the same factors that curtails food packaging recycling generally: contamination and transportation costs. To be effectively recycled, food containers should first be thoroughly cleaned, a responsibility that many municipalities are not yet ready to adopt. Also, the light weight of polystyrene products, especially foam, can make it uneconomical to ship polystyrene long distances for recycling.

As recycling technology advances, and as polystyrene recycling becomes more widespread, these issues will tend to become less daunting. In the meantime, the fact that most alternatives to polystyrene are made from multiple materials – paper cups, for example, are typically coated with polyethylene plastic or wax – often makes them harder to recycle than polystyrene alternatives.

C. Polystyrene is not toxic

A wave of confusion about the safety of polystyrene foam foodservice products has swept over the U.S., following the recent release of the “12th Report on Carcinogens” by the National Toxicology Program’s (NTP), a division of the U.S. Department of Health and Human Services (HHS).

In that report, dated June 10, 2011, styrene was listed for the first time as “reasonably anticipated to be a human carcinogen.” (Note the use here of the word “anticipated,” rather than “proven.”) No other government agency outside the United States has endorsed this supposition. In fact, agencies from the European Union, Canada, Japan and Hong Kong have all conducted similar studies on styrene and completely disagree with the NTP’s conclusion. Even the NTP itself cautions that the fact that substances are listed in its own report “does not establish that such substances present a risk to persons in their daily lives.”

But more importantly, polystyrene is not styrene (or vice versa).

Styrene is a clear, colorless **liquid** that occurs naturally in foods such as cinnamon, beer, steak, coffee beans, peanuts, strawberries, and wheat. Polystyrene is a **solid plastic** created through a chemical process in which styrene is polymerized. As the NTP itself explains, “Although styrene, a liquid, is used to make polystyrene, ... we do not believe that people are at risk from using polystyrene products.”

Since the release of the NTP study, news reports have made much of the fact that trace amounts of liquid styrene can in some circumstances leach into food contained in rigid polystyrene food containers or foam polystyrene cups. (*All* containers, by the way, have ingredients that leach into food.) One study showed that a foam cup, for example, could release 5 to 10 *parts per billion* of styrene into the food contained therein. But compare this amount with the styrene to be found in various foods themselves:

Food (with no packaging contact)	Range of styrene exposure (ppb)
Beef	5.3 – 6.4
Beer	10 - 200
Cinnamon	170 – 39,000
Coffee beans	1.6 – 6.4
Peanuts	1.2 - 2
Strawberry (one)	.37 – 3.1
Wheat	.4 - 2

In other words, if you ate 15 strawberries out of a polystyrene cup, you could ingest 5 to 10 times as much styrene from the strawberries themselves as from the cup. If you drink beer from the same cup, you could consume **up to 40 times** as much styrene from the beer itself as from the polystyrene cup holding it.

Even so, most of the styrene we ingest on a daily basis comes not from our food, but from the air we breathe. Studies indicate that between 90 and 99 percent of the styrene we take into our bodies comes from breathing polluted air, while only 1 to 10 percent comes from the food we eat.

Finally, to put these trace amounts of styrene into perspective, keep in mind that the U.S. Occupational Safety & Health Administration (OSHA) sets standards for the amount of chemical exposure it deems to be safe in the workplace. In the case of styrene (not polystyrene), OSHA recommends limiting styrene exposure to 50,000 parts per billion in an eight-hour period – the equivalent of eating approximately 30,000 strawberries or drinking 500 beers.

D. There is no emergency that justifies this hastily proposed product ban

The U.S. chemical industry is one of the nation's most pervasively regulated industries. If chemicals are not managed safely, they can have health and environmental consequences. But polystyrene and other plastics have been used safely for more than 50 years in food contact applications with no validated scientific evidence that they pose any human health concerns.

Polystyrene foodservice disposables meet stringent U.S. FDA standards for use in food-contact packaging. The U.S. FDA, which regulates plastics used in food contact applications, and the National Academy of Sciences and other federal authorities rely not on opinions but on the weight of validated scientific evidence when evaluating safety and efficacy. That evidence overwhelmingly supports the safe use of polystyrene in food contact applications.

Polystyrene is safe. Polystyrene is “green.” If there were any scientific evidence to suggest that polystyrene was causing harm to Portland residents, we would support efforts to find a replacement. But there is no need, and no reason, for the City and its residents to suffer the costs and consequences of banning a substance that has no harmful effects.

And there is certainly no need, or cause, to rush this matter through the City Council.

VI. Conclusion

For the foregoing reasons, the members of the Green Packaging Working Group Task Force representing Maine business interests cannot support this ill-conceived polystyrene foam product ban.

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AMENDMENT TO PORTLAND CITY CODE CHAPTER 12 GARBAGE, WASTES AND JUNK ARTICLE IX. WASTE REDUCTION SECTIONS 12-230 THROUGH 12-238

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That Chapter 12, Article IX, Sections 12-230 thru 12-238 of the
Portland City Code is hereby enacted as follows:*

12-230. Findings; purposes.

The city council hereby finds as follows:

(1) The City Council has a duty to protect the natural environment and the health of its citizens and visitors; and

(2) The use of disposable bags has severe environmental impacts on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation; and

(3) Despite recycling and voluntary solutions to control pollution from disposable bags, very few disposable bags are recycled; and

(4) Numerous studies have documented the prevalence of disposable bags littering the environment, blocking storm drains, and endangering wildlife; and

(5) The City of Portland's taxpayers must bear costs associated with the effects of disposable bags on the solid waste stream, drainage, litter, and wildlife; and

(6) The City, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy (reduce, reuse, recycle, compost, waste-to-energy landfill) and supports efforts to achieve State recycle goals; and

(7) From an environmental and economic perspective, the best alternative to disposable bags is to shift to reusable bags for shopping; and

(8) Whereas the City Council of the City of Portland aims to conserve resources, reduce greenhouse gas emissions, waste,

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and litter and to protect the public health and welfare, including wildlife, all of which increase the quality of life for the City's residents and visitors; and

(9) Evidence indicates that the vast majority of disposable bags are used for the bagging and carryout of products purchased from Stores and Restaurants, as those business are defined in this Ordinance; and

(10) Studies document and participating municipalities report that placing a mandatory fee on disposable bags will dramatically reduce the use of those types of bags; and

(11) The City Council of the City of Portland believes that residents and visitors should use reusable bags and that a fee on the distribution of disposable bags by stores and restaurants is appropriate to fund the City's efforts to educate residents, business, and visitors about the impact of trash on the regional environmental health and to fund the use of reusable carryout bags, City cleanup events and infrastructure and programs that reduce waste; and

(12) It is in the best interests of the health, safety and welfare of citizens and visitors of Portland to reduce the cost to the City of solid waste disposal, and to protect our environment and our natural resources by mandating a fee for disposable bags and incentivizing the use of reusable bags at Stores and Restaurants, as defined in this Ordinance.

12-231. **Definitions.**

As used in this Ordinance the following terms have the following meanings:

Disposable Bag. The term Disposable Bag means a bag that is not a Reusable Bag. Disposable Bag does not mean:

(a) Any bag without handles used exclusively to carry bulk items such as candy, small hardware items, nuts, grains, produce, meats, or other food items to the point of sale inside a store or to prevent such bulk items from coming into direct contact with other purchased items

(b) Bags used by consumers inside stores to:

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- (1) contain or wrap flowers, potted plants, or other items where dampness may be a problem; or
- (2) contain unwrapped prepared foods or baker goods;
- (c) Bags provided by pharmacists to contain prescription drugs;
- (d) Newspaper bags, door-hanger bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

Restaurant. The term *restaurant* means a restaurant, take-out food establishment, food truck, food cart, or any other business, that receives ninety percent (90%) or more of its revenue from the sale of prepared food to be eaten on or off its premises.

Store. The term *Store* means any of the following retail establishments located within the City of Portland:

- (a) a full-line, self-service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items.
- (b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.
- (c) a vendor doing business at a farmer's market authorized under Chapter 21 of the Portland City Code.
- (d) a laundry or dry-cleaning business.

"Store" does not mean:

Businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be "incidental" if such sales comprise no more than 2 percent of the business's gross sales in the City as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

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Reusable Bag means a bag that is:

- (a) Designed and manufactured to withstand repeated uses over a period of time;
- (b) Is machine washable or, made from a material that can be cleaned and disinfected regularly;
- (c) That is at least 2.25 mil thick if made from plastic;
- (d) Has a minimum lifetime of 75 uses; and
- (e) Has the capability of carrying a minimum of 18 pounds.

Waste Reduction Fee. The term Waste Reduction Fee means a City fee imposed and required to be paid by each consumer making a purchase from a Store or Restaurant for each Disposable Bag used during the purchase.

12-232. Waste Reduction Fee Requirements

- (a) Stores and Restaurants shall collect from customers, and customers shall pay, at the time of purchase, a Waste Reduction fee of \$0.10 for each Disposable Bag provided to the customer.
- (b) Stores and Restaurants shall record the number of Disposable Bags provided and the total amount of Waste Reduction Fee charged on the customer transaction receipt.
- (c) Stores and Restaurants shall not refund to the customer any part of the Waste Reduction Fee, nor shall a Store or Restaurant advertise or state to customers that any part of the Waste Reduction Fee will be refunded to the customer.
- (d) No Store or Restaurant shall exempt any part of the Waste Reduction Fee for any reason.

12-233. Retention, Remittance, and Transfer of the Waste Reduction Fee.

- (a) A Store or Restaurant may retain forty percent (40%) of each Waste Reduction Fee collected, which is the "Retained Percent."
- (b) The Retained Percent may only be used by the Store or Restaurant to:

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- (1) Provide educational information about the Waste Reduction Fee to customers;
- (2) Train staff in the implementation and administration of the fee;
- (3) Improve or alter infrastructure to allow for the implementation, collection, administration of the fee;
- (4) Collect, account for and remit the fee to the city;
- (5) Develop and display informational signage to inform consumers about the fee, encourage the use of reusable bags or promote recycling of disposable bags; and
- (6) Improve infrastructure to increase recycling of disposable bags.

(c) The Retained Percent shall not be classified as revenue for the purposes of calculating sales tax.

(d) The amount of the Waste Reduction Fee collected by a Store or Restaurant in excess of the Retained Percent shall be paid to the City and shall be used only as set forth in subsection (g) to mitigate the effects of Disposable Bags in Portland.

(e) A Store or Restaurant shall pay and the City shall collect all Waste Reduction Fees over and above the Retained Percent. The City shall provide the necessary forms for Stores and Restaurants to file with the City, to demonstrate compliance with the provisions of this ordinance.

- (1) If payment of any amount due to the City is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due as described in section 12-236, "Audits and Violations."

(f) The Waste Reduction Fee shall be administered by the City Manager. The City Manager is authorized to adopt interpretive rules to implement this chapter, prescribe forms and provide methods of payment and collection, due dates, and otherwise implement requirements of this chapter.

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(g) Funds from the Waste Reduction Fee shall be used by the City only for the expenditures that are intended to mitigate the effects of Disposable Bags and other packaging materials, including without limitation the following:

(1) Administrative costs associated with developing and implementing the Waste Reduction Fee.

(2) Activities of the City to:

(A) Provide reusable carryout bags to residents and visitors;

(B) Educate residents, businesses, and visitors about the impact of Disposable Bags and other litter on the City's environmental health, the importance of reducing the number of single-use carryout bags entering the waste stream, and the expenses associated with mitigating the affects of single-use bags and other litter on the City's drainage system, transportation system, wildlife and environment;

(C) Fund programs and infrastructure that allow the Portland community to reduce waste associated with Disposable Bags and other packaging materials;

(D) Purchase and install equipment designed to minimize bag pollution, including, recycling containers, and waste receptacles associated with Disposable Bags;

(E) Fund community cleanup events and other activities that reduce trash associated with Disposable Bags and other litter;

(F) Mitigate the effects of Disposable Bags on the City's drainage system, transportation system, wildlife and environment;

(G) Maintain a public website that educates residents on the progress of waste reduction efforts including those associated with Disposable Bags; and

(H) Fund the administration of the Waste Reduction Fee program.

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(h) No Waste Reduction Fees collected in accordance with this ordinance shall be used for general government purposes.

(i) Waste Reduction Fees collected in accordance with this chapter shall be continually available for the uses and purposes set forth in subsection (g) of this section without regard to fiscal year limitation. No Waste Reduction Fee funds shall be used for any purpose not authorized in this chapter.

12-234. Required Signage for Restaurants and Stores.

Every Store and Restaurant subject to the collection of the Waste Reduction Fee shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the City of Portland's Waste Reduction Fee.

12-235. Exemptions.

A Restaurant or Store shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public health or safety.

12-236. Audits and Violations.

(a) Each Store and Restaurant subject to the provisions of this chapter shall maintain accurate and complete records of the Waste Reduction Fees collected, the number of Disposable Bags provided to customers, the form and recipients of any notice required pursuant to this chapter, and any underlying records, including any books, accounts, invoices, or other records necessary to verify the accuracy and completeness of such records. It shall be the duty of each Store and Restaurant to keep and preserve all such documents and records, including any electronic information, for a period of three years from the end of the calendar year of such records.

(b) If requested, each Store and Restaurant shall make its records available for audit by the City Manager during regular business hours for the City to verify compliance with the provisions of this chapter. All such information shall be treated as confidential commercial documents.

(c) If any person fails, neglects, or refuses to collect the Waste Reduction Fee, or underpays the Waste Reduction Fee, the City Manager or his/her designee shall make an estimate of the fees due, based on available information, and shall add thereto

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penalties, interest, and any additions to the fees. The Manager or his/her designee shall serve upon the delinquent Store or Restaurant personally, by electronic mail or by first class mail directed to the last address of the Store or Restaurant on file with the city, written notice of such estimated fees, penalties, and interest, constituting a Notice of Final Determination, Assessment, and Demand for Payment, (also referred to as "Notice of Final Determination") due and payable within 20 calendar days after the date of the notice. The Store or Restaurant may request a hearing on the assessment as provided in section 12-237, "Hearings."

(d) If payment of any amount of the Waste Reduction Fee to the City is not received on or before the applicable due date (as set by the City Manager), penalty and interest charges shall be added to the amount due in the amount of:

(1) A penalty of ten percent of total due;

(2) Interest charge of one percent of total penalty per month.

12-237. **Hearings.**

(a) A Store or Restaurant may request a hearing on any proposed fee imposed under this title after receiving a Notice of Final Determination, by filing a written request for hearing within 30 calendar days of the date of mailing of the Notice of Final Determination. The request for hearing shall set forth the reasons for and amount of changes in the Notice of Final Determination that the Store or Restaurant seeks and such other information as the manager may prescribe.

(b) The City Manager or his/her designee shall conduct the hearing within 10 days after the filing of the request and may affirm, reverse or modify the decision. Any decision made by the City Manager or his/her designee shall be supported by written findings of fact and conclusions of law.

(c) Appeal to the superior court. Any person aggrieved by a decision of the City Manager or his/her designee may appeal therefrom to the superior court in accordance with the provisions of Maine Rule of Civil Procedure 80B.

12-238. **Effective Date**

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The provisions of this ordinance shall become effective on April 1, 2015.

City of Portland

Green Packaging Working Group



Majority Report on Disposable Bags

Councilor Edward Suslovic, Chair

March 13, 2014

Communities across the United States and around the globe are grappling with ways to address waste and litter associated with disposable bags. These bags, which retailers provide to package the goods they sell, are routinely discarded as soon as consumers remove their purchased items. Too often the unwanted bags end up as litter, either improperly discarded by thoughtless individuals or blown from trash or recycling bins on a windy day. In either case, bag litter is unsightly, negatively impacts our environment and requires municipal employees and concerned volunteers to expend financial and human resources to clean them up. When plastic bags reach municipal recycling facilities; they often wrap around equipment, hide trash, liquids or other materials that contaminate other recyclables. While paper bags are easily recycled, their production and distribution consume natural resources and create environmental impacts that degrade both air and water. Using any bags -- plastic or paper -- to carry goods one time and then disposing of them represents an unnecessary waste of resources, especially when re-usable alternatives are readily available to most consumers.

Members of the Green Packaging Working Group met four times to review approaches the City could take to minimize the use of disposable bags. Approaches discussed ranged from:

- increasing education and outreach in support of existing efforts by large retailers to encourage the use of reusable bags,
- banning the use of disposable shopping bags, or
- placing a fee on disposable bags distributed by merchants to incentivize the use of reusable bags.

Early in the discussions, the group determined that most members did not support an outright ban on disposable bags. They determined that the adopted solution should maintain consumer choice and provide options to individuals who arrive at the checkout counter without a reusable bag. Consequently, discussion focused on the other alternatives.

Members learned that efforts to reduce the use of disposable bags have been ongoing in the State of Maine for a number of years. In 1991, the State enacted legislation requiring retailers who use plastic bags, to provide a container to collect plastic bags, and requires them to ensure the bags collected are recycled. (38 M.R.S. §1605) In 2007, then State Representative Ted Koffman introduced a bill to place a fee on single use bags in Maine. While this legislation was not enacted it foretold legislative efforts in 2009 to convene a working group to find ways to reduce waste from bags. This group included members of the business community, environmental groups and the now defunct Maine State Planning Office. This group's work culminated in the development of the Got Your Bags campaign that provides a tool kit of resources, designed to help participating merchants promote the use of re-usable bags at checkout. Participating member merchants in Portland include Hannaford and Rite-Aid. Most large grocery retailers in Portland are currently promoting the use of re-usable bags in a variety of ways. Some stores have place signs in the parking lot to remind customers to bring their own bags. Many place re-usable bags at checkout for affordable prices. In addition, many independent organizations provide the public with reusable bags as a way to encourage their use.

During its discussions, the GPWG was not able to determine the extent to which these efforts have been able to reduce the use of disposable bags. Anecdotal reports suggest increasing numbers of shoppers are bringing their own bags to stores. However, we have no data indicating what percentage of shoppers are doing so, or to what extent this practice has reduced the number of plastic bags given out by merchants. While members support these voluntary efforts, the majority of the group felt that the use of disposable bags remains prevalent and that additional measures are needed in order to substantially reduce their use. Staff research confirms that voluntary efforts in other communities have not been effective on their own and that bag use did not substantially decline until government adopted formal policies to ban them or incentivize the use of reusable alternatives.

Given these findings, the majority of the Green Packaging Working Group recommends that the City Council adopt an ordinance to establish a \$0.10 fee on each disposable bag (paper and plastic) used to package goods sold at stores and restaurants in the City of Portland. This recommendation focuses on bags used at the point of sale as these bags can most easily be replaced by re-usable options. Shoppers generally plan ahead before embarking on a shopping trip and anticipate carrying a quantity of items. Bringing a reusable bag to the store is not a difficult burden. Additionally, a majority of the working group felt that the proposed fee should apply to bags used by restaurants to contain take-out orders or packaged leftovers.

The GPWG identified a number of situations and types of bags that are difficult for consumers to replace because they serve specific functions to protect the quality of goods or to maintain health and safety including:

- Bags without handles used to carry bulk items such as candy, small hardware items, produce, meats, or other bulk food items
- Bags used by consumers inside stores to contain unwrapped prepared foods or items where dampness may be a problem
- Bags provided by pharmacists to contain prescription drugs;
- Newspaper bags, door-hanger bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.

Such bags are exempt from the fee in the proposed ordinance.

Under the proposed ordinance, the definition of store centers on businesses that sell grocery items and snack foods. This includes supermarkets, convenience stores, pharmacies and similar businesses. It also includes farmers markets and would require vendors at such markets to charge the \$0.10 fee when they use a disposable bag to package a purchase (The fee would not apply to bags used by the market customer to contain bulk purchases). Finally, as proposed, the ordinance would apply to laundry/dry cleaning businesses. These business would be required to charge customers the \$0.10 fee for bags used to cover items leaving their stores. The ordinance would not otherwise apply to businesses where food sales are incidental (less than 2%) to the business. As indicated above, the fee would also apply to restaurants including food trucks and cart.

The recommended ordinance would require the City to use the revenue generated by the fee to mitigate the effects of disposable bags and other litter. Eligible activities would include:

- Providing reusable bags to residents and visitors to the city, as well as distributing reusable bags through social service agencies to ensure low income residents have access to them
- Creating and implementing programs to educate the public about the impact of disposable bags and other litter on the City's environmental health
- Purchasing and installing equipment such as recycling containers and waste receptacles to prevent litter
- Funding community clean up events and other activities to reduce waste
- Funding the administration of the fee program

The ordinance would prohibit the City from using funds collected from the bag fee to be used for general government purposes.

Retailers required to collect the fee would be allowed to keep up to 40% of the funds under the program. They would be able to use this money to defray the costs of administering the fee and would also be able to use the funds to:

- Train staff about the program
- Improve or alter store infrastructure to increase the recycling of disposable bags or facilitate implementation of the program
- Develop informational signage to inform customers about the fee, to encourage use of reusable bags or promote the recycling of disposable bags

The intent of this provision is to facilitate participation by the affected businesses and to ensure they are able to cover the costs incurred by complying with the provisions of the ordinance.

The majority of the Green Packaging Working Group feels that charging a fee to reduce the consumption of disposable bags is warranted for several reasons:

1. Conformity with the City's solid waste policy:

The Solid Waste Task Force Report (2011) indicates in its policy statement:

It is the policy of the City of Portland to be an environmental leader in municipal solid waste (MSW) management by minimizing the generation of solid waste, diverting waste from landfill disposal, reducing the environmental impacts of waste, and promoting the demand for recovered materials.

Single use products, such as bags, are symbolic of our "throw away culture" that emphasizes short term convenience over the long term environmental impacts and waste management costs. Such products are intended, by design, to be thrown away. Studies done in California suggest that consumers use more than 400 plastic bags per year and that less than 5% of them get recycled. The rest are thrown away – either properly in the solid waste management system or discarded as litter. By discouraging the

consumption of disposable bags the City would be actively minimizing waste production. Waste reduction is the highest rung of the waste management hierarchy – **reduce**, reuse, recycle, compost, recover energy, landfill.

2. Positive experience with incentive based waste reduction programs:

Since 1999 the City of Portland has maintained a Pay as You Throw program that charges residents for each bag of trash they dispose of. Recycling is free. The bag fee serves as a financial incentive for residents to reduce the amount of waste they dispose of by avoiding waste production in the first place and recycling as much as they can. This program has proven to be very effective and has resulting in a recycling rate that went from below 7% before the program began to around 37% today. Charging a \$0.10 fee on each disposable bag will discourage people from using them and provide a financial incentive for store patrons to bring their own bags.

3. Negative impacts on infrastructure from disposable bags:

Many disposable bags, particularly plastic ones, end up in the environment because thoughtless individuals drop them as litter or because they blow out of a waste container or recycling bin due to their light weight. When the wind catches plastic bags they easily become airborne and can travel a long distance. They often get tangled in trees and shrubs where they are unsightly. More problematically, they get caught in storm drains and catch basins where they can cause back-ups if they are not removed. Even recycling facilities have challenges handling plastic bags. Wind can carry them out of, and away from the waste handling facility, contributing to litter problems at the facility. Even when processed, disposable plastic bags often become wrapped around machinery and must be removed by hand. At ecomaine this is a costly and time consuming exercise that must be repeated after every work shift.

4. Negative impacts on the environment from disposable bags:

The production of single use products, such as disposable bags, creates a long chain of unnecessary environmental impacts. Manufacturing these items consumes natural resources that must be extracted from the earth. Producing and distributing the products also creates pollution that impacts both air and water resources. Working group members also expressed concern about the consequences of plastic bags entering the marine environment, which is becoming heavily contaminated by waste plastics. Our close proximity to Casco Bay leads untold numbers of fly away plastic bags to be blown into the water. Once there, they disintegrate and pollute this valuable water resource. Additionally, marine life frequently mistake plastic bags for food, often with fatal consequences.

The Master Environmental Assessment On Single-Use and Reusable Bags conducted for Green Cities California in 2010 lays the environmental choices out clearly:

Single Use Plastic Bags: Nearly 20 billion single-use high density polyethylene (HDPE) plastic grocery bags are used annually in California, and most end up in landfills or as litter. In fact, of the ... types of bags considered, plastic bags had the greatest impact on litter.

Single-Use Paper Bags: Kraft paper bags are recycled at a significantly higher rate than single-use plastic bags. Still, over its lifetime, a single-use paper bag has significantly larger greenhouse gas (GHG) emissions and results in greater atmospheric acidification, water consumption, and ozone production than plastic bags.

Reusable Bags: Reusable bags can be made from plastic or cloth and are designed to be used up to hundreds of times. Assuming the bags are reused at least a few times, reusable bags have significantly lower environmental impacts, on a per use basis, than single-use bags. Some of the reviewed LCAs (life cycle analyses) indicate that use of the non-woven plastic reusable bag results in particularly large environmental benefits.

5. Effectiveness of similar measures in other jurisdictions:

Local, state, and national governments around the world have adopted measures designed to prohibit or limit the use of disposable bags. These measures have proven to be very effective at reducing the number of bags consumers use and increasing their use of reusable bags. Ireland, for instance, has adopted a nationwide fee on plastic bags. According to a 2008 New York Times article, consumption of these bags has fallen by 94% and the Irish have widely adopted reusable bags. In other European countries, such as Germany and Russia, merchants have long charged a fee for shopping bags and consumer use of reusable bags is the norm. Here in the United States, dozens of communities, large and small, have adopted measures aimed at reducing the use of disposable bags. Washington, DC established a \$0.05 fee on plastic bags which caused the number of bags distributed to fall from 22.5 million bags per month to 3.3 million per month.

Conclusion: It is time for the City of Portland to take action to reduce the use of disposable bags. Voluntary efforts by retailers are commendable but are inadequate on their own. A small fee on disposable bags will incentivize Portland residents to remember to bring their reusable bags when they are out shopping, or lead them to decline a disposable bag when they only have one or two items. The proliferation of disposable bags and the environmental impacts they cause, are too great a price to bear for simple convenience. Adopting this ordinance will underscore the importance of reducing our waste stream, reduce our City's environmental footprint and make Portland a more sustainable community.

February 7, 2014

The members of the Green Packaging Working Group Task Force who represent Maine businesses propose that the City of Portland adopt a public awareness and educational campaign with ecomaine, city residents and the business community.

The City of Portland has the opportunity to take a leadership role by becoming the first community in the State to adopt a comprehensive and meaningful education campaign to:

- increase appropriate recycling of existing bags
- identify ways to reuse and properly dispose of bags
- reduce the number of bags distributed by retailers and at city and private events
- increase the use of reusable bags

The City of Portland and ecomaine should make it clear that plastic film is not acceptable for recycling at their facility. ecomaine should feel free to inform their customers that retailers providing plastic check out bags are required to accept plastic bags for recycling.

Portland should adopt the Got Your Bags? Maine campaign. The promotional and educational materials are available for immediate implementation. Maine was one of the first states to launch this statewide, voluntary program designed for both retailers and consumers to help educate them on the benefits of reducing bag numbers, recycling bags, increasing the use of reusable bags and providing information helpful to municipalities. The Got Your Bags? Maine campaign is always looking for meaningful opportunities to expand the program and we are ready and willing to offer our assistance to City officials, businesses and interested organizations.

Many of our Portland member companies already manage complex internal recycling programs and back haul plastics out of state to be recycled. They educate their customers about where to recycle bags (plastic and paper) and encourage their customers to use reusable bags by placing signage/placards in their parking lots and entry ways.

The infrastructure is in place. Don't bypass this opportunity to do the right thing. Let's work together to create a meaningful public awareness and educational program to Reduce, Reuse, Recycle and promote the use of Reusable bags!