

## ORDINANCE NO. 5

### PHOSPHORUS CLEANING COMPOUND BAN

WHEREAS, Section 75-7-411, M.C.A., allows the counties to adopt an ordinance under the procedures set forth in the Sections 7-5-103 through 7-5-109, M.C.A., prohibiting the sale and distribution of certain phosphorus compounds for cleaning purposes using standards designated by the Montana Department of Health and Environment Sciences;

WHEREAS, the Montana Department of Health and Environment Sciences adopted a model rule pursuant to Section 75-7-401, M.C.A., effective August 29, 1986; and

WHEREAS, the Board of Commissioners of Flathead County made the following determinations on October 20, 1986, based on information produced at a hearing held on October 9, 1986: that eutrophication enhanced by human activity is occurring in Flathead Lake, with phosphorus being the limiting factor, and that other efforts are being undertaken in Flathead County to reduce the amount of phosphorus entering surface waters.

NOW, THEREFORE, BE IT RESOLVED that effective 30 days after the second reading and final adoption hereof, the following ordinance shall be in full force and effect in Flathead County:

**Section 1. Definitions.** In this ordinance the following terms have the meanings indicated below:

- a) "Chemical water conditioner" means a water softening chemical or other substance containing phosphorus which is intended to treat water for use in machines for washing laundry.
- b) "Commercial establishment" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including but not limited to laundries, hospitals, hotels, motels, and food or restaurant establishments.
- c) "Household cleaning product" means any product including but not limited to soaps and detergents, used for domestic or commercial cleaning purposes, including but not limited to the cleaning of fabrics, dishes, food utensils, and household and commercial premises. Household cleaning product does not mean foods, drugs, cosmetics, or personal care items such as toothpaste, shampoo, or hand soap.
- d) "Person" means any individual, proprietor of a commercial establishment, corporation, municipality, the state or any department, agency, or subdivision of the state, and any partnership, unincorporated association, or other legal entity.
- e) "Phosphorus" means elemental phosphorus.
- f) "Trace quantity" means an incidental amount of phosphorus which is not part of the household cleaning product formulation, and is present only as a consequence of manufacturing, and does not exceed 0.5% of the content of the product by weight expressed as elemental phosphorus.

**Section 2. Prohibitions.**

- a) No household cleaning product may be distributed, sold, offered, or exposed for sale if it contains phosphorus in concentrations in excess of a trace quantity, except that no dishwashing detergent may be distributed, sold, offered, or exposed for sale if it contains phosphorus in excess of 8.7% by weight expressed as elemental phosphorus.
- b) No chemical water conditioner which contains more than 20% phosphorus by weight may be distributed, sold, offered, or exposed for sale.

**Section 3. Exceptions.** The following cleaning agents and other products containing phosphorus are exempt from the provisions of this rule:

- a) Those used in food or beverage processing, or used by health care services and facilities;
- b) Those used by commercial establishments, and those used for industrial processes or for cleaning food and beverage processing equipment, medical or surgical equipment, or dairy equipment; and
- c) Those used for agricultural operations.

**Section 4. Penalty.** A person convicted of the offense of sale or commercial distribution of a prohibited phosphorus compound is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment not to exceed six months, or both fine and imprisonment. Each day of such violation is a separate offense.

**Section 5. Severability.** If any provision of this ordinance is held to be invalid, such invalidity shall not effect other provisions which can be given effect without the invalid provision. To this end provisions of this ordinance are to be severable.

DATED this 5<sup>th</sup> day of November, 1986.

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana

By /s/Henry Oldenburg  
Henry Oldenburg, Chairman

ATTEST  
Susan W. Haverfield, Clerk  
By: /s/ Marie Potter, Deputy