




# CITY OF LONG BEACH

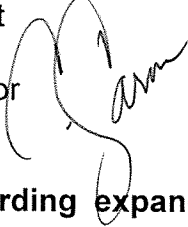
DEPARTMENT OF PLANNING AND BUILDING

333 W. Ocean Blvd. - Long Beach, CA 90802 - 562/570-7713 - FAX 562/570-6205

**Date:** November 28, 2007

**To:** Environmental Committee

**From:**  Suzanne Frick, Director  
Planning and Building Department

Christopher Garner, Acting Director   
Public Works Department

**Subject:** **Policy Recommendations regarding expanded polystyrene and plastic bag usage**

## BACKGROUND:

On June 5, 2007, the City Council referred a discussion of the use of plastic bag and expanded polystyrene, in the form of take-out food containers, to the Environmental Committee with the purpose of returning to Council with a policy action. To facilitate further discussion, the Environmental Committee held a public meeting to receive stakeholder feedback on these issues.

## STAKEHOLDER OUTREACH:

The Environmental Committee met on October 25, 2007, and hosted a community forum entitled, "For Here Or To Go: A Discussion About How Waste Impacts a Livable City." The purpose of this meeting was to allow affected parties and the public to begin the policy discussion to address expanded polystyrene and plastic bag usage, with the goal of making Long Beach a more sustainable city.

Over one thousand local residents, business, and organizations were invited to attend the public meeting. The invitees included environmental associations, community associations, Long Beach Chamber of Commerce, the Grocer's Association, the American Plastics Council, and all Long Beach restaurants. A press release was also issued, and information was available on the City's website. Approximately 25 people attended, which included restaurant owners, environmental groups, industry representatives, private citizens, and City staff.

The first part of this meeting featured a five-member panel with a wide range of expertise. The panelists included an environmentalist, a recycling company executive, a plastic bag manufacturer's representative, a Grocer's Association representative, and a local government official. Please see Attachment A for the panelists' biographies. This panel was designed to provide insight into the environmental impacts of expanded polystyrene and plastic bags on our community, explain how the products are currently used and discarded, and explain and debate the possible policy change options.

Overall, what was heard during the panel discussion was that both plastic bags and expanded polystyrene can have negative environmental impacts if not handled properly. These include litter, danger to wildlife and marine habitat, and decreased quality of life. Expanded polystyrene also has adverse toxic effects to both humans and animals. Dr. Marcus Eriksen, of Algalita Marine Research Foundation, discussed the wide range of environmental impacts of these products on the marine environment. However, there were differing opinions as to how to mitigate these impacts.

Jennifer Forkish, of the California Grocer's Association, and Chet Chaffee, of Boustead Consultants and Associates, who are proponents of plastic bags, provided information that plastic bags are economical, practical, and more energy efficient than paper bags and other alternatives. Any ban would force companies to use more expensive products and that cost would be passed to the consumer, creating an unnecessary burden. Also, because plastic bags are recyclable, there is no reason to ban them. The focus should instead be on education and outreach to inform the public as to the proper use and recycling of plastic bags.

The recycling industry representative, Dan Domonoske, from Potential Industries, a recycling company, discussed the recyclability of both expanded polystyrene and plastic bags. While plastic bags are relatively easy to recycle, expanded polystyrene is very difficult to recycle and not economically profitable. Also, in order to be recycled, expanded polystyrene must be free from food contamination. It is rare that used expanded polystyrene is completely clean when consumers put it in the recycling bin, making it difficult to recycle due to the contamination.

Josephine Miller, from the Environmental Programs Division for the City of Santa Monica, described the City's policy and process of implementing a ban a non-recyclable disposable food-packaging ban. The numerous issues associated with expanded polystyrene, including its environmental impact, degradation of the aesthetic environment when it is littered, and the large percentage of expanded polystyrene litter on beaches, city streets, and neighborhoods made a citywide ban appealing to the City of Santa Monica. Additionally, the public was very receptive to the ban and there were a variety of cost-effective alternatives to expanded polystyrene, such as paper, recyclable plastic, tin, and bio-plastics.

Following the panel discussion, there was a public comment period. The majority of the speakers made comments as to the severity of the plastic problem, and urged the City of Long Beach to take the necessary steps to mitigate the environmental impacts and prevent the littering of these products. See Attachment B for individual comment summaries.

Following the official close of the Environmental Committee, there was an opportunity for the public to participate in a variety of activities designed to provide staff with additional feedback regarding the issue of expanded polystyrene and plastic bag waste in our city and how Long Beach could become a more sustainable city. Please see Attachment C for event photographs.

Several poster-sized information boards also provided attendees with information regarding Long Beach's current waste management programs, including the residential recycling program and the SERRF facility. These displays were designed to educate the public about the current system and encourage the use of existing City programs.

The participation activities posed a variety of questions regarding current practices, possible future policies, and suggestions for change. These activities were designed to help City staff understand people's current recycling practices, understand where people are getting expanded polystyrene and plastic bags, gauge their reactions to upcoming policies, understand how effective new policies may be, and allow them to share their ideas and suggestions.

The feedback from these activities was overwhelmingly positive. All of the participants recycle plastic, glass, metal, cardboard, and paper regularly. The majority of participants are getting expanded polystyrene from restaurants and take-out facilities, while others get it at coffee shops and public events. The primary sources of plastic bags are retail, grocery stores, and restaurants. The secondary plastic bag sources are department stores and convenience stores.

The majority of participants supported a citywide ban on expanded polystyrene as well as a separate citywide ban on plastic bags. They also were supportive of using "green" products, like paper cups or reusable canvas bags, as an alternative to both products. Participants were also receptive to the idea of a "green business" designation, which could help promote businesses that meet a number of "green" criteria.

Participants saw cleaner beaches, less litter, and a healthier marine environment as a result of an expanded polystyrene or plastic bag ban.

#### Regulatory Setting for Plastic Bags

- On July 1, 2007, AB 2449, authored by Assemblymember Lloyd Levine, went into effect. This bill was designed to address the problem of the low plastic bag recycling rate and the high litter rate. This new law requires that all large grocery stores and pharmacies take back their plastic bags for recycling. The law also requires that these stores make reusable bags available for purchase.
- Currently, the City of Long Beach residential recycling program accepts plastic bags. The Environmental Services Bureau's website contains the complete list of products that are accepted in the residential recycling program.
- There is a contamination problem associated with combining regular plastic bags with biodegradable bags in the recycling stream. When a biodegradable bag is mistaken for a regular plastic bag and is put in the recycling, it can contaminate the plastic resins, making them non-recyclable. This could compromise current recycling efforts. Therefore, the option of requiring biodegradable bags is impractical.

- Currently, Long Beach does not have a citywide composting program, although individual composting bins are made available at a low cost to residents. Therefore, most compostable bags would end up in the trash. Compostable bags in the waste stream would pose a problem for Long Beach because it would limit disposal options. Processing compostable waste mixed with other materials requires a special solid waste facilities permit. Currently, there are no local sites that could handle this type of mixed material. Because of the lack of a comprehensive composting program and lack of adequate disposal, requiring compostable bags is not a feasible alternative to plastic and would most likely not have the intended environmental benefit.
- The City of Long Beach also has outreach programs that are designed to increase recycling rates and decrease litter, including Litter Free Long Beach. Litter Free Long Beach is a multifaceted citywide program that combines education and outreach, community participation, business partnerships, and enforcement to reduce litter and promote a more livable city.
- The City is also actively promoting the use of reusable bags as an alternative to single-use disposable bags. Litter Free Long Beach, along with the Environmental Services Bureau's waste diversion program promotes the use of reusable bags. The bureau is also in the process of adding a reusable bag component to their traveling recycling education center, and plans to expand a reduce and reuse effort aimed at reducing the use of plastic bags.
- Three California cities, San Francisco, Oakland, and Fairfax have enacted plastic bag bans. San Francisco's ordinance, the first of its kind in the nation, was adopted March 22, 2007 and bans all non-biodegradable plastic carryout bags. Effective November 20, 2007 for all large grocery stores and March 22, 2008 for all large pharmacies, these stores must provide biodegradable carryout bags, paper bags, or reusable bags. The San Francisco ordinance requires fines for violators. The City of Oakland recently enacted a similar ban that will go into effect in January 2008. This ban requires that all stores that generate at least \$1 million annually, except restaurants and fast food establishments, offer either compostable or biodegradable, paper, or reusable bags. Oakland's ban also provides for fines for violations. In a separate ordinance, which went into effect in October 2007, non-biodegradable plastic carryout bags are prohibited from all City of Oakland events. Please see Attachments D and E for San Francisco and Oakland's plastic bag ordinances.
- Los Angeles County is currently studying the feasibility of a plastic bag ban. The staff report entitled, "An Overview of Carryout Bags in Los Angeles County: A Staff Report to the Los Angeles County Board of Supervisors," issued in August 2007, found that plastic bags are a significant environmental problem in Los Angeles County, and compostable and biodegradable bags are not currently a feasible option. Reusable bags were found to be the most practical option that will achieve the goals of environmental protection, resource conservation, and litter reduction. Several policy options were offered. One of which included banning plastic bags from large grocery stores and retail stores, with an exemption for stores that apply a point of sale fee to each plastic bag. Another option was a future ban dependent upon whether or not plastic bag

consumption decreased by a specified amount. For example, the staff report suggested a ban for large grocery and retail stores by July 2010 if the plastic bag disposal rate does not decrease by at least 35%.

- In response to the new plastic bag recycling mandate associated with AB 2449, the City of Los Angeles has created the "It's Our LA! Keep it Clean" program. This program helps the stores mandated to comply with AB 2449 to implement the recycling program. The program also coordinates a voluntary plastic bag recycling program for smaller businesses that wish to participate. For the large grocery stores and pharmacies that have to meet the requirements of AB 2449, the City provides promotional materials for use at the stores. The voluntary program is currently in a one-year pilot stage. Businesses in the highest trash areas of Los Angeles can participate. Participating businesses agree to abide by the provisions of AB 2449, and the City of Los Angeles will provide the businesses with a recycling bin and regular curbside pick-up or help arrange an independent collection service. The City also provides promotional materials. Participating stores will be highlighted on the program's website and will benefit from the City's program promotions and associated media.

## RECOMMENDATION

Staff recommends that the City continue to promote and monitor current plastic bag recycling programs, consider a plastic bag ban, and encourage and promote regional plans and efforts to reduce plastic bag waste.

- First, staff recommends that the City continue to promote and monitor plastic bag recycling programs currently in place at both the state and local levels for one year. Promoting and monitoring these programs will help to determine whether or not additional steps are necessary. It is recommended that after one year from the effective date of AB 2449, the plastic bag disposal rate should be evaluated and consider further regulatory action if the recycling rate has not substantially improved.
- Second, if after year one staff evaluates the disposal/recycling rate of plastic bags and it hasn't substantially improved, staff recommends considering a ban on plastic bags, which could be accomplished multiple ways. For example, the City could ban plastic bags from large grocery stores and retail stores, with an exemption for stores that voluntarily apply a point of sale fee to each plastic bag. Another option is a future ban dependent upon whether or not plastic bag consumption decreased by a specified amount. A possible plastic bag ban can be considered for large grocery and retail stores in the future if the plastic bag disposal rate does not decrease by a certain percentage. For example, a staff report from the Los Angeles County Board of Supervisors, who are also studying the effects of plastic bags, suggested a ban for large grocery and retail stores by July 2010 if the plastic bag disposal rate does not decrease by at least 35%.

- The problem of litter, especially plastic bags, in our waterways is an issue that the region should be addressing as a whole because of the interconnectedness of the environment. Despite Long Beach's efforts at recycling plastic bags and preventing litter, the problem of plastic bag litter will continue without a comprehensive effort to combat it. The City should work with other local jurisdictions, especially those upstream of the Los Angeles River, to encourage the region as a whole to address plastic bag litter.

### **Expanded Polystyrene**

Expanded polystyrene use is a more complicated issue than that of plastic bags because it is not easily recycled, and currently the recycling process is not financially feasible. Long Beach's residential recycling program accepts most plastics, including rigid polystyrene. However, the residential recycling program does not accept expanded polystyrene, which constitutes take-out food containers. Also, when expanded polystyrene is littered, it impacts the quality of life in our communities and endangers wildlife. Because expanded polystyrene is difficult to deal with, there are a variety of policy options that may address the issue of expanded polystyrene litter as well as the environmental impact of this product.

Several other cities currently have expanded polystyrene bans, including Santa Monica, San Francisco, Oakland, and Berkeley. All of these ordinances specifically ban expanded polystyrene for use at City facilities and events as well as restaurants and other food service facilities citywide, while Santa Monica's ban also bans all non-recyclable food service containers. San Francisco and Oakland both require that alternative products be biodegradable/compostable, while Berkeley requires that at least 50% of each facilities packaging is degradable or recyclable. San Francisco also allows alternative products to be recyclable. All of these ordinances have an affordability clause allowing for an exemption if no feasible alternative exists or if using an alternative product would cause undue hardship. Oakland's ordinance also exempts food prepared or packaged outside of the City of Oakland. Please see attachments F-I for sample ordinances.

Expanded polystyrene reduction policy options include:

1. Create an expanded polystyrene reduction outreach program for Long Beach restaurants: An outreach program would be designed to educate foodservice business owners about the problems associated with expanded polystyrene and provide information as to where recyclable alternative take-out containers can be purchased. An outreach program would aid in the voluntary reduction of expanded polystyrene use. This program could include staff visits to restaurants, pamphlets outlining the issue, and providing a list of alternative products. Educating businesses about the problems associated with expanded polystyrene may make business owners more receptive to switching to green products than a comprehensive ban. Also, providing a list of alternative products and where to purchase them will make the process as simple as possible for business owners, while giving them a variety of options to fit their needs and budget. See Attachment J for a sample list of alternative products that could be used for outreach program.

An outreach program would be time-consuming for City staff and would rely on a voluntary behavior change on the part of the business owner. Because of the reliance on voluntary action, an outreach program may not necessarily be effective in eliminating expanded polystyrene use. It also will not directly address consumer behavior.

2. Create a green business designation/program: A green business designation/program would be a multi-faceted program to reward "green" businesses based on a variety of criteria, a component of which could be the use of alternative products rather than expanded polystyrene. Providing incentives rather than regulations for businesses to voluntarily switch material may help reduce expanded polystyrene use as well as empower business and stimulate Long Beach's "green" economy.
3. Ban expanded polystyrene at all municipal buildings and City events: Former Councilmember Frank Colonna of the Third District previously introduced this approach in December 2005. At the time, a resolution was recommended to ban expanded polystyrene from all City facilities and events. It was concluded at the time that an expanded polystyrene foam food-packaging ban would have little fiscal impact. Any cost increase would be passed to the consumer.

The City's current Environmentally Preferable Procurement Program does discourage the use of expanded polystyrene when cost-effective alternatives are available.

An expanded polystyrene ban within City facilities and events would help reduce expanded polystyrene usage and lead the way for the rest of the City to voluntarily follow. There would likely be less opposition from both the community and industry if an expanded polystyrene ban were limited to City facilities and events. This action would demonstrate Long Beach's commitment to the community and our environment.

4. Citywide expanded polystyrene ban: Following the best management practices of cities such as Santa Monica, San Francisco, Oakland, and Berkeley, Long Beach could implement a citywide ban of expanded polystyrene take-out food containers. A citywide ban would likely be a multi-step process implemented in phases, first requiring the elimination of expanded polystyrene in City facilities and City events, and then requiring its elimination at all food service facilities citywide. For example, Santa Monica's recently approved Non-Recyclable Disposable Food Service Container Ban requires that City facilities eliminate expanded polystyrene from City facilities, events, and City-sponsored events as of February 2007, and all food service citywide must comply by February 2008. Please see Attachment F for text of the City of Santa Monica Non-Recyclable Disposable Food Service Container Ban.

Feasible alternatives to expanded polystyrene would be recyclable materials like paper, metal, or plastic; therefore, it would be reasonable to require that any alternative to expanded polystyrene be recyclable. It would not be practical to require compostable products because Long Beach does not currently have a composting program.

Any ordinance would require that cost-effective options are available. In order for an ordinance to be effective there must be an outreach program to inform food service facilities owners of the new requirements, as well as a means of enforcement for non-compliance.

## RECOMMENDATION

Staff recommends a two-phase approach to eliminating expanded polystyrene citywide resulting in the reduction of expanded polystyrene litter, improved quality of life for residents, and a more Sustainable City.

- First, staff recommends an expanded polystyrene ban for all City facilities, operations and City-sponsored events coupled with a citywide educational campaign and the development of a green business designation in year one. This type of ban for all City facilities, operations and City-sponsored events will demonstrate a positive first step in eliminating expanded polystyrene and provide leadership for the rest of the City. A citywide educational campaign would focus on educating both the public and food service facilities as to the problems associated with expanded polystyrene and encourage the use of alternatives. The green business designation would provide an incentive for restaurants and other businesses to be recognized for their environmentally friendly choices, one of which would be the use of alternative products. A citywide education program coupled with a green business designation would result in greater consumer awareness, which would help to encourage food service facilities to switch to alternative products. Also, providing food service facilities with tools and incentives empowers them to make more environmentally friendly choices that work for their business without regulatory action.
- Second, staff recommends that a citywide expanded polystyrene ban be considered in 2009. Like the other cities that have expanded polystyrene ordinances, Long Beach could ban expanded polystyrene, require recyclable alternatives, and provide penalties for violation. Types of products that would fall under an expanded polystyrene ban would include the foam cups, plates, bowls, and clamshell containers used in food service. Other food service items like cutlery, straws, and lids would not be included because these items are usually composed of rigid polystyrene. Rigid polystyrene is currently accepted in Long Beach's residential recycling. Implementing a citywide polystyrene ban after the initial outreach and education period would capture businesses that have not voluntarily complied and completed the elimination of expanded polystyrene. Waiting to enact a citywide ban would give businesses time to adjust their practices and purchasing policies. Also, at the time when the ban is implemented, there may be a wider range of cost-effective alternatives to expanded polystyrene food containers available.



Attachments:

- A. Panelist Biographies
- B. "For Here Or To Go: A Discussion About How Waste Impacts a Livable City" event photographs
- C. Public Comment Summaries
- D. City of San Francisco's *Plastic Bag Reduction Ordinance*
- E. City of Oakland Ordinance #12818
- F. Ordinance Number 2216 (CCS) (Santa Monica)
- G. City and County Of San Francisco, Chapter 16: Food Service Waste Reduction Ordinance (San Francisco)
- H. Chapter 8.07 Polystyrene Foam Service Ware (Oakland)
- I. Ordinance No. 5886—N.S. Polystyrene Foam, Degradable, and Recyclable Food Packaging Ordinance (Berkeley)
- J. City of Santa Monica Distributors of Biodegradable and Recyclable Food Service Containers



## Panelist Biographies

### **Chet Chaffee, Progressive Bag Alliance**

Chet Chaffee serves as a partner with Boustead Consultants and Associates. He is the Progressive Bag Alliance's scientific expert and has a wide range of experience as the vice president of Scientific Certification Systems, Inc., project manager at Stanford Research International (SRI), and marine biologist at CH2M Hill Inc. Chaffee holds a Ph.D. in marine sciences from the University of California, Santa Cruz.

The Progressive Bag Alliance (PBA) is a consortium of the large plastic bag manufacturers in the United States. The PBA's mission is to ensure that plastic bags are recycled, reused, and disposed of properly.

### **Dan Domonoske, Potential Industries**

Dan Domonoske serves as Vice President for Potential Industries. He has 20 years experience in the recycling industry, including 15 years in Material Recovery Facility operations and management. Domonoske holds a PhD in Political Science from Claremont Graduate School, a MBA from American Graduate School of International Management, and a BS in Economics.

Potential Industries is a recycling company located in Wilmington, California. Established in 1975, Potential recycles materials from commercial and industrial sources as well as residential curbside materials. Potential Industries' most commonly recycled materials are paper, plastic, aluminum, and glass.

### **Dr. Marcus Eriksen, Algalita Marine Research Foundation**

Dr. Eriksen serves as the Director of Education and Research for Algalita Marine Research Foundation. Some of his duties include translating research on plastic debris into school programs, like "Watershed Wonders" and "Plastics are Forever", which visit 1000's of students and the public annually. Dr. Eriksen holds a PhD in Science Education from the University of Southern California.

Algalita Marine Research Foundation is a Long Beach-based non-profit environmental organization dedicated to the preservation of the marine environment. The organization's current projects include research on pelagic plastics, plastic debris, and kelp reforestation.

### **Jennifer Forkish, California Grocer's Association**

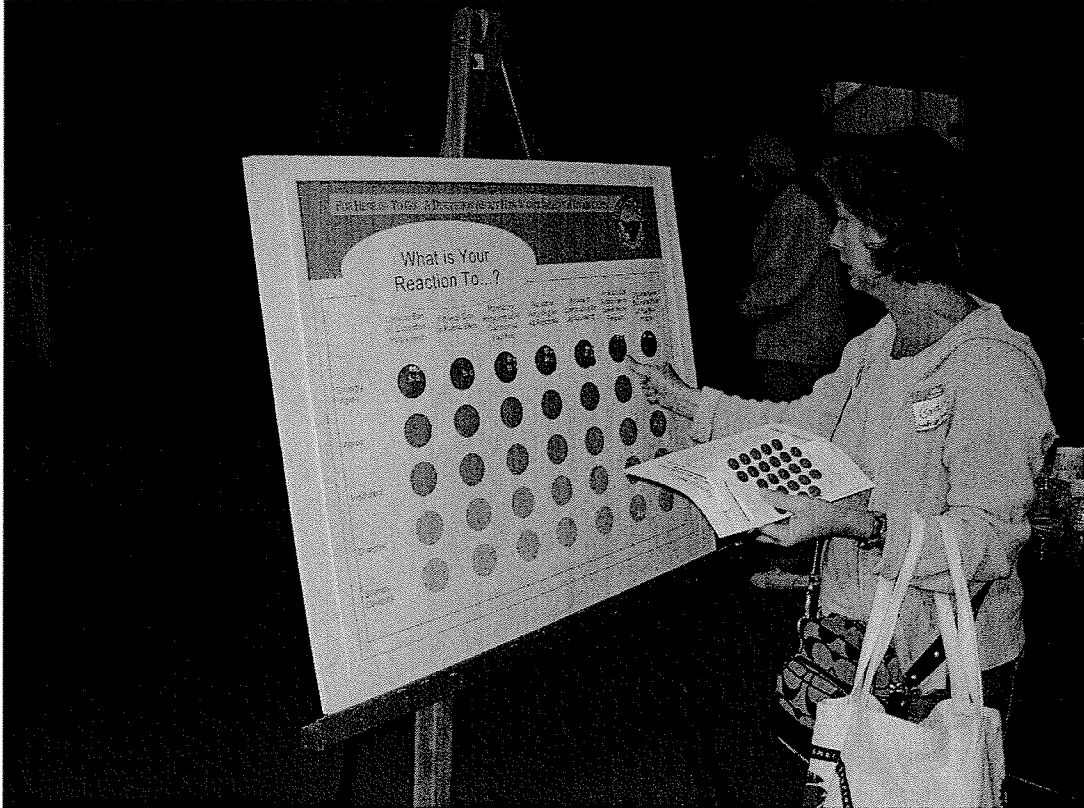
Jennifer Forkish serves as the local government representative for the California Grocer's Association (CGA). She is responsible for promoting CGA's issues by working with all city and county governments from Kern to San Diego. Forkish holds a Bachelor of Arts degree in political science from the University of Arizona.

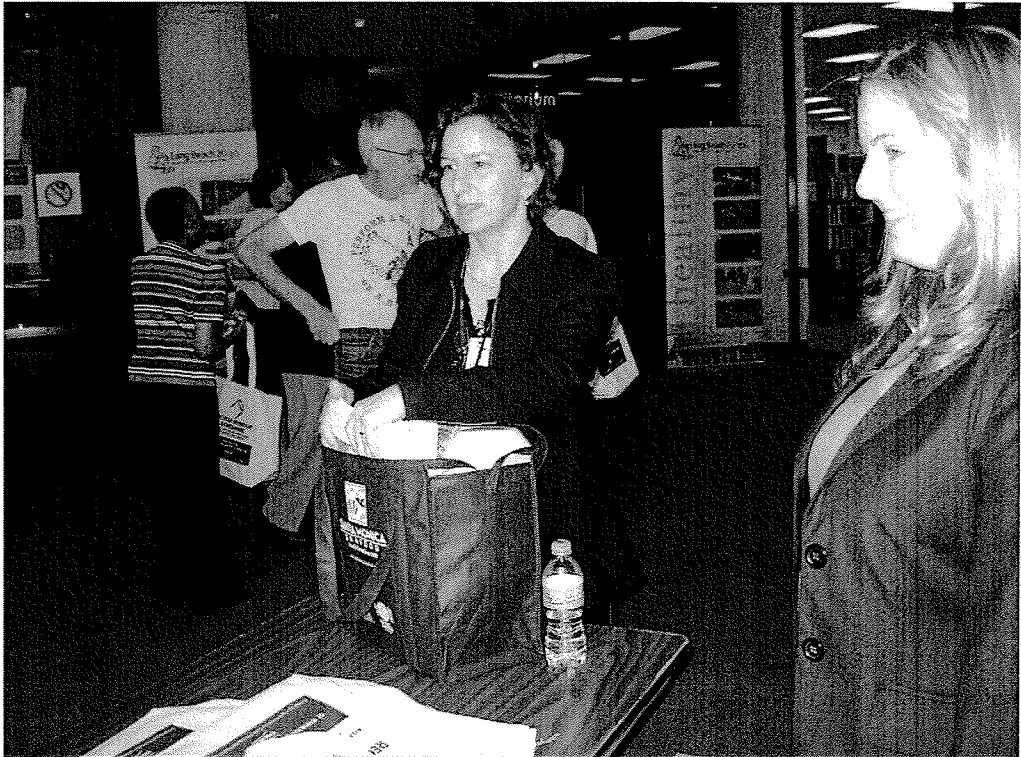
The California Grocer's Association is a non-profit statewide trade association that represents thousands of retail grocers, convenience store owners, suppliers, and distributors. Established in 1898, CGA provides legislative advocacy for its members.

### **Josephine Miller, Environmental Programs Division, City of Santa Monica**

Josephine Miller serves as an Environmental Programs Analyst for the City of Santa Monica. Her focus is on the development, implementation, outreach and evaluation of the City of Santa Monica Non-Recyclable Plastic Disposable Food Service Container Ban.

In response to the environmental concerns of expanded polystyrene, Santa Monica has recently implemented a non-recyclable food service container ban. This ban went into effect for all city facilities, operations, and city-sponsored events in February 2007 and will go into effect for all food service providers in the city in February 2008.





## **Attachment C: Public Comment Summaries**

Environmental Committee Hearing  
Thursday, October 25, 2007

**Harvey Cochran, Long Beach resident:** Harvey Cochran stated that he and his family has been recycling for years, and it can be a useful source of income. Cochran is concerned that there is too much trash in Long Beach.

**Aden Ortega, Plastics Council** (also a former board member of Heal the Bay and current board member of Audubon Society): Aden Ortega stated that there are over 100 individual bans on plastic products nationwide, but there is still an abundance of litter; therefore, bans do not work. Without the education, enforcement, and anti-litter campaigns supporting a ban, the problem of litter will continue. Also, alternative packaging products have impacts beyond the litter stream and still need to be disposed of properly. The issue is really about preventing litter and not banning certain products.

**Steve Aceti, California Coastal Coalition:** Steve Aceti sees the issue of plastic bags and expanded polystyrene as litter problem not a material problem. Alternative products will also be in the litter stream if not handled properly. Aceti stressed the need for the City to urge the State for more money for local awareness and anti-litter campaigns, an improved statewide anti-litter campaign, storm drain filters, more and better trash receptacles, and other litter-reduction programs. Also, there needs to be more coordination between the entities that own the LA River. This will keep trash out of the river's outfalls, which will prevent it from getting into the ocean.

**Stephanie Barger, Earth Resource Foundation:** Stephanie Barger argued that America's current disposable, petroleum-based society is not sustainable, and that every jurisdiction should adopt a Zero Waste plan. The goal should be source reduction as well as the use of non-damaging products. Styrene, a component of polystyrene, is toxic to both humans and animals and therefore should not be used.

**Gordana Kajer, Surfrider Foundation:** The Surfrider Foundation is very active organizing local beach clean-ups and is currently working on implementing an exchange program for their beach clean-ups. Volunteers can bring a plastic bag from home and will receive a recycled bag instead. Kajer stressed the need for education about this issue at local levels, especially with elementary-age kids who often participate in the Surfrider beach clean-ups.

**Kirsten James, Heal the Bay:** Kirsten James stated that plastic litter is a large environmental and economic problem because of the environmental impacts and the expense that local governments incur to deal with litter. The City should pursue a bag ban and promote reusable bags instead. In regard to the problem of expanded polystyrene, the environmental impacts combined with the fact that the product is non-recyclable makes alternative products the common sense choice.

FILE NO. 070085

ORDINANCE NO. 81-07

[Plastic Bag Reduction Ordinance.]

Ordinance amending the San Francisco Environment Code by adding Chapter 17, sections 1701 through 1709, to: (1) require the use of compostable plastic, recyclable paper and/or reusable checkout bags by grocery stores located in the City and County of San Francisco, and (2) provide penalties for violations.

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough italics Times New Roman~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

- (a) The City and County of San Francisco has a duty to protect the natural environment, the economy, and the health of its citizens.
- (b) The City and County of San Francisco has adopted citywide goals of 75% landfill diversion by 2010 and zero waste by 2020.
- (c) The expansive usage of plastic shopping bags and their typical disposal creates an impediment to San Francisco's landfill diversion goals.
- (d) Plastic shopping bags are difficult to recycle and currently contaminate material that is processed through San Francisco's recycling and composting programs.
- (e) Plastic shopping bags create significant litter problems in San Francisco's neighborhoods, highlighted by local residents in a series of public meetings held by the Department of the Environment, and also litter community beaches, sewer systems and the San Francisco Bay.
- (f) Plastic ~~grocery~~-shopping bags have significant environmental impacts each year, including the felling of over 14 million trees, and use of over 12 million barrels of oil for

1 bags in the U.S., as well as the death of over 100,000 marine animals from plastic  
2 entanglement.

3 (g) Governments in several countries have banned or taken action to discourage  
4 the use of plastic bags, including the Republic of Ireland, which has achieved a 90% decrease  
5 in shopping bag usage.

6 Section 2. The San Francisco Environmental Code is hereby amended by adding  
7 Chapter 17, Section 1701 through 1709, to read as follows:

8 **SEC. 1701. SHORT TITLE.**

9 *This Ordinance shall be entitled the "Plastic Bag Reduction Ordinance."*

10 **SEC. 1702. DEFINITIONS.**

11 *For the purposes of this Ordinance, the following words shall have the following meanings:*

12 (a) *"ASTM Standard" means the American Society for Testing and Materials (ASTM)'s*  
13 *International standard D6400 for compostable plastic, as that standard may be amended from time to*  
14 *time.*

15 (b) *"Compostable Plastic Bag" means a plastic bag that (1) meets the conforms to*  
16 *California labeling law (Public Resources Code Section 42355 et seq.), which requires*  
17 *meeting the current ASTM-Standard Specifications ~~Standards~~ for compostability; (2) contains*  
18 *less than 75% petroleum derived content the percentage to be reviewed annually with the*  
19 *target of achieving no products derived from petroleum by 2010 is certified and labeled as*  
20 *meeting the ASTM-Standard by a recognized verification entity such as the Biodegradable*  
21 *Product Institute; (3) contains no products derived from genetically modified organisms, and*  
22 *conforms to requirements to ensure that the renewable based product content is maximized*  
23 *over time as set forth in Department of the Environment regulations; (4) conforms to*  
24 *requirements to ensure that products derived from genetically modified feedstocks are phased*  
25

1 out over time as set forth in Department of the Environment regulations; and (5) displays the  
2 word-phrase "Green Cart Compostable" and the word "Reusable" in a highly visible manner on  
3 the outside of the bag.

4 (c) "Checkout bag" means a carryout bag that is provided by a grocery store to a customer  
5 at the point of sale.

6 (d) "Department" means the Department of the Environment.

7 (e) "Director" means the Director of the Department of the Environment.

8 (f) "Grocery Store" means a retail establishment located within the geographical  
9 limits of the City and County of San Francisco that meets either of the following requirements:

10 (1) is a full-line, self-service retail store supermarket with gross annual sales of two  
11 million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or  
12 nonfood items and some perishable items. For purposes of determining which retail  
13 establishments are grocery stores supermarkets, the City shall use the annual updates of the  
14 Progressive Grocer Marketing Guidebook and any computer printouts developed in  
15 conjunction with the guidebook; or

16 (2) has over 5,000 square feet of retail space that generates sales or use tax pursuant  
17 to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with  
18 Section 7200) of Division 2 of the Revenue and Taxation Code) is a retail pharmacy with at  
19 least five locations under the same ownership within the geographical limits of San Francisco  
20 that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of  
21 Division 2 of the Business and Professions Code

22 (f) "Highly visible manner" means (1) for compostable plastic bags, displaying the word  
23 both of the following in green lettering contrasting with the bag's background color that is at  
24 least two inches high: (i) the phrase "Green Cart Compostable" either on the front and back  
25



1 of the bag together with a solid green band at least one-half inch thick circling the  
2 circumference of the bag, or repeatedly, as a band of text or text alternating with solid stripe,  
3 circling the circumference of the bag, and (ii) the word "Reusable" displayed on the front and  
4 and/or either back of the bag or repeatedly in a band circling the circumference of the bag in  
5 green lettering contrasting with the bag's background color that is at least two inches high;  
6 and (2) for recyclable paper bags, displaying the word-words "Reusable" and "Recyclable" on the  
7 front or and/or back of the bag in blue lettering contrasting with the bag's background color that is at  
8 least two inches high, and (3) for both compostable plastic bags and recyclable paper bags, as  
9 otherwise required by Department of the Environment regulation regulations.

10 (g) "Person" means an individual, trust, firm, joint stock company, corporation,  
11 cooperative, partnership, or association.

12 (h) "Pharmacy" means a retail use where the profession of pharmacy by a  
13 pharmacist licensed by the State of California in accordance with the Business and  
14 Professions Code is practiced and where prescriptions (and possibly other merchandise) are  
15 offered for sale, excluding such retail uses located inside a hospital.

16 (i) "Recyclable" means material that can be sorted, cleansed, and reconstituted using San  
17 Francisco's available recycling collection programs for the purpose of using the altered form in the  
18 manufacture of a new product. Recycling does not include burning, incinerating, converting, or  
19 otherwise thermally destroying solid waste.

20 (j) "Recyclable Paper Bag" means a paper bag that meets all of the following  
21 requirements: (1) contains no old growth fiber, (2) is 100% recyclable overall and contains a minimum  
22 of 40% post-consumer recycled content, and (3) displays the words "Reusable" and "Recyclable" in a  
23 highly visible manner on the outside of the bag.

1           (k) "Reusable Bag" means a bag with handles that is specifically designed and  
2 manufactured for multiple reuse and is either (1) made of cloth or other machine washable fabric,  
3 and/or (2) made of durable plastic that is at least 2.25 mils thick.

4           (l) "Grocery Store" means a retail establishment located within the geographical limits  
5 of the City and County of San Francisco that meets either of the following requirements:

6           (1) is a full-line, self-service retail store supermarket with gross annual sales of two  
7 million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood  
8 items and some perishable items. For purposes of determining which retail establishments are grocery  
9 stores supermarkets, the City shall use the annual updates of the Progressive Grocer Marketing  
10 Guidebook and any computer printouts developed in conjunction with the guidebook; or

11           (2) has over 5,000 square feet of retail space that generates sales or use tax pursuant  
12 to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with  
13 Section 7200) of Division 2 of the Revenue and Taxation Code) is a retail pharmacy with at  
14 least five locations under the same ownership within the geographical limits of San Francisco  
15 that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of  
16 Division 2 of the Business and Professions Code

17 **SEC. 1703. MANDATORY USE OF RECYCLABLE AND COMPOSTABLE CHECKOUT BAGS.**

18           (a) All Grocery Stores shall provide only the following as checkout bags to customers:  
19 recyclable paper bags, and/or compostable plastic bags, and/or reusable bags.

20           (b) Violation of the requirements set forth in subsection (a) shall subject a Grocery Store to  
21 penalties set forth in Section 1705.

22           (c) Nothing in this section shall be read to preclude Grocery Stores from making reusable  
23 bags available for sale to customers.

24 **SEC. 1704. IMPLEMENTATION.**

1           The Director, after a public hearing, may adopt and may amend guidelines, rules, regulations  
2 and forms to implement and enforce this Ordinance.

3 **SEC. 1705. ENFORCEMENT AND PENALTIES.**

4           (a) Any person who violates this Ordinance shall be guilty of an infraction. If charged as  
5 an infraction, upon conviction thereof, said person shall be punished by (1) a fine not exceeding  
6 \$100.00 for a first violation, (2) a fine not exceeding \$200.00 for a second violation within the same  
7 year, and (3) a fine not exceeding \$500.00 for each additional violation within the same year.

8           (b) In the event that the City adopts an ordinance creating a procedure for the City  
9 Administrator to impose and review imposing and reviewing Administrative Penalties pursuant to  
10 California Government Code Section 53069.4, the City may impose Administrative Penalties for  
11 violation of this Ordinance as follows: (1) in an amount not exceeding \$100.00 for the first violation,  
12 (2) in an amount not exceeding \$200.00 for the second violation in the same year, and (3) in an amount  
13 not exceeding \$500.00 for each subsequent violation in the same year.

14           (c) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this  
15 Ordinance, including without limitation, civil penalties in an amount not exceeding \$200.00 for the first  
16 violation, \$400.00 for the second violation, and \$600.00 for each subsequent violation in any given  
17 year.

18           (d) The City may not recover both administrative and civil penalties for the same violation.

19 **SEC. 1706. OPERATIVE DATE.**

20           This All of the requirements set forth in this Ordinance shall become operative as to Stores  
21 that are supermarkets six (6) months after its effective date. All of the requirements set forth in  
22 this Ordinance shall become operative as to Stores that are pharmacies one (1) year after its  
23 effective date.

24 **SEC. 1707. SEVERABILITY.**

1 If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held  
2 to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision  
3 shall not affect the validity of the remaining portions of the Ordinance. The Board of Supervisors  
4 hereby declares that it would have passed this Ordinance and each and every section, subsection,  
5 sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any  
6 portion of this Ordinance would be subsequently declared invalid or unconstitutional.


7 **SEC. 1708. NO CONFLICT WITH FEDERAL OR STATE LAW.**

8 Nothing in this Ordinance shall be interpreted or applied so as to create any requirement,  
9 power or duty in conflict with any federal or state law.

10 **SEC. 1709. UNDERTAKING FOR THE GENERAL WELFARE.**

11 In undertaking the implementation of this Ordinance, the City is assuming an undertaking only  
12 to promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an  
13 obligation for breach of which it is liable in money damages to any person who claims that such breach  
14 proximately caused injury.

15  
16 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

17 By:   
18 Catharine Barnes  
19 Deputy City Attorney



# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails Ordinance

---

**File Number:** 070085

**Date Passed:**

Ordinance amending the San Francisco Environment Code by adding Chapter 17, sections 1701 through 1709, to: (1) require the use of compostable plastic, recyclable paper and/or reusable checkout bags by stores located in the City and County of San Francisco, and (2) provide penalties for violations.

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February 13, 2007 Board of Supervisors — SUBSTITUTED

March 27, 2007 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

Noes: 1 - Jew

April 10, 2007 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

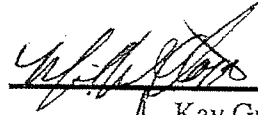
Noes: 1 - Jew


File No. 070085

I hereby certify that the foregoing Ordinance was FINALLY PASSED on April 10, 2007 by the Board of Supervisors of the City and County of San Francisco.

4/20/07

Date Approved

 FOR  
Kay Gulbengay  
Interim Clerk of the Board

  
Mayor Gavin Newsom

As Introduced on Floor 7/3/07

APPROVED AS TO FORM AND LEGALITY

*Setta C.R. Jackson*  
City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE NO. 12818 C.M.S.

INTRODUCED BY COUNCILMEMBERS NANCY J. NADEL AND JEAN QUAN

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**ORDINANCE BANNING THE USE OF NON-COMPOSTABLE PLASTIC CARRY-OUT BAGS AT POINT OF SALE BY RETAIL ESTABLISHMENTS IN THE CITY OF OAKLAND THAT GROSS ONE MILLION DOLLARS OR MORE ANNUALLY AND PROVIDING EDUCATION AND INCENTIVES FOR SHOPPERS TO USE RE-USEABLE BAGS AT AFFECTED RETAIL ESTABLISHMENTS IN THE CITY**

**WHEREAS**, each year, 500 billion to 1 trillion plastic bags are used worldwide – one million per minute – the production and use of which have significant environmental impacts, including litter, the consumption of 12 million barrels of oil, and the deaths of thousands of marine animals; and

**WHEREAS**, according to AB 2449, the 2006 California Assembly Bill creating the At-Store Recycling Program, Californians use 19 billion disposable plastic bags every year and throw away 600 bags per second, and less than 50 tons of the 52,000 tons of disposable plastic bags used in California annually are recycled, resulting in over 147,000 tons of waste going to landfills, at an annual cost of \$51 million; and

**WHEREAS**, according to the Algalita Marine Research Foundation, plastic bags do not biodegrade, but break down through abrasion and tearing into small toxic bits that contaminate soil, waterways, and the marine environment, where they are mistaken for food by animals, killing over 1 million seabirds, 100,000 marine mammals, and countless fish annually from ingestion of, or entanglement in, marine debris; and

**WHEREAS**, marine debris is ubiquitous and can be found from highly populated urban beaches to the most remote arctic beaches, such as the North Pacific Gyre, which is home to a floating island of trash twice the size of Texas; and

**WHEREAS**, in 2006, the California Coastal Commission determined that up to 80% of all marine debris is plastic and 80% comes from land-based sources; and

**WHEREAS**, the Department of Conservation, in its annual Coastal Cleanup and the 1999 Litter Study, concludes that disposable retail bags represent some of the most commonly littered items, and plastic bags littered in Oakland streets are carried by wind and storm water into City storm drains that lead to Oakland's creeks, Lake Merritt, the Oakland estuary, and eventually into the San Francisco Bay; and

**WHEREAS**, on February 8, 2007, the Ocean Protection Council unanimously adopted a marine debris resolution that calls for reduced use of single-use plastic food containers; and

**WHEREAS**, plastic bags contaminate recycling operations and are otherwise difficult to recycle due to the logistics of sorting, contamination of inks, and the low quality of the plastic used, resulting in an extremely low estimated recycling rate of 1-3% for plastic bags; and

**WHEREAS**, one of the strategies proposed in Oakland's Zero Waste Strategic Plan (Resolution 80286 C.M.S., adopted in December 2006 by the Oakland City Council) is to "ban the use or sale of problematic products;" and

**WHEREAS**, 10 percent of U.S. oil consumption – approximately 2 million barrels each day – is used to make plastic, and therefore discouraging the use of single-use plastic bags promotes and aids the goal of "Oil Independent Oakland By 2020," the task force established by the Oakland City Council to develop a plan to reduce Oakland's reliance on oil (Resolution No. 80214 C.M.S., adopted October 17, 2006); and

**WHEREAS**, retail outlet stores could educate and encourage their customers to use environmentally preferable and readily available alternatives to non-compostable plastic bags, including reusable cloth bags, compostable plastic bags and/or paper bags which are collected by Oakland's curbside recycling program, and can be composted with Oakland's Food Scraps/Yard Trimming program; and

**WHEREAS**, governments in several countries, including Australia, Singapore, Taiwan, South Africa, Bangladesh, and the Republic of Ireland have taken action to discourage the use of non-biodegradable plastic bags; and

**WHEREAS**, the California Legislature, by enacting Chapter 5.1, the At-Store Recycling Program (commencing with Section 42250), Part 3 of Division 30, of the Public Resources Code, encourages the use of reusable bags by consumers and retailers and discourages the consumption of single-use bags; now therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

SECTION 1. Sections 2 through 7 of this Ordinance shall be codified as a new chapter of the Oakland Municipal Code under TITLE 8, HEALTH AND SAFETY. Additions to the Code are indicated by underscoring.

**SECTION 2. Definitions.**

- A. "Affected retail establishment" means any retail establishment, excluding restaurants, located within the geographical limits of the City of Oakland that has gross annual sales of one million dollars (\$1,000,000) or more.



- B. “City sponsored event” means any event organized or sponsored by a City of Oakland Department or Agency.
- C. “Compostable bag” means a carry out bag that is certified and labeled as meeting the current ASTM-Standard Specification for compostability by a recognized verification entity such as the Biodegradable Product Institute and which can be easily differentiated, through color coding and other markings, from non-compostable plastic carry-out bags.
- D. “Customer” means any person purchasing food or other materials from an affected retail establishment.
- E. “Operator” means a person in control of, having daily responsibility for, the daily operation of an affected retail establishment, which may include, but is not limited to, the owner of the affected retail establishment
- F. “Plastic carryout bag” means a non-compostable plastic bag provided by a store to a customer at the point of sale. These bags are often referred to as “t-shirt” bags.
- G. “Recyclable Paper Bag” means a paper carryout bag provided by an affected retail establishment to a customer at the point of sale for purposes of transporting groceries or other goods and meets *all* of the following requirements: (1) contains no old growth fiber, (2) is 100% recyclable, and (3) contains a minimum of 40% post-consumer recycled content.
- H. “Reusable Bag” means a bag that is specifically designed and manufactured for multiple reuse and is (1) made of cloth or other machine washable fabric, or (2) made of other durable material suitable for re-use.

### **SECTION 3. Prohibitions and Requirements.**

- A. Affected retail establishments are prohibited from providing plastic carry-out bags to their customers at the point of sale. reusable bags, recyclable paper bags, and compostable plastic bags are allowed alternatives.
- B. Affected retail establishments are strongly encouraged to provide incentives for the use of reusable bags through the use of education and credits, rebates, or tokens for individuals who bring reusable bags.
- C. Nothing in this section shall be read to preclude affected retail establishments from making reusable, compostable, or recyclable paper bags available for sale or free to customers.

### **SECTION 4. Liability and Enforcement.**

- A. The City Administrator or his/her designee will have primary responsibility for enforcement of this Chapter. The City Administrator or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, entering the premises of any affected retail establishment to verify compliance.

B. An affected retail establishment that is operated in violation of any of the requirements of this Chapter is deemed a public nuisance and any person who causes or permits such violations shall be subject to the civil penalties authorized in Chapter 1.08 of this code.

C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

#### **SECTION 5. Violations – Penalties.**

A. If the City Administrator or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the operator of an affected retail establishment that a violation has occurred.

B. If the affected retail establishment has subsequent violations of this Chapter, the following penalties will apply.

a. A fine, payable by the owner of the affected retail establishment or the corporation itself, not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.

b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.

c. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.

C. Affected retail establishments may request an administrative hearing to adjudicate any penalties issued under this Chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter. Any determination from the administrative hearing on penalties issued under this Chapter will be final and conclusive.

#### **SECTION 6. Exemptions.**

A. Retail establishments in the City of Oakland with gross annual sales of less than one million dollars are exempted from the provisions of this Ordinance. All retail establishments in the City of Oakland are encouraged to comply with the provisions of this Ordinance.

B. This ordinance applies only to non-compostable carry out plastic bags provided at the point of sale, otherwise known as “t-shirt” bags. The provisions of this ordinance do not apply to single-use plastic bags exclusively used to transport produce such as apples, oranges, grapes, carrots and other similar fruits or vegetables to the point-of-sale counter of the affected retail establishment.

#### **SECTION 7. No Conflict With Federal or State Law.**

Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law.

**SECTION 8. Severability.**

If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

**SECTION 9. Effective Date.**

This Ordinance will become effective upon adoption by the City Council. All affected retail establishments must comply with its requirements within six months of its effective date. City-sponsored events at which plastic carry-out bags may be used must comply with the provisions of this Chapter within ninety (90) days from the effective date of this Chapter.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 17 2007, 20  

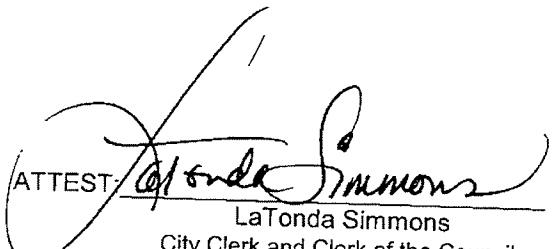
**PASSED BY THE FOLLOWING VOTE:**

AYES- ~~11~~ ~~11~~ BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, ~~1~~ and PRESIDENT DE LA FUENTE - 6

NOES- 0

ABSENT- 0

ABSTENTION- Reid, Brooks - 2

ATTEST:   
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Introduction Date: JUL - 3 2007

## NOTICE AND DIGEST

### **ORDINANCE BANNING THE USE OF NON-COMPOSTABLE PLASTIC CARRY-OUT BAGS AT POINT OF SALE BY RETAIL ESTABLISHMENTS IN THE CITY OF OAKLAND THAT GROSS ONE MILLION DOLLARS OR MORE ANNUALLY AND PROVIDING EDUCATION AND INCENTIVES FOR SHOPPERS TO USE RE-USEABLE BAGS AT AFFECTED RETAIL ESTABLISHMENTS IN THE CITY**

This ordinance codifies a new chapter of the Oakland Municipal Code under Title 8, Health And Safety, entitled "Plastic Bags" to protect and enhance the health of the residents of the city by promoting use of reusable bags and prohibiting the use of non-compostable plastic bags to transport customers' purchases from retail establishments that gross one million dollars or more annually.

City Council Meeting 1-9-07  
Santa Monica, California

**ORDINANCE NUMBER (CCS)  
ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
SANTA MONICA BANNING NON-RECYCLABLE PLASTIC DISPOSABLE  
FOOD SERVICE CONTAINERS**

WHEREAS, there are currently approximately 300 individual restaurants and food service businesses in Santa Monica; and

WHEREAS, many of these businesses use disposable food containers made from expanded polystyrene (EPS) and other non-recyclable plastics; and

WHEREAS, EPS is not biodegradable and as a result persists in the environment for hundreds and possibly thousands of years; and

WHEREAS, EPS material easily breaks down into smaller pieces and is so light that it floats in water and is easily carried by the wind, even when it has been disposed of properly; and

WHEREAS, numerous studies have documented the prevalence of EPS debris in the environment, including in storm drains and on beaches, causing Santa Monica's residents to pay thousands of dollars in clean-up costs; and

WHEREAS, marine animals and birds often confuse EPS for a source of food and the ingestion of EPS often results in reduced appetite and nutrient absorption and possible death by starvation of birds and marine animals; and

WHEREAS, recycling of EPS products is not currently economically viable; and

WHEREAS, there are several alternatives to EPS disposable food service containers available in Santa Monica from existing food packaging suppliers; and

WHEREAS, an important goal of the City's Sustainable City Plan is to procure and use sustainable products and services; and

WHEREAS, it is the City's desire to reduce the amount of beach litter and marine pollution and to protect local wildlife, both of which increase the quality of life for Santa Monica's residents and visitors,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 5.44 is hereby added to the Santa Monica Municipal Code as follows:

**5.44.010 Definitions**

(a) "Biodegradable" refers to the ability of a material to decompose into elements normally found in nature within a reasonably short period of time after disposal.

(b) “City Facilities” refers to buildings and structures owned or leased by the City of Santa Monica.

(c) “Disposable Food Service Container” means single-use disposable products used in the restaurant and food 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. This does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

(d) “Expanded Polystyrene” (EPS) means polystyrene that has been expanded or “blown” using a gaseous blowing agent into a solid foam.

(e) “Food Provider” means any establishment, located or providing food within the City of Santa Monica, which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, super market, delicatessen, catering truck or vehicle, or any other person who provides prepared food; and any organization, group or individual which regularly provides food as a part of its services.

(f) “Non-Recyclable Plastic” refers to any plastic which cannot be feasibly recycled by a municipal recycling program in the State of California, including polystyrene and expanded polystyrene.

(g) “Polystyrene” means and includes expanded polystyrene which is a thermoplastic petrochemical material 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, form molding, and extrusion-blow molding (extruded foam polystyrene). The term “polystyrene” also includes clear or solid polystyrene which is known as “oriented polystyrene”.

(h) “Prepared Food” means any food or beverage prepared for consumption on the food provider’s premises, using any cooking or food preparation technique. This does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation.

(i) “Recyclable Plastic” means any plastic which can be feasibly recycled by a municipal recycling program in the State of California. Recyclable plastics comprise those plastics with the recycling symbols #1 through #5 including polyethylene terephthalate (PET or PETE), high density polyethylene (HDPE), low density polyethylene (LDPE), and polypropylene (PP).

**5.44.020 Prohibition on the Use of Non-Recyclable Plastic Disposable Food Service Containers**

A. Except as provided in Section 5.44.030, food providers are prohibited from dispensing prepared food to customers in disposable food service containers made from expanded polystyrene.

B. Except as provided in Section 5.44.030, food providers are prohibited from dispensing prepared food to customers in disposable food service containers made from non-recyclable plastic.

C. All City Facilities, City-managed concessions, City sponsored events, and City permitted events are prohibited from using disposable food service containers made from expanded polystyrene or non-recyclable plastic.

#### **5.44.030 Exemptions**

(a) The Director of the Environmental and Public Works Management Department (EPWM), or his/her designee, may exempt a food provider from the requirements of this ordinance for a one year period, upon showing by the food provider that the conditions of this ordinance would cause undue hardship. An “undue hardship” shall be found in:

1. Situations unique to the food provider where there are no reasonable alternatives to expanded polystyrene or non-recyclable plastic disposable food service containers and compliance with this Chapter would cause significant economic hardship to that food provider;
2. Situations where no reasonably feasible available alternatives exist to a specific and necessary expanded polystyrene or non-recyclable plastic food container.

A food provider granted an exemption by the City must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

(b) An exemption application shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The Director may require the applicant to provide additional information to permit the Director to determine facts regarding the exemption application.

(c) The Director may approve the exemption application, in whole or in part, with or without conditions.

(d) Exemption decisions are effective immediately and final and are not appealable.

#### **5.44.040 Enforcement and Notice of Violations**

A. The Director of EPWM or his/her designee shall have primary responsibility for enforcement of this ordinance and the Director of EPWM or his/her designee shall have authority to issue citations for violation of this Chapter. The Director of EPWM or his/her designee is authorized to establish regulations or administrative procedures and to take any and all actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, but not limited to, inspecting any vendor’s premises to verify compliance in accordance with applicable law.

B. Anyone violating or failing to comply with any of the requirements of this chapter or of any regulation or administrative procedure authorized by it shall be guilty of an infraction.

C. The City Attorney may seek legal, injunctive, or any other relief to enforce this chapter and any regulation or administrative procedure authorized by it.

D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

#### **5.44.050 Penalties and Fines for Violations**

Violations of this ordinance shall be enforced as follows:

A. For the first violation, the Director of EPWM or his/her designee, upon determination that a violation of this chapter has occurred, shall issue a written warning notice to the food provider which

will specify the violation and the appropriate penalties in the event of future violations.

B. Thereafter, the following penalties shall apply:

1. A fine not exceeding one hundred dollars (\$100.00) for the first violation following the issuance of a warning notice.
2. A fine not exceeding two hundred and fifty dollars (\$250.00) for the second and any other violation that occurs following the issuance of a warning notice.

C. Fines are cumulative and each day that a violation occurs shall constitute a separate violation.

**5.44.60 Effective Dates**

A. No food provider shall distribute or utilize disposable food service containers containing expanded polystyrene or non-recyclable plastic on or after one year following the adoption of this ordinance by the City Council.

B. No City facilities, City managed concessions, City sponsored events or City permitted events shall distribute or utilize disposable food service containers containing expanded polystyrene or non-recyclable plastic on or after the effective date of this ordinance

SECTION 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

---

MARSHA JONES MOUTRIE

City Attorney



295-06

NO. 060944

ORDINANCE NO.

1 [Food Service Waste Reduction Ordinance.]

2  
3 **Ordinance amending the San Francisco Environment Code by adding Chapter 16,**  
4 **Sections 1601 through 1611, to: (1) prohibit the use of polystyrene foam disposable**  
5 **food service ware and require the use of biodegradable/compostable or recyclable**  
6 **disposable food service ware by restaurants, retail food vendors, City departments and**  
7 **the City's contractors and lessees unless there is no affordable alternative; and, (2)**  
8 **provide for penalties for violation; and amending the San Francisco Health Code by**  
9 **repealing Sections 469 through 469.10, which ban the use of food packaging and**  
10 **plastic food service ware made with chlorofluorocarbons.**

11 Note: Additions are *single-underline italics Times New Roman*;  
12 deletions are *strikethrough italics Times New Roman*.  
13 Board amendment additions are double underlined.  
14 Board amendment deletions are ~~strikethrough normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. **Findings.**

16 (a) The City and County of San Francisco has a duty to protect the natural  
17 environment, the economy, and the health of its citizens.

18 (b) Reusing food service ware and using compostable and biodegradable take-out  
19 materials made from renewable resources such as paper, corn starch and sugarcane are  
20 among the effective ways to reduce the negative environmental impacts of disposable food  
21 service ware.

22 (c) Polystyrene foam is a common environmental pollutant as well as a non-  
23 biodegradable substance that is commonly used as food service ware in the City and County  
24 of San Francisco.

25  
Supervisors Peskin, Daly, Mirkarimi, Ammiano, McGoldrick, Sandoval, Maxwell, Dufty, Ma, *Alioto-Pier*  
BOARD OF SUPERVISORS

1 (d) There continues to be no meaningful means to recycle polystyrene foam food  
2 service ware and biodegradable/ compostable or recyclable disposable food service ware is  
3 an affordable, safe, more ecologically sound alternative.

4 (e) Affordable biodegradable/compostable or recyclable food service ware products  
5 are increasingly available for various food service applications such as cold cups, plates and  
6 hinge containers and these products are more ecologically sound than polystyrene foam  
7 materials and can be recycled or turned into a compost product.

8 (f) The natural compost product from these biodegradable or compostable materials is  
9 used as fertilizer for farms and gardens, thereby moving towards a healthier zero waste  
10 system.

11 (g) Disposable food service ware constitutes a large portion of the litter in San  
12 Francisco's streets, parks and public places and the cost of managing this litter is high and  
13 rising.

14 (h) Polystyrene foam is a notorious pollutant that breaks down into smaller, non-  
15 biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing  
16 them.

17 (i) Due to the physical properties of polystyrene foam, the United States Environmental  
18 Protection Agency (EPA) states "that such materials can also have serious impacts on  
19 human health, wildlife, the aquatic environment and the economy."

20 (j) In the product manufacturing process as well as the use and disposal of the  
21 products, the energy consumption, greenhouse gas effect, and total environmental effect,  
22 polystyrene foam's environmental impacts were second highest, according to the California  
23 Integrated Waste Management Board.

1 (k) Styrene, a component of polystyrene foam, is a known hazardous substance that  
2 medical evidence and the United States Food and Drug Administration suggest leaches from  
3 polystyrene foam containers into food and drink.

4 (l) Styrene is a suspected carcinogen and neurotoxin that potentially threatens human  
5 health.

6 (m) The general public is not typically warned of any potential hazard from styrene  
7 particularly in the immigrant and non-English-speaking community.

8 (n) Due to these concerns, nearly 100 cities have banned polystyrene foam food  
9 service ware including several California cities, and many local businesses and several  
10 national corporations have successfully replaced polystyrene foam and other non-  
11 biodegradable food service ware with affordable, safe, biodegradable products.

12 (o) The City of Berkeley banned polystyrene foam in 1990 and has reported that  
13 Berkeley restaurants have had no problem switching to paper and other alternatives.

14 (p) The City of Berkeley also reports positive environmental impacts from the ban,  
15 citing there is almost no styrofoam litter in Berkeley since the ban and further that their food  
16 waste stream is cleaner and more compostable.

17 (q) Restricting the use of polystyrene foam food service ware products and requiring  
18 them to be replaced with biodegradable or recyclable food service ware products in San  
19 Francisco will further protect the public health and safety of its residents, the City and County  
20 of San Francisco's natural environment, waterways and wildlife, would advance the City's goal  
21 of Zero Waste by 2020 and fulfill Article 10 of the Environmental Accords, whereby San  
22 Francisco partnered with other cities across the globe in signing a commitment to eliminate or  
23 restrict the use of one chemical or environmental hazard every year.

1 (r) In 1988, the Board of Supervisors adopted Ordinance No. 542-88 (Health Code  
2 Section 469 – 469.10) which banned the use of food packaging and plastic food service ware  
3 made with chlorofluorocarbons (CFC). The Ordinance provides that it shall be void upon the  
4 enactment or adoption of any state or federal law or regulation imposing limits on the use of  
5 CFCs in the manufacture of plastic foams. Effective 1994, the federal government banned the  
6 use of CFCs in the manufacture of foam products. 40 CFR Part 82 (58 Federal Register 4678  
7 January 15, 1993). Accordingly, the 1988 ordinance is void by its terms.  
8

9 Section 2. The San Francisco Environmental Code is hereby amended by adding  
10 Chapter 16, Sections 1601 through 1611, to read as follows:

11 **SEC. 1601. TITLE.**

12 *This Ordinance shall be known as the Food Service Waste Reduction Ordinance.*  
13

14 **SEC. 1602. DEFINITIONS.**

15 *(a) "Affordable" means purchasable for not more than 15 percent more than the purchase cost*  
16 *of the non-Biodegradable non-Compostable or non-recyclable alternative(s).*

17 *(b) "ASTM Standard" means meeting the standards of the American Society for Testing and*  
18 *Materials (ASTM) International standards D6400 or D6868 for biodegradable and compostable*  
19 *plastics, as those standards may be amended.*

20 *(c) "Compostable" means all the materials in the product or package will break down into, or*  
21 *otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely*  
22 *manner in San Francisco's composting program an appropriate composting program or facility,*  
23 *or in a home compost pile or device. Compostable Disposable Food Service Ware includes, by*  
24 *way of example, must meet ASTM-Standards for compostability Bio-Plastics (plastic-like*  
25

1 products) that are and any bio-plastic or plastic like product must be clearly labeled, preferably  
2 with a color symbol, to allow proper identification such that any San Francisco's compost collector  
3 and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM  
4 Standard Compostable plastic. For the purposes of this ordinance the term biodegradable shall have  
5 the same meaning as compostable. This ordinance uses the terms biodegradable and compostable  
6 interchangeably and in all cases whether the terms are used separately, in the disjunctive or in the  
7 conjunctive they shall always be interpreted and applied consistent with this definition of the term  
8 "compostable".

9 (d) "City Administrator" means the City Administrator appointed under Section 3.104 of the  
10 Charter or his or her designee.

11 (e) "City contractors and lessees" means any person or entity that has a contract with the City  
12 for public works or improvements to be performed, for a franchise, concession or lease of property, for  
13 grant monies or goods and services or supplies to be purchased at the expense of the City and County,  
14 or to be paid out of monies deposited in the Treasury or out of trust monies under the control or  
15 collected by the City and County.

16 (f) "City Facility" means any building, structure or vehicle owned or operated by the City of  
17 San Francisco.

18 (g) "City Facility Food Provider" means an entity that provides, but does not sell, Prepared  
19 Food in City Facilities, including without limitation, San Francisco General Hospital, Laguna Honda  
20 Hospital, San Francisco County Jail and the San Bruno Jail Complex.

21 (h) "Disposable Food Service Ware" means all containers, bowls, plates, trays, carton, cups,  
22 lids, straws, forks, spoons, knives, napkins and other items that are designed for one-time use for  
23 Prepared Foods, including without limitation, service ware for takeout foods and/or leftovers from  
24 partially consumed meals prepared by Food Vendors. The term "Disposable Food Service Ware" does  
25

1 not include items composed entirely of aluminum or polystyrene foam coolers and ice chests that are  
2 intended for reuse, nor does this term include recyclable food service ware.

3 (i) "Food Vendor" means any Restaurant or Retail Food Vendor located or operating within  
4 the City and County of San Francisco.

5 (j) "Person" means an individual, trust, firm, joint stock company, corporation including a  
6 government corporation, partnership, or association.

7 (k) "Polystyrene Foam" means blown polystyrene and expanded and extruded foams  
8 (sometimes called Styrofoam<sup>TM</sup>) which are thermoplastic petrochemical materials utilizing a styrene  
9 monomer and processed by any number of techniques including, but not limited to, fusion of polymer  
10 spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding  
11 (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays,  
12 clamshell containers, meat trays and egg cartons.

13 (l) "Prepared Food" means food or beverages, which are serviced, packaged, cooked, chopped,  
14 sliced, mixed, brewed, frozen, squeezed or otherwise prepared (collectively "prepared") within the City  
15 and County of San Francisco for individual customers or consumers. For the purpose of this Chapter,  
16 Prepared Food includes take-out food, but does not include raw, butchered meats, fish and/or poultry  
17 sold from a butcher case or similar retail appliance.

18 (m) "Recyclable" means material that can be sorted, cleansed, and reconstituted using San  
19 Francisco's available recycling collection programs for the purpose of using the altered form in the  
20 manufacture of a new product. Recycling does not include burning, incinerating, converting, or  
21 otherwise thermally destroying solid waste.

22 (n) "Restaurant" means any establishment located within the City and County of San Francisco  
23 that sells Prepared Food for consumption on, near, or off its premises. For purposes of this Chapter,  
24 the term includes a Restaurant operating from a temporary facility, cart, vehicle or mobile unit.  
25

1           (o) "Retail Food Vendor" means any store, shop, sales outlet, or other establishment, including  
2 a grocery store or a delicatessen, other than a Restaurant, located within the City and County of San  
3 Francisco that sells Prepared Food.

4  
5 **SEC. 1603. PROHIBITED DISPOSABLE FOOD SERVICE WARE.**

6           (a) Food Vendors may not sell Prepared Food in Disposable Food Service Ware that contains  
7 Polystyrene Foam.

8           (b) City Facility Food Providers may not provide Prepared Food in Disposable Food Service  
9 Ware that contains Polystyrene Foam.

10           (c) City Departments may not purchase, acquire or use Disposable Food Service Ware that  
11 contains Polystyrene Foam.

12           (d) City contractors and lessees may not use Disposable Food Service Ware that contains  
13 Polystyrene Foam in City Facilities and while performing under a City contract or lease.

14  
15 **SEC. 1604. REQUIRED BIODEGRADABLE/ COMPOSTABLE OR RECYCLABLE**  
16 **DISPOSABLE FOOD SERVICE WARE.**

17           (a) All Food Vendors using any Disposable Food Service Ware shall use a suitable Affordable  
18 alternative Biodegradable/Compostable or Recyclable product, unless there is no suitable Affordable  
19 Biodegradable/Compostable or Recyclable product available as determined by the City Administrator  
20 in accordance with this subsection. Not later than 30 days before the operative date of this Chapter,  
21 and after a public hearing, the City Administrator shall adopt a list of available suitable Affordable  
22 Biodegradable/ Compostable or Recyclable alternatives for each product type. The City Administrator  
23 shall regularly update the list.

1           **(b) All City Facility Food Providers and City departments using any Disposable Food Service**  
2 **Ware shall use Biodegradable/Compostable or Recyclable Disposable Food Service Ware unless there**  
3 **is no Affordable Biodegradable or Compostable product available as determined by the City**  
4 **Administrator in accordance with subsection ~~1603(a)~~1604(a).**

5           **(c) City contractors and lessees using any Disposable Food Service Ware shall use suitable**  
6 **Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while**  
7 **performing under a City contract or lease unless there is no suitable Affordable**  
8 **Biodegradable/Compostable or recyclable product available as determined by the City Administrator**  
9 **in accordance with subsection ~~1603(a)~~1604(a).**

10  
11 **SEC. 1605. IMPLEMENTATION; CITY CONTRACTS AND LEASES.**

12           **(a) The City Administrator is authorized to promulgate regulations, guidelines and forms and**  
13 **to take any and all other actions reasonable and necessary to implement and enforce this Chapter.**

14           **(b) Any person may seek a waiver from the requirements of Section 1604 of this Chapter by**  
15 **filing a request on a form specified by the City Administrator. The City Administrator, consistent with**  
16 **this Chapter, may waive any specific requirement of this Chapter for a period of up to one year if the**  
17 **person seeking the waiver has demonstrated that strict application of the specific requirement would**  
18 **create an undue hardship or practical difficulty not generally applicable to other persons in similar**  
19 **circumstances. The City Administrator's decision to grant or deny a waiver shall be in writing and**  
20 **shall be final.**

21           **(c) All City contracts and leases, including without limitation, contracts with City Facility Food**  
22 **Providers, shall contain the following minimum language: "Contractor agrees to comply fully with**  
23 **and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in**  
24 **San Francisco Environment Code Chapter 16, including the remedies provided, and implementing**  
25



1 guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a  
2 part of this agreement as though fully set forth. This provision is a material term of this agreement. By  
3 entering into this agreement, contractor agrees that if it breaches this provision, City will suffer actual  
4 damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the  
5 sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars  
6 (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars  
7 (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the  
8 damage that City will incur based on the violation, established in light of the circumstances existing at  
9 the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed  
10 monetary damages sustained by City because of contractor's failure to comply with this provision."

11  
12 **SEC. 1606. ENFORCEMENT AND PENALTIES.**

13 (a) The City Administrator shall issue a written warning to any person he or she determines is  
14 violating Sections 1603(a) or 1604(a) of this Chapter. If after issuing a written warning of violation  
15 from the City Administrator, the City Administrator finds that person continues to violate the provisions  
16 of Sections 1603(a) or 1604(a), the City Administrator may apply for or impose the various sanctions  
17 provided in this Section.

18 (b) Any person who violates the provisions of Sections 1603(a) or 1604(a) of this Chapter shall  
19 be guilty of an infraction. If charged as an infraction, upon conviction thereof, said person shall be  
20 punished for the first offense by a fine of not more than \$100.00 for a first violation; not more than  
21 \$200.00 for a second violation in the same year and not more than \$250.00 for each subsequent  
22 violation in the same year.

23 (c) The City Administrator may issue an administrative civil liability citation to such person in  
24 an amount not exceeding \$100.00 for the first violation, an amount not exceeding \$200.00 for the

1 second violation in the same year, and an amount not exceeding \$500.00 for each subsequent violation  
2 in the same year.

3 In determining administrative civil penalties, the City Administrator shall consider the extent of  
4 harm caused by the violation, the nature and persistence of the violation, the length of time over which  
5 the violation occurs, the frequency of past violations, any action taken to mitigate the violation, and the  
6 financial burden to the violator.

7 Any person to whom the City Administrator issues a written warning of violation or an  
8 administrative civil liability citation may request an administrative hearing to appeal such warning or  
9 determination of liability. Not later than 30 days before the operative date of this Chapter, and after a  
10 public hearing, the City Administrator shall promulgate rules and procedures for requesting and  
11 conducting an administrative hearing under this Chapter. In any administrative hearing under this  
12 Article, all parties involved shall have the right to offer testimonial, documentary, and tangible  
13 evidence bearing on the issues, to see and copy all documents and other information the City relies on  
14 in the proceeding, and to confront and cross-examine any witnesses against them. A decision by the  
15 hearing officer shall be final. Any person assessed a penalty under this subsection may contest such  
16 decision to the Superior Court within 20 days after service of the City's decision.

17 (d) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this  
18 Chapter, including without limitation, civil penalties in an amount not exceeding \$100.00 for the first  
19 violation, \$200.00 for the second violation, and \$250.00 for each subsequent violation in any given  
20 year.

21 (e) The City may not recover both administrative and civil penalties pursuant to subsections (c)  
22 and (d) of this Section for the same violation. Penalties collected under subsections (c) and (d) of this  
23 Section, which may include recovery of enforcement costs, shall be used to fund implementation and  
24 enforcement of this Chapter.

1  
2 **SEC. 1607. REPORT TO THE BOARD OF SUPERVISORS.**

3 No later than June 1 February 1, 2008, the Director of the Department of the Environment, in  
4 consultation with the City Administrator and with input from members of the public, shall submit to the  
5 Board of Supervisors a report recommending changes, if any, to this Chapter, including whether the  
6 ban imposed by this Chapter should be extended to other products, as supported by the report. If the  
7 Director recommends banning additional products, the report must include an estimate of the costs and  
8 benefits of compliance with a ban on additional products, including the increased costs to the City as  
9 well as to the City's food service industry.

10  
11 **SEC. 1608. OPERATIVE DATE.**

12 This ordinance shall become operative on June 1, 2007.

13  
14 **SEC. 1609. SEVERABILITY.**

15 If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to  
16 be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall  
17 not affect the validity of the remaining portions of the Chapter. The Board of Supervisors hereby  
18 declares that it would have passed this Chapter and each and every section, subsection, sentence,  
19 clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this  
20 Chapter would be subsequently declared invalid or unconstitutional.

21  
22 **SEC. 1610. NO CONFLICT WITH FEDERAL OR STATE LAW.**

23 Nothing in this Ordinance shall be interpreted or applied so as to create any requirement,  
24 power or duty in conflict with any federal or state law.

1  
2 **SEC. 1611. UNDERTAKING FOR THE GENERAL WELFARE.**

3 *In undertaking the implementation of this Chapter, the City is assuming an undertaking only to*  
4 *promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an*  
5 *obligation for breach of which it is liable in money damages to any person who claims that such breach*  
6 *proximately caused injury.*

7  
8 Section 3. The San Francisco Health Code is hereby amended by repealing Sections  
9 469 through 469.10 in their entirety.

10 **~~SEC. 469. CHLOROFLUOROCARBON PROCESSED FOOD PACKAGING FINDINGS.~~**

11 *~~The Board of Supervisors finds that the release of chlorofluorocarbons (CFC) into the~~*  
12 *~~environment may endanger public health and welfare by causing or contributing to significant~~*  
13 *~~depletion of the stratospheric ozone layer.~~*

14 *~~CFCs are manufactured chemicals that remain in the atmosphere for decades slowly migrating~~*  
15 *~~upwards without reacting with any other chemicals.~~*

16 *~~Stratospheric ozone shields the earth's surface from dangerous ultraviolet (UV-B) radiation.~~*  
17 *~~When CFC molecules react with UV light in the stratosphere they break down, freeing chlorine atoms~~*  
18 *~~which catalyze the destruction of ozone. One chlorine atom can destroy as many as 100,000 ozone~~*  
19 *~~molecules before it is rendered inactive or removed from the atmosphere.~~*

20 *~~A national and international consensus has developed that unabated use of CFCs is resulting in~~*  
21 *~~depletion of stratospheric ozone. The Environmental Protection Agency has determined that as~~*  
22 *~~stratospheric ozone levels drop, penetration of UV-B radiation will increase resulting in potential~~*  
23 *~~health and environmental harm. Direct effects are likely to include increased incidence of skin cancer~~*

1 and cataracts, suppression of the immune response system and damage to crops and aquatic  
2 organisms. (Federal Register, August 12, 1988, p. 30566.)

3 *In the troposphere, the lower atmosphere, CFCs along with other chemicals absorb infrared*  
4 *radiation, warming the earth. Scientists predict that global warming may melt polar ice, raise sea*  
5 *levels and flood low-lying coasts. It may also disrupt agriculture due to shifts in global temperature*  
6 *and rainfall patterns.*

7 *CFCs are widely used as blowing agents in the manufacture of plastic food packaging.*  
8 *Moreover, while other foam products store or bank much of the CFCs within them, food service*  
9 *products emit most of the CFC used in their manufacture during the manufacture, use and disposal of*  
10 *the products.*

11 *The Board of Supervisors finds, therefore, that the widespread use of CFC processed food*  
12 *packaging poses a threat by the introduction of toxic byproducts into the atmosphere and general*  
13 *environment of the City and County of San Francisco.*

14 *The Board of Supervisors further finds that restricting the sale of CFC processed food*  
15 *packaging and the use of CFC processed food packaging in retail food establishments in San Francisco*  
16 *would be a step toward slowing ozone loss and greenhouse gas buildup, thereby protecting the public*  
17 *health.*

18 *In addition to emitting CFCs, plastic food service items take hundreds of years to decompose*  
19 *and cannot be recycled. However, these food packaging items can be made from other materials, such*  
20 *as recycled or virgin paper, and other biodegradable products which are not made with CFCs. By this*  
21 *legislation, the Board of Supervisors intends to encourage restaurant and food retailers and*  
22 *wholesalers in San Francisco to use biodegradable packaging in place of those made with CFCs.*

23  
24 **SEC. 469.1. DEFINITIONS.**

1           ~~As used in Sections 469 through 469.9 inclusive, the following words and terms shall have the~~  
2 ~~following meanings:~~

3           ~~(a) "Chlorofluorocarbons," ("CFCs") means the family of substances containing carbon,~~  
4 ~~fluorine and chlorine and having no hydrogen atoms and no double bonds.~~

5           ~~(b) "CFC processed food packaging" means food packaging which uses chlorofluorocarbons~~  
6 ~~as blowing agents in its manufacture.~~

7           ~~(c) "Director" means the Director of Health of San Francisco's Department of Public Health,~~  
8 ~~or designee.~~

9           ~~(d) "Food" means any article intended for use for food, drink, confection, or condiment, or any~~  
10 ~~article which is used or integrated for use as a component of the food or otherwise affecting the~~  
11 ~~component of the food.~~

12           ~~(e) "Food packaging" means all food related wrappings, boxes, containers, bowls, plates,~~  
13 ~~trays, cartons, cups, lids or drinking utensils, on which or in which food is placed or packaged on the~~  
14 ~~retail food establishment's premises, and which are not intended for reuse. Food packaging does not~~  
15 ~~include forks, knives, straws or single-service condiment packages.~~

16           ~~(f) "Retail food establishment" means any food product and marketing establishment as defined~~  
17 ~~in Section 440 of this Code and any food preparation and service establishment as defined in Section~~  
18 ~~451 of this Code.~~

19           ~~(g) "Supplier" means anyone selling, or otherwise supplying packaging to a retail food~~  
20 ~~establishment.~~

21           ~~(h) "Wholesaler" means anyone who acts as a wholesale merchant, broker, jobber or agent,~~  
22 ~~who sells for resale.~~

1 ~~SEC. 469.2. PROHIBITION ON USE OF CHLOROFLUOROCARBON PROCESSED FOOD~~  
2 ~~PACKAGING.~~

3 ~~(a) No retail food establishment located and doing business within the City and County of San~~  
4 ~~Francisco shall purchase, obtain, keep, sell, distribute, provide to customers or otherwise use in its~~  
5 ~~business, any CFC processed food packaging, except as provided in Sections 469.4 and 469.5.~~

6 ~~(b) No wholesaler located and doing business within the City and County of San Francisco~~  
7 ~~shall sell, distribute or provide to customers, or keep within the City and County of San Francisco, any~~  
8 ~~CFC processed food packaging, except as provided in Sections 469.4 and 469.5.~~

9  
10 ~~SEC. 469.3. FOOD PACKAGING - PROOF OF COMPLIANCE.~~

11 ~~(a) Every retail food establishment shall show proof of compliance with Section 469.2 of this~~  
12 ~~Code by (1) either entering into a contract with its suppliers, or obtaining a written statement from its~~  
13 ~~suppliers, which provides that the supplier will supply only food packaging not manufactured with~~  
14 ~~CFCs and (2) obtaining a written statement from the supplier on each invoice for food packaging that~~  
15 ~~the food packaging invoiced was not CFC processed.~~

16 ~~(b) Every wholesaler shall show proof of compliance with Section 469.2 of this Code by~~  
17 ~~obtaining a written statement from the supplier on each invoice for food packaging that is sold,~~  
18 ~~distributed or provided to customers in the City and County of San Francisco that the food packaging~~  
19 ~~invoiced was not CFC processed, and acknowledging that the supplier is aware of the provisions of this~~  
20 ~~ordinance making illegal the providing of false information on the invoice.~~

21 ~~(c) It shall be unlawful for any supplier to make any false statement regarding the use or non-~~  
22 ~~use of CFCs in the manufacture of food packaging supplied to any wholesaler or retail food~~  
23 ~~establishment.~~

1           ~~(d) Retail food establishments shall retain copies of each contract or written statement required~~  
2 ~~by this Section, and wholesalers shall retain copies of invoices required by this Section, and they shall~~  
3 ~~make them available for inspection upon request. Invoices and contracts required by this Section shall~~  
4 ~~be retained for a period of one year.~~

5  
6 **~~SEC. 469.4. EXCEPTIONS.~~**

7           ~~The Director may exempt an item or type of food packaging from the requirements of Sections~~  
8 ~~469.2 and 469.3 upon application by the retail food establishment demonstrating to the satisfaction of~~  
9 ~~the Director that the item or type of packaging has no acceptable non-CFC processed equivalent.~~

10  
11 **~~SEC. 469.5. FOOD PACKAGING—EXISTING CONTRACTS.~~**

12           ~~Food packaging required to be purchased under a contract entered into prior to or within six~~  
13 ~~months of the effective date of this ordinance is exempt from the provisions of this ordinance.~~

14  
15 **~~SEC. 469.6. PENALTIES AND ENFORCEMENT.~~**

16           ~~(a) The Director may enforce the provisions of Sections 469.2 and 469.3 against violations by~~  
17 ~~either of the following actions:~~

18           ~~(1) Serving notice requiring the correction of any violation;~~

19           ~~(2) Calling upon the City Attorney to maintain an action for injunction to enforce the~~  
20 ~~provisions of Sections 469.2 and 469.3, to cause the correction of any such violation, and for the~~  
21 ~~assessment and recovery of a civil penalty for such violation.~~

22           ~~(b) Any individual, firm, partnership, corporation, company, association, society, group, or~~  
23 ~~other person or legal entity that violates any provision of Sections 469.2 and 469.3 shall be liable for a~~  
24 ~~civil penalty, not to exceed \$500 for each day such violation is committed or permitted to continue. Any~~



1 *penalty shall be assessed and recovered in a civil action brought in the name of the people of the City*  
2 *and County of San Francisco by the City Attorney in any court of competent jurisdiction. Any penalty*  
3 *assessed and recovered in an action brought pursuant to this Section shall be paid to the Treasurer of*  
4 *the City and County of San Francisco.*

5 *(e) Failure to comply with the provisions of Sections 469.2 and 469.3 shall be grounds for*  
6 *suspension or revocation of a permit issued pursuant to Sections 440 and 452, after a hearing by the*  
7 *Department of Public Health.*

8  
9 **~~SEC. 469.7. CITY AND COUNTY PURCHASES PROHIBITED.~~**

10 *The City and County shall purchase no CFC processed food packaging, except packaging*  
11 *required to be purchased under a contract entered into prior to or within six months of the effective*  
12 *date of this ordinance unless the department purchasing the item or type of packaging makes a showing*  
13 *to the Director that the item or type of packaging has no acceptable non-CFC processed equivalent.*

14  
15 **~~SEC. 469.8. CONFLICT WITH OTHER LAWS.~~**

16 *(a) By adopting this ordinance, the City and County of San Francisco does not intend to*  
17 *authorize any activity that federal or state law or regulation prohibits, to prohibit any activity that*  
18 *federal or state law or regulation authorizes, or to duplicate any federal or state law or regulation*  
19 *except to the extent allowed by law.*

20 *(b) This ordinance shall be void upon the enactment or adoption of any state or federal law or*  
21 *regulation imposing limits on the use of CFCs in the manufacture of plastic foams.*

22  
23 **~~SEC. 469.9. PROMOTING PURPOSES OF LEGISLATION.~~**

1           ~~The Board of Supervisors will promote the lobbying of the State Legislature and United States~~  
2 ~~Congress to stop the use of chlorofluorocarbons in the United States. The Board will promote~~  
3 ~~consultations with San Francisco sister cities pursuing an end to chlorofluorocarbon use~~  
4 ~~internationally.~~

5  
6 **~~SEC. 469.10. SEVERABILITY.~~**

7           ~~If any Section, Subsection, Subdivision, Paragraph, sentence, clause or phrase of this Article or~~  
8 ~~any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of~~  
9 ~~competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining~~  
10 ~~portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would~~  
11 ~~have passed each Section, Subsection, Subdivision, Paragraph, sentence, clause or phrase thereof~~  
12 ~~irrespective of the fact that any one or more Sections, Subsections, Subdivisions, Paragraphs,~~  
13 ~~sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.~~

14  
15  
16 APPROVED AS TO FORM:  
17 DENNIS J. HERRERA, City Attorney

18 By:   
19 BURK E. DELVENTHAL  
20 Deputy City Attorney



# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails

### Ordinance

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**File Number:** 060944

**Date Passed:**

Ordinance amending the San Francisco Environment Code by adding Chapter 16, Sections 1601 through 1611, to: (1) prohibit the use of polystyrene foam disposable food service ware and require the use of biodegradable/compostable or recyclable disposable food service ware by restaurants, retail food vendors, City departments and the City's contractors and lessees unless there is no affordable alternative; and, (2) provide for penalties for violation; and amending the San Francisco Health Code by repealing Sections 469 through 469.10, which ban the use of food packaging and plastic food service ware made with chlorofluorocarbons.

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October 31, 2006 Board of Supervisors — SUBSTITUTED

November 14, 2006 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

November 14, 2006 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

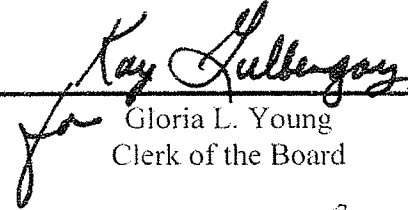
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

November 21, 2006 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval  
Excused: 1 - Daly

File No. 060944

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on November 21, 2006 by the Board of Supervisors of the City and County of San Francisco.

  
\_\_\_\_\_  
for Gloria L. Young  
Clerk of the Board

NOV 29 2006

\_\_\_\_\_  
Date Approved

  
\_\_\_\_\_  
Mayor Gavin Newsom

OFFICE OF THE CITY CLERK  
OAKLAND

2006 JUN 26 AM 9:32

Introduced by Councilmember QUAN AND DE LA FUENTE  
(USE IF APPLICABLE)

Approved as to Form and Legality

*James Atencio*  
Oakland City Attorney's Office

## OAKLAND CITY COUNCIL

Ordinance No. 12747 C.M.S.

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### **AN ORDINANCE TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE AND REQUIRE THE USE OF BIODEGRADABLE OR COMPOSTABLE DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS AND CITY FACILITIES**

This ordinance will institute two distinct practices by all food vendors and City Facilities in Oakland. The first is that the use of polystyrene foam disposable food service ware will be prohibited. The second is that all disposable food service ware will be required to be biodegradable or compostable, as long as it is affordable.

**WHEREAS**, the City of Oakland has a duty to protect the natural environment, the economy, and the health of its citizens; and

**WHEREAS**, effective ways to reduce the negative environmental impacts of throw-away food service ware include reusing food service ware and using compostable and biodegradable take-out materials made from renewable resources such as paper, corn starch and sugarcane; and

**WHEREAS**, polystyrene foam is a common environmental pollutant as well as a non-biodegradable substance that is commonly used as food service ware by food vendors operating in the City of Oakland; and

**WHEREAS**, there continues to be no meaningful recycling of polystyrene foam food service ware and biodegradable or compostable food service ware is an affordable, safe, more ecologically sound alternative; and

**WHEREAS**, affordable biodegradable or compostable food service ware products are increasingly available for several food service applications such as cold cups, plates and hinge containers and these products are more ecologically sound than polystyrene foam materials and can be turned into a compost product; and

**WHEREAS**, the Oakland Coliseum has successfully replaced its cups with biodegradable corn starch cups and has shown an overall cost savings due to organics recycling; and

**WHEREAS**, over 155 businesses in Oakland engage in organics recycling and it has been demonstrated that the use of biodegradable or compostable food service ware can reduce waste disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill; and

**WHEREAS**, the natural compost product from these biodegradable or compostable materials is used as fertilizer for farms and gardens, thereby moving towards a healthier zero waste system; and

**WHEREAS**, disposable food service ware constitutes a large portion of the litter in Oakland's estuary, streets, parks and public places and the cost of managing this litter is high and rising; and

**WHEREAS**, polystyrene foam is notorious as a pollutant that breaks down into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them; and

**WHEREAS**, due to the physical properties of polystyrene, the EPA states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy." and

**WHEREAS**, a 1986 EPA report on solid waste named the polystyrene manufacturing process as the fifth largest creator of hazardous waste in the United States; and

**WHEREAS**, in the product manufacturing process as well as the use and disposal of the products, the energy consumption, greenhouse gas effect, and total environmental effect, polystyrene's environmental impacts were second highest, behind aluminum, according to the California Integrated Waste Management Board; and

**WHEREAS**, styrene, a component of polystyrene, is a known hazardous substance that medical evidence and the Food and Drug Administration suggests leaches from polystyrene containers into food and drink; and

**WHEREAS**, styrene is a suspected carcinogen and neurotoxin which potentially threatens human health; and

**WHEREAS**, styrene has been detected in the fat tissue of every man, woman and child tested by the EPA in a 1986 study; and

**WHEREAS**, the general public is not typically warned of any potential hazard, particularly in the immigrant and non-English-speaking community; and

**WHEREAS**, due to these concerns nearly 100 cities have banned polystyrene foam food service ware including several California cities, and many local businesses and several national corporations have successfully replaced polystyrene foam and other non-biodegradable food service ware with affordable, safe, biodegradable products; and

**WHEREAS**, restricting the use of polystyrene foam food service ware products and replacing non-biodegradable food service ware with biodegradable food service ware

products in Oakland will further protect the public health and safety of the residents of Oakland, the City of Oakland's natural environment, waterways and wildlife, would advance the City's goal of Developing a Sustainable City, advance the City's goal of Zero Waste by 2020 and fulfill Article 10 of the Environmental Accords, whereby Oakland partnered with other cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year;

**THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN CHAPTER 8.07 OF THE MUNICIPAL CODE SHALL BE:**

**Section 8.07.010 Definitions**

"Affordable" means purchasable by the Food Vendor for same or less purchase cost than the non-Biodegradable, non-Polystyrene Foam alternative.

"ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International standards D6400 or D6868 for biodegradable and compostable plastics.

"Biodegradable" means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

"Compostable" means all materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Compostable Disposable Food Service Ware includes ASTM-Standard Bio-Plastics (plastic-like products) that are clearly labeled, preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic.

"City Facilities" means any building, structure or vehicles owned or operated by the City of Oakland, its agent, agencies, departments and franchisees.

"Customer" means any person obtaining Prepared Food from a Restaurant or Retail Food Vendor.

"Disposable Food Service Ware" means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items that are designed for one-time use and on, or in, which any Restaurant or Retail Food Vendor directly places or packages Prepared Foods or which are used to consume foods. This includes, but is not limited to, service ware for Takeout Foods and/or leftovers from partially consumed meals prepared at Restaurants or Retail Food Vendors.

"Food Vendor" means any Restaurant or Retail Food Vendor located or operating within the City of Oakland.

“Polystyrene Foam” means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. 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.

“Prepared Food” means Food or Beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Vendor’s premises or within the City of Oakland. For the purposes of this ordinance, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises, also known as “takeout food”.

“Restaurant” means any establishment located within the City of Oakland that sells Prepared Food for consumption on, near, or off its premises by Customers. Restaurant for purposes of this Chapter includes Itinerant Restaurants, Pushcarts and Vehicular Food Vendors as those terms are defined in sections 5.49, 8.08, 8.09 of the City of Oakland Municipal Code.

“Retail Food Vendor” means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a Restaurant, located within the City of Oakland that sells Prepared Food.

#### **Section 8.07.040 Prohibited Food Service Ware**

- A. Except as provided in Section 8.07.042, Food Vendors are prohibited from providing Prepared Food to Customers in Disposable Food Service Ware that uses Polystyrene Foam.
- B. All City Facilities are prohibited from using Polystyrene Foam Disposable Food Service Ware and all City Departments and Agencies will not purchase or acquire Polystyrene Foam Disposable Food Service Ware for use at City Facilities.
- C. City franchises, contractors and vendors doing business with the City shall be prohibited from using Polystyrene Foam Disposable Food Service Ware in City facilities or on city projects within the City of Oakland.

#### **Section 8.07.041 Required Biodegradable and Compostable Disposable Food Service Ware**

- A. All Food Vendors using any Disposable Food Service Ware will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application. Food Vendors are strongly encouraged to reuse Food Service Ware in place of using Disposable Food Service Ware. In instances that Food Vendors wish to use a Biodegradable or Compostable Disposable Food Service Ware Product that is not Affordable, a Food Vendor may charge a “take out fee” to customers to cover the cost difference.



B. All City Facilities will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application.

C. City franchises, contractors and vendors doing business with the City will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application.

#### **Section 8.07.042 Exemptions**

A. Prepared Foods prepared or packaged outside the City of Oakland are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Oakland are encouraged to follow the provisions of this Chapter.

B. Food Vendors will be exempted from the provisions of this Chapter for specific items or types of Disposable Food Service Ware if the City Administrator or his/her designee finds that a suitable Affordable Biodegradable or Compostable alternative does not exist and/or that imposing the requirements of this Chapter on that item or type of Disposable Food Service Ware would cause undue hardship.

C. Polystyrene Foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

D. Disposable Food Service Ware composed entirely of aluminum is exempt from the provisions of this Chapter.

E. Emergency Supply and Services Procurement: In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter.

#### **Section 8.07.043 Liability and Enforcement**

A. The City Administrator or his/her designee will have primary responsibility for enforcement of this Chapter. The City Administrator or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, entering the premises of any Food Vendor to verify compliance.

B. Anyone violating or failing to comply with any of the requirements of this Chapter will be guilty of an infraction pursuant to Chapter 1.28 O.M.C.

C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

**Section 8.07.044 Violations - Penalties**

1. If the City Administrator or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the Food Vendor that a violation has occurred.
2. If the Food Vendor has subsequent violations of this Chapter, the following penalties will apply:
  - a. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
  - b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
  - c. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.
3. Food Vendors may request an administrative hearing to adjudicate any penalties issued under this Chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter. Any determination from the administrative hearing on penalties issued under this Chapter will be final and conclusive.

**Section 8.07.045 Study**

One year after the effective date of this Chapter, the City Administrator will conduct a study on the effectiveness of this Chapter.

**Section 8.07.0456 Effective Date**

This Chapter will become effective January 1, 2007.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 30 2006, 2006

**PASSED BY THE FOLLOWING VOTE:**

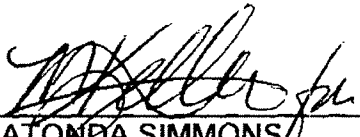
AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, ~~BRUNNER~~, REID, CHANG,  
AND  
PRESIDENT DE LA FUENTE - 7

NOES - 1, Brooks

ABSENT - 0

ABSTENTION - 0

ATTEST:

  
LATONDA SIMMONS  
City Clerk and Clerk of the  
Council of the City of Oakland

City of Berkeley, California

**Ordinance No. 588-N.S.**

**POLYSTYRENE FOAM, DEGRADABLE, AND RECYCLABLE FOOD PACKAGING ORDINANCE.**

**Section 11.60.010 Findings and purposes.**

The council finds as follows:

A. Solid waste that is non-degradable or non-recyclable poses an acute problem for any environmentally and financially responsible program of solid waste management. Such waste covers the City's streets, parks, public places, and open spaces. It enters the marine and natural environment and is ingested by aquatic wildlife, frequently causing death. There is resultant damage to the ecological balance.

B. Products which are degradable or recyclable offer environmentally sound alternatives or non-degradable and non-recyclable products currently used. By decaying into their constituent substances, degradable products, compared to their non-degradable equivalents, are less of a danger to the natural environment, and less of a permanent blight on the urban landscape. Recycling of products reduces costly waste of natural resources and energy used in production of new products as well as costly disposal of waste in landfills.

C. Polystyrene foam is a petroleum processing by-product. Oil is a non-renewable resource, which can only be obtained by increasingly hazardous methods such as off-shore drilling, which poses significant dangers to the environment. Alternative products which are degradable or recyclable pose far less overall hazards than continued and expanded reliance on oil-based products.

D. Evidence indicates that all blowing agents currently used or proposed in connection with the manufacture of polystyrene foam pose dangers to the environment. Beyond the generally acknowledged dangers of Chlorofluorocarbons (CFCs) to the ozone layer, which are addressed in another City of Berkeley ordinance, other blowing agents also create dangers. For example, the blowing agent pentane creates hazardous earth-level smog and has already been restricted in some regions for air quality reasons.

E. Takeout food packaging constitutes the single greatest source of litter in Berkeley and is a significant contributor to the total amount of waste entering the City's waste stream.

F. It is in the interest of the health, safety, and welfare of all who live, work and do business in the City that the amount of litter on the public streets, parks, public places, and open spaces be reduced.

G. The City of Berkeley has the duty to responsibly dispose of its solid waste, yet existing landfill sites are rapidly approaching capacity, and additional sites are increasingly unavailable.

H. Reduction of the amount of non-degradable waste entering the waste stream and encouraging the use of recyclable containers further this goal.

I. This Chapter is consistent with the City of Berkeley's 1986 Solid Waste Management Plan, the County of Alameda Solid Waste Management Plan, and the

legislative intent and findings of the State of California Solid Waste Management and Resource Recovery Act of 1972 (Government Code Section 66700 et seq.) (Ord. 5888-NS § 1, 1988)

**Section 11.60.020 Definitions.**

A. "Polystyrene foam" means any styrene or vinyl chloride polymer which is blown into a foam-like material.

B. "Polystyrene foam food packaging" means any food packaging which contains any polystyrene foam.

C. "Customer" means anyone purchasing food or beverages from a restaurant or retail food vendor.

D. "Person", "Anyone" means any natural person, firm, corporation, partnership, or other organization or group however organized.

E. "Supplier" means anyone selling, or otherwise supplying food packaging to a restaurant or retail food vendor.

F. "Food vendor" means any restaurant or retail food vendor.

G. "Prepared food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed. "Prepared food" does not include any raw uncooked meat product or fruits or vegetables which are not chopped, squeezed, or mixed.

H. "Restaurant" means any establishment located within the City of Berkeley, selling prepared food to be eaten on or about its premises by customers. Restaurant includes a sidewalk food vendor.

I. "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are generally purchased in order to be consumed off the retail food vendor's premises.

J. "Retail food vendor" means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the City of Berkeley, which sells takeout food.

K. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on a restaurant's or retail food vendor's premises.

L. "Degradable food packaging" means food packaging which substantially reduces to its constituent substances through degradation processes initiated by natural organisms whose end products are substantially, but not necessarily entirely, carbon dioxide and water; and plastic items designed to degrade when exposed to ultraviolet light. Degradable food packaging does not include cellulose-based items which have a synthetic or plastic coating comprising more than five percent of the total volume of the item.

M. "Recyclable food packaging" means any food packaging including glass, cans, cardboard, paper, mixed paper, or other items which can be recycled, salvaged, composted, processed, or marketed by any means other than landfilling or burning, whether as fuel or otherwise, so that they are returned to use by society. (Ord. 5888-NS § 2, 1988)

**Section 11.60.030 Prohibited food packaging (polystyrene foam).**

A. Restaurants:

1. Except as provided in Sections 11.60.070 and 11.60.080, no restaurant shall provide prepared food to its customers in any polystyrene foam food packaging, nor shall any restaurant purchase, obtain or keep any polystyrene foam food packaging for such purpose.

2. As to any food packaging obtained after the effective date of this chapter, each restaurant shall obtain from each of its suppliers a written statement signed by the supplier, or by a responsible agent of the supplier, stating that the supplier will supply no polystyrene foam food packaging to that vendor, that the supplier will note on each invoice for food packaging supplied to that vendor that the packaging covered by the invoice is not polystyrene foam and the identity of the packaging's manufacturer.

3. All contracts between a restaurant and a supplier entered into after the effective date of this chapter shall include provisions that the supplier will supply no polystyrene foam food packaging; that the supplier will state on each invoice for food packaging supplied that the packaging is not polystyrene foam and the identity of the packaging's manufacturer; and that failure to comply with such provisions shall constitute a material breach of the contract.

4. Restaurants shall retain each supplier's written statement for one year from the date of receipt of any food packaging from that supplier.

B. Retail food vendors:

1. Except as provided in Sections 11.60.070 and 11.60.080, no retail food vendor shall sell takeout food in any polystyrene foam takeout food packaging, nor shall any retail food vendor purchase, obtain or keep any polystyrene foam packaging for this purpose.

2. All retail food vendors shall segregate, in their warehouses or other storage areas, food packaging used in their takeout food operations from other food packaging. Takeout food packaging containers or boxes shall be labelled as such and shall indicate that they contain food packaging which is not polystyrene foam.

3. As to any takeout food packaging purchased after the effective date of this chapter, each retail food vendor shall comply with the requirements of Sections 11.60.030A, paragraphs 2 and 4 of this chapter.

4. All contracts for the purchase of takeout food packaging entered into after the effective date of this chapter shall comply with the provisions of Section 11.60.030A, paragraph 3. (Ord. 5888-NS § 3, 1988)

**Section 11.60.040 Degradable and recyclable food packaging.**

A. Restaurants:

1. At least fifty percent by volume of each restaurant's food packaging, in which prepared food is provided to customers, or which is kept, purchased, or obtained for this purpose, shall be degradable or recyclable.

2. Each restaurant shall maintain written records evidencing its compliance with this section.

B. Retail food vendors:

1. At least fifty percent by volume of each retail food vendor's packaging, in which takeout food is provided to customers, or which is kept, purchased, or obtained for this purpose, shall be degradable or recyclable.
2. Each retail food vendor shall maintain written records evidencing its compliance with this section. (Ord. 5888-NS § 4, 1988)

**Section 11.60.050 Regulations applicable to all food vendors.**

- A. It shall be unlawful for any supplier to make any misstatement of material fact to any food vendor or to the City Manager or his or her agents regarding the degradable or recyclable nature of, or the use or non-use of polystyrene foam in the manufacture of any food packaging supplied to any food vendor.
- B. Food vendors shall state that they are in compliance with this chapter on their annual business license renewal forms. (Ord. 5888-NS § 5, 1988)

**Section 11.60.060 Inspection of documents.**

All statements and documents required by this chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such documents to fail or refuse to produce such documents upon request by the City Manager or his or her designated representative. (Ord. 5888-NS § 6, 1988)

**Section 11.60.070 Exemptions.**

The City Manager or his or her authorized representative may exempt an item or type of food packaging from the requirements of this chapter, upon a showing that the item or type has no acceptable non-polystyrene foam equivalent and that imposing the requirements on that item or type would cause undue hardship. Said documentation shall include a list of suppliers contacted to determine if non-polystyrene foam substitutes are available. (Ord. 5888-NS § 7, 1988)

**Section 11.60.080 Existing contracts exempted.**

Food packaging required to be purchased under a contract entered into prior to September 22, 1987 is exempt from the provisions of this chapter. (Ord. 5888-NS § 8, 1988)

**Section 11.60.090 City of Berkeley: purchases prohibited.**

The City of Berkeley shall not purchase any polystyrene foam food packaging, nor shall any City-sponsored event utilize such packaging. At least fifty percent by volume of the food packaging which the City, or any City-sponsored event, utilizes shall be recyclable or degradable. (Ord. 5888-NS § 9, 1988)

**Section 11.60.100 Separate food packaging waste receptacles.**

Each restaurant and retail food vendor shall establish separate waste receptacles for each type of recyclable food packaging waste, generated on premises, including, but not limited to, glass, cans, cardboard, newspapers, and mixed paper. (Ord. 5888-NS § 10, 1988)

**Section 11.60.110 City Manager's powers.**

The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any vendor's premises to verify compliance. (Ord. 5888-NS § 11, 1988)

**Section 11.60.120 Liability and enforcement.**

A. Anyone violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code.

B. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

C. The remedies and penalties provided in this section are cumulative and not exclusive. (Ord. 5888-NS § 12, 1988)

**Section 11.60.130 Severability.**

If any part or provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter, 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 chapter are severable. (Ord. 5888-NS § 13, 1988)

**Section 11.60.140 Ordinance voided by superseding laws and regulations.**

The provisions of this chapter with respect to polystyrene foam, shall be void upon the enactment or adoption of any law or regulation restricting the use of plastic foams. (Ord. 5888-NS § 14, 1988)

**Section 11.60.150 Effective date.**

The provisions of this chapter shall become effective on January 1, 1990. (Ord. 5888-NS § 15, 1988)



**City of Santa Monica**  
**Distributors of Biodegradable and Recyclable**  
**Food Service Containers**



Advisory: All of the companies below sell biodegradable and recyclable products as well as non-recyclable products. Be sure to specify "biodegradable and recyclable." If you would like to suggest additions or corrections, please call the Environmental Programs Division at 310.458.4925 or visit us at [www.smepd.org/container](http://www.smepd.org/container).

Distributors	Website	Contact	Phone
American Paper and Plastics, Inc.	<a href="http://www.appinc.com">www.appinc.com</a>	Steven Silver	310.409.5076
BioCorp	<a href="http://www.biocorpaavc.com">www.biocorpaavc.com</a>	Kelly Lehrmann	800.348.8348
Biodegradable Food Service LLC	<a href="http://www.biodegradablefoodservice.com">www.biodegradablefoodservice.com</a>	Kevin Duffy	541.593.2191
BioPak-GSD Packaging	<a href="http://www.gsdpackaging.com">www.gsdpackaging.com</a>	Jim Keitges	559.441.1181
California Recycles, Inc.	<a href="http://www.californiarecycles.com">www.californiarecycles.com</a>	Elham Ebiza	310.478.3001 x101
Cater Green	<a href="http://www.catergreen.com">www.catergreen.com</a>	Allan Haskell	323.663.7747
EarthSmart LLC	<a href="http://www.earthsmartllc.com">www.earthsmartllc.com</a>	Wes Craddock	480.206.4513
Eco Products	<a href="http://www.ecoproducts.com">www.ecoproducts.com</a>	Order online	303.449.1876
Excellent Packaging and Supply	<a href="http://www.excellentpackaging.com">www.excellentpackaging.com</a>	Steve Levine	800.317.2737
Green Earth Office Supply	<a href="http://store.yahoo.com/greenearthofficesupply/">http://store.yahoo.com/greenearthofficesupply/</a>	Order online	800.327.8449
Green Wave by Western Pacific Assoc.	<a href="http://greenwave.us.com/">http://greenwave.us.com/</a>	Joe Battung	562.208.6695
The Individual Group	<a href="http://www.theindgrp.com">www.theindgrp.com</a>	Richard Zions	323.981.2800
Pak West Paper	<a href="http://www.pakwest.com">www.pakwest.com</a>	Chris Smith	714.481.3846
Paper Company	<a href="http://www.thepapercompany.net">www.thepapercompany.net</a>	Mike Madden	714.444.2171
Recyclaholics	<a href="http://recyclaholics.com/foodservice.htm">http://recyclaholics.com/foodservice.htm</a>	Order online	612.521.5667
Renewable Products	<a href="http://www.renewable-products.com/">http://www.renewable-products.com/</a>	Bob Pondo	612.521.5667
Smart and Final - Venice	<a href="http://www.smartandfinal.com">www.smartandfinal.com</a>	Enrique Perez	310.392.4954
Smart and Final - W. Los Angeles	<a href="http://www.smartandfinal.com">www.smartandfinal.com</a>	Evan Howell	310.473.0344
Stalk Market	<a href="http://www.stalkmarket.net">www.stalkmarket.net</a>	Order online	503.295.4977
Sysco Food Service	<a href="http://www.sysco.com">www.sysco.com</a>	Mike Antoci	310.505.9486
Sysco Food Service	<a href="http://www.sysco.com">www.sysco.com</a>	Svante Johansson	310.927.6431
Trade Supplies	<a href="http://www.tradesuppliesinc.com">www.tradesuppliesinc.com</a>	Aaron Fishbain	323.581.3250
US Food	<a href="http://www.usfood.com">www.usfood.com</a>	Miriam Corver	800.379.5633 x6147
WorldCentric Store	<a href="http://www.worldcentric.org/store/index.htm">www.worldcentric.org/store/index.htm</a>	Order online	650.283.3797

Disclaimer: Reference to any commercial business, organization, or product does not constitute nor imply endorsement or recommendation.

Last updated 11.06.07