

Local Food System Ordinance of Benton County, Oregon

Section 1. Findings and Intent

We the people of Benton County have the inalienable right to grow, raise, rear, access, harvest, preserve, process, exchange, and consume – both individually and collectively – whole food and food products from a local food system.

We the people of Benton County find that our right to a local food system is essential to the well-being of the County's residents and natural communities, as well as the health, resilience, and flourishing of the local economy, of which local agriculture plays a vital role.

We the people of Benton County have the right to a local food system and seed heritage that does not harm the right of natural communities to exist, persist, and flourish; adapts to local growing conditions; promotes biodiversity, resilience, and productivity; and provides for the social, equitable, nutritional, economic, and cultural enhancement of the quality of life for all residents of Benton County.

We the people of Benton County find that the civil right to grow, save, preserve, protect, harvest, adapt, and distribute open pollinated seeds, which is the foundation of all agriculture, is required – both individually and collectively – to secure the peoples' commonly held seed heritage and right to a local food system.

We the people of Benton County find that the patenting and ownership of seeds and other self-replicating life forms used for the growing, rearing, or raising of food is a direct threat to our inalienable right – both individually and collectively – to grow, save, preserve, protect, harvest, adapt, and distribute seed to grow food and produce food products from one generation to another within Benton County.

We the people of Benton County find that the patenting and privatization of seeds that have been genetically modified interferes with the diversity of and access to the people's seed heritage, reduces the people's ability to save, replant, and adapt open pollinated seeds free of contamination, limits research and development of seeds and other life forms adapted to local growing conditions and soils that meet the economic and nutritional needs of the community, and encourages the use of genetically modified or altered life forms which pose significant risks to natural communities and farmer livelihoods through irreversible contamination of crops and related species.

We the people of Benton County understand that any attempt to prohibit the privatization and use of patented seed may run afoul of claimed corporate "rights" to engage in those practices, as well as State or federal laws. We understand that failure to legislatively challenge those "rights" and laws guarantees that a local food system will never exist.

We the people of Benton County therefore enact this local law pursuant to the inherent and inalienable right of the residents of Benton County to govern their own county for their own health, safety, and welfare. That authority is also secured by the Declaration of Independence's assertion that governments are instituted to secure the rights of people, in the State Constitution of Oregon's recognition that all power is inherent in the people, and in the Benton County Charter, which delegates the authority to the people and their representatives to enact local legislation on matters of county concern;

Therefore, through this Ordinance, which shall be known and cited as the "Local Food System Ordinance of Benton County, Oregon", *the people of Benton County ordain as follows*:

Section 2. Statements of Law – Food Bill of Rights

Right to a Local Food System: All residents of Benton County possess the right to a local food system. This right shall include, but is not limited to, the right to access, use, consume, produce, harvest, collect, process, and distribute foods generated from sustainable agricultural systems within Benton County.

Right to Seed Heritage: All residents of Benton County possess the right to grow, adapt, save, preserve, protect, collect, harvest, and distribute all seeds grown within Benton County. This right shall include, but is not limited to, the right to be free from infection, infestation, or drift by any means from genetically engineered organisms, trans-genetic risk seed, or other seeds that have been developed using methods other than traditional plant breeding.

Rights of Natural Communities: Natural communities, such as soils and other terrestrial systems, and aquatic systems such as aquifers, streams, rivers, and wetlands, shall possess the right to exist, persist, maintain themselves and regenerate their own vital cycles, structures, functions and evolutionary processes to the extent necessary to further the creation and protection of Benton County's local food system. That right shall include the right to be free from genetically engineered organisms and the right to be free from the patenting, licensing, or ownership of their genes within Benton County.

Right to Self-Government: All residents of Benton County possess the right to a form of governance where they live which recognizes that all power is inherent in the people and that all free governments are founded on the people's consent, to the extent necessary to further the creation and protection of Benton County's local food system. Use of the "Benton County" municipal corporation by the people of Benton County shall not be deemed, by any authority, to eliminate or reduce that self-governing authority.

Rights are Fundamental and Self-Executing: All rights delineated and secured by this Ordinance are fundamental and inalienable, shall not need additional legislation to be enforceable, and shall be enforceable against both public and private actors.

Section 3. Statements of Law – Prohibitions Necessary to Secure the Bill of Rights

- (a) It shall be unlawful for any corporation or governmental entity to violate any right secured by this Ordinance.
- (b) It shall be unlawful for any corporation or governmental entity to engage in the use of genetically engineered organisms within Benton County.
- (c) It shall be unlawful for any corporation or governmental entity to plant trans-genetic risk seed in Benton County unless such seed has been proven to be free of any traces of genetic modification, and such proof has been submitted to the Benton County Commissioners and the report released to the public without charge.
- (d) It shall be unlawful for any corporation or governmental entity to require registration or patenting of open pollinated or traditionally-bred seed within Benton County.
- (e) No person or business in Benton County shall be liable to any corporation claiming seed patent or ownership rights or claiming loss of income or commercial infringement resulting from the inadvertent infection of agricultural crops by genetically engineered organisms or other patented traits.
- (f) No permit, license, privilege, charter, or other authority issued by any State or federal entity which would violate the rights or prohibitions of this Ordinance shall be deemed valid within Benton County.

Section 4. Implementation

- (a) Existing, non-perennial and perennial genetically engineered organisms within Benton County must be harvested, removed, or destroyed within ninety (90) days after the adoption of this Ordinance.
- (b) It shall be unlawful to allow re-growth of genetically engineered seedlings, forage sod, stump sprouting, or perennials (including, but not limited to, alfalfa) in any location where those organisms have previously been intentionally grown, processed, or stored. The Benton County Commissioners shall establish fines and shall impose those fines on landowners violating this sub-section.
- (c) Ninety (90) days after the effective date of this Ordinance, corporations that either hold patents, licenses, or own genetically engineered organisms shall be strictly liable for the removal of any and all genetically engineered organisms found in Benton County where the genetically engineered organism was not intentionally put there by the property owner or tenant. Removal costs shall include, but not be limited to, clean-up, testing, lost income, attorney fees, and any other costs related to the contamination.
- (d) Testing costs and contamination of seeds before planting – Ninety (90) days after the effective date of this Ordinance, owners of patents of genetically engineered organisms which are discovered by testing of trans-genetic risk seed within the County, shall be strictly liable for the costs of clean-up and removal, testing, lost income, attorney fees, and any other costs related to the contamination.

Section 5. Enforcement

- (a) Any resident or group of residents within Benton County shall have legal standing and the authority to enforce the provisions of this Ordinance in any court possessing jurisdiction over events occurring within Benton County. In such an action, the resident or group of residents shall be entitled to recover damages and all costs of litigation, including, without limitation, expert and attorney's fees.
- (b) Benton County may enforce this Ordinance through an action brought in a court of competent jurisdiction. In such an action, Benton County shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees. Violation of the prohibitions established by this Ordinance shall also be a criminal offense, and action against the violator shall be brought by the County in a court of competent jurisdiction.
- (c) Any action brought to remedy the violation of the rights of natural communities shall list the natural community as a plaintiff in the action; damages sought must bear a relationship to the damage inflicted upon the natural community, and awarded damages must be payable to the municipality for the restricted use of repairing the natural community to its condition prior to the violation.

Section 6. Enforcement – Corporate Powers

- (a) Corporations which violate this Ordinance shall not be deemed to be “persons,” nor possess any other legal rights, privileges, powers, or protections which would interfere with the enforcement of rights or prohibitions enumerated by this Ordinance. Such powers shall include the authority to assert state or federal preemptive laws in an attempt to overturn this Ordinance, and the authority to assert that the people of the County lack the authority to adopt this Ordinance.
- (b) All laws adopted by the legislature of the State of Oregon, and rules adopted by any State agency, shall be the law of Benton County only to the extent that they do not violate the rights or prohibitions of this Ordinance.

Section 7. People’s Right to Self-Government

Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, shall require Benton County to hold public hearings that explore the timely adoption of other measures that expand the ability of residents to protect their fundamental and inalienable right to self-government, including without limitation, the amendment of the Benton County Charter to secure the peoples’ rights as enumerated in this Ordinance to a local food system.

Section 8. Definitions

(a)“Corporation”: Shall refer to any corporation, limited partnership, limited liability partnership, business trust, other business entity, or limited liability corporation organized under the laws of any State of the United States, or under the laws of any country.

(b)“Engaged in the Use of”: Shall include, but not be limited to, the use, provision, sale, or patenting of genetically modified organisms which are then used, planted, grown, cultivated, raised, reared, propagated, or harvested.

(c)“Genetically Engineered Organism”: Any organism, organisms, or life forms, in which the genetic or self replicating material has been changed, engineered, modified or altered using techniques such as, but not limited to:

1)In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles, or

2)Fusion of cells (including protoplast fusion) or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells/protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination.

The phrase shall not include traditional selective breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

(d)“Seed Heritage”: All open pollinated seeds developed and adapted over millennia, handed down from generation to generation, held in common by all peoples, which serve as the inalienable, inherited, life-giving wealth of all future generations of all the people.

(e)“Sustainable Agriculture”: Agriculture conducted pursuant to the provisions of U.S. Code Title 7, Section 3103.19 which does not violate the rights of natural communities and ecosystems as recognized by this Ordinance; which respects the rights enumerated in section two of this Ordinance; which provides a viable income for farming and harvesting families; which maintains plants, soil, air, water, and animals free from genetic modifications or patenting; which is free from the application of sewage sludge as well as urban and industrial waste not properly composted; and that provides for the humane treatment of livestock.

(f) “Local Food System”: A food system based on sustainable agriculture that does not violate the rights of natural communities and ecosystems to exist, persist, and flourish, and which promotes biodiversity, living soils, resilience, and nutrient density while providing for the social, equitable, economic, nutritional and cultural enhancements of the quality of life in Benton County.

(g) “Trans-genetic risk seed”: Any seed, or crop produced from that seed, including, but not limited to, corn, soy, flax, canola, wheat, beets, alfalfa, and bent grass that has been genetically modified or patented and is widely grown, spread, and distributed, making all seeds of those crops and related crops subject to contamination with traces of the alteration.

Section 9. Severability

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of this Ordinance. The people of Benton County hereby declare that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

Section 10. Repealer

All provisions within the county code of Benton County that are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent necessary to remedy the inconsistency.

Section 11. Effect

This Ordinance shall take effect on the date of adoption.