

ORDINANCE NO. 6,911–N.S.

ADDING BERKELEY MUNICIPAL CODE CHAPTER 12.29, PRECAUTIONARY PRINCIPLE

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

Section 1. That Chapter 12.29 is added to the Berkeley Municipal Code to read as follows:

Chapter 12.29

Precautionary Principle

Sections:

12.29.010 Purpose.

12.29.020 Definitions.

12.29.030 Application of Precautionary Principle by City in existing policies.

12.29.040 Application of Precautionary Principle by City in future policies.

12.29.050 Annual report on implementing actions.

12.29.060 Precautionary Principle limited to promotion of general welfare.

12.29.070 Severability.

12.29.010 Purpose.

The purpose of this chapter is to promote the health, safety, and general welfare of the community by minimizing health risks, improving air quality, protecting the quality of ground and surface water, minimizing consumption of resources, and minimizing the City's contribution to global climate change by implementing in a phased manner, as provided in this chapter, the City's use of a precautionary principle approach in its decisions.

12.29.020 Definitions.

Whenever any of the words hereinafter defined are used in this chapter, they shall be construed to mean the following:

A. "City" shall mean, for the purposes of this chapter, the City of Berkeley.

B. "City of Berkeley Precautionary Principle policy:" Where threats of serious or irreversible damage to people or nature exist, lack of full scientific certainty about cause and effect shall not be viewed as sufficient reason for the City to postpone measures to prevent the degradation of the environment or protect human health. Any gaps in scientific data uncovered by the examination of alternatives will provide guideposts for future research, but will not prevent protective action being taken by the City. As new scientific data become available, the City will review its decisions and make adjustments when warranted.

C. "Precautionary Principle approach" shall mean a course of action and decision-making by the City guided by the following tenets:

1. Anticipatory Action: Anticipatory action may prevent harm. Government, business, community groups, and the public share this responsibility.

2. Right to Know: The community has a right to know complete and accurate information on potential health and environmental impacts associated with the selection of products, services, operations or plans.

3. Alternatives Assessment: Examine a full range of alternatives and select the alternative with the least potential impact on health and the environment including the alternative of doing nothing.

4. Consideration of Significant Costs: Consider significant short-term and long-term costs in comparing product alternatives, when feasible. This includes evaluation of significant costs expected during the lifetime of a product, (e.g. raw materials, manufacturing and production, transportation, use, clean-up, acquisition, extended warranties, operation, supplies, maintenance, disposal costs, long and short-term environmental and health impacts); and that expected lifetime compared to other alternatives.

5. Participatory Decision Process: Decisions applying the Precautionary Principle should be transparent, participatory by including community input, and informed by the best available information.

12.29.030 Application of Precautionary Principle by City in existing policies.

The City shall continue to abide by the following policies, which were previously adopted by the City Council and implemented by the City embodying the Precautionary Principle:

A. Environmentally Preferable Purchasing Policy. (Resolution No. 62,693–N.S., 2004) Regarding the purchase of, and providing specifications for, products or services that reduce waste and toxics, prevent pollution, contain recycled content, save energy and water, follow green building practices, employ sustainable landscape management techniques, conserve forests, and encourage agricultural bio-based products to be implemented in a phased manner, as provided for in Section 12.29.040, beginning with janitorial products used by the City.

B. Non-Polystyrene Foam Food Packaging. (Resolution No. 62,693–N.S., 2004 and BMC Section 11.60.090) Policy regarding City purchase of polystyrene foam food packaging.

C. Pentachlorophenol, Arsenic and Creosote Treated Wood. (Resolution No. 62,693–N.S., 2004 and Resolution No. 61,724–N.S., 2002) Policy regarding the purchase of all pentachlorophenol, arsenic, and creosote treated wood by the City.

D. Redwood Products. (Resolution No. 62,693–N.S., 2004 and Resolution No. 58,704–N.S., 1996). Policy regarding the purchase of virgin redwood products and previously used or certified sustainably harvested redwood for City projects.

E. Tropical Hardwood. (Resolution No. 62,693–N.S., 2004 and Resolution No. 58,291–N.S., 1995) Policy regarding the purchase or use by the City of tropical hardwoods and products.

F. Eliminate Anthropogenic Sources of Dioxin Pollution. (Resolution No. 62,693–N.S., 2004 and Resolution No. 60,196–N.S., 1999) Policy regarding the City's purchasing practice to increase dependence on alternatives such as chlorine-free paper and PVC-free plastics, among other actions.

G. Green Building. (Resolution No. 62,693–N.S., 2004 and Resolution No. 62,284–N.S., 2003). Policy regarding the use of the US Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System Standards for City owned and operated projects.

H. Integrated Pest Management Policy. (Resolution No. 62,693–N.S., 2004 and Resolution No. 54,319–N.S., 1988). Policy regarding the use of Integrated Pest Management principles for pest control and pesticide use by the City.

I. Purchasing Recycled and Recyclable Paper. (Resolution No. 62,693–N.S., 2004 and Resolution No. 55,327–N.S., 1990) Policy regarding the City's purchasing preference for recycled content paper.

J. City Administrative Policy Regarding Mercury. Policy regarding City's purchase of fluorescent lamps with low mercury content for fluorescent fixtures.

12.29.040 Application of Precautionary Principle by City in future policies.

The City shall continue to implement the Precautionary Principle in additional areas as the City Manager determines are feasible.

12.29.050 Annual report on implementing actions.

The City Manager shall submit an annual report to the City Council describing: (a) the status of implementation of actions required by the policies listed in Section 12.29.030; and (b) the status of activities undertaken to implement the Precautionary Principle pursuant to Section 12.29.040. Sufficient information shall be provided to enable an assessment of progress and to identify proposed actions that were deemed infeasible by the City Manager pursuant to 12.29.040 above.

12.29.060 Precautionary Principle limited to promotion of general welfare.

In undertaking the enforcement of this chapter, the City is assuming an undertaking only to promote the general welfare of the community. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in monetary damages to any person who claims that such breach proximately caused injury, nor may this chapter provide any basis for any other judicial relief including, but not limited to, a writ of mandamus or an injunction.

12.29.070 Severability.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason declared unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity, or ineffectiveness of any one or more of its sections, subsections, sentences, clauses, or phrases.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on March 7, 2006, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on March 21, 2006, this Ordinance was adopted by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

ATTEST:

Sara T. Cox
Sara T. Cox, City Clerk

Tom Bates
Tom Bates, Mayor

In effect: April 20, 2006