

DRAFT MODEL ORDINANCE

ENVIRONMENTALLY ACCEPTABLE FOOD PACKAGING

The Monterey Bay National Marine Sanctuary is a federally protected area encompassing one of the globe's most diverse marine ecosystems. The Sanctuary was established for the purpose of resource protection, research, education, and public use of this national treasure. Protecting this 5,322 square-mile area is the responsibility of everyone, particularly those who live and work in the Central Coast region, not only those who make their homes close to the bay, but also those who live throughout Monterey County. This is one of the environmentally richest, most beautiful and productive areas in the world.

Polystyrene is a plastic resin that is used to make up a wide range of consumer goods and packaging, and in its "foamed" or "expanded" state is frequently used to produce takeout containers for food. However, unlike many other types of packaging, littered polystyrene foam remains permanently in the environment where it breaks into tiny pieces that disperse widely and pose a severe threat to wildlife. Polystyrene foam means and includes expanded polystyrene (EPS), which is not collected for recycling in the Central Coast region because it is not economically viable. There are presently no manufacturers in the region using this material as a feedstock.

We have seen first-hand the impact of polystyrene foam plastic litter in our storm drains, in our fields, on our roadways and highways, in our rivers, in the ocean and on our beaches. Banning polystyrene foam take-out packaging locally will help to address marine pollution by requiring the use of environmentally preferable alternatives while helping to educate business owners and citizens on the positive impact their packaging choices can make.

FINDINGS AND INTENT

The city/county finds and declares that:

- (a) The city/county has a responsibility to protect its natural environment, its economy, and the health of its citizens. Solid waste that is non-degradable or non-recyclable poses an acute problem for any environmentally and financially responsible solid waste management program.
- (b) The city/county borders or is in close proximity to the Monterey Bay National Marine Sanctuary, a federal preserve that supports one of the most diverse and delicate ecosystems in the world. This sanctuary provides habitat for at least 33 mammals, 94 species of seabirds, 345 species of fish, and contains the largest kelp forest in the nation. The nearby region also encompasses some of the richest farmland in the world as it stretches deep into the Salinas Valley. Agricultural-business interests and tourism constitute the mainstays of the economy of Monterey County. The impact of an environmentally damaged Monterey Bay or the pollution of our rivers would be felt throughout the area.
- (c) Food and beverage packaging constitutes a significant and growing portion of the waste in the city/county. Laws, policies and regulations pertaining to disposable food service-ware are a vital component in the city/county's efforts to reduce the amount of disposed waste.
- (d) Food service-ware made from polystyrene foam is not biodegradable, returnable, or practically recyclable. Polystyrene foam breaks into smaller pieces and, because it is lightweight, may be picked up by the wind even when it has been placed in a waste receptacle.
- (e) A prevalence of polystyrene foam packaging, which is highly durable and persists longer than any other type of refuse, litters parks and public places, streets and roads, waterways, storm drains and beaches. This litter ultimately floats or is blown into the Monterey Bay, creating a financial cost and adversely impacting our environment. Polystyrene foam that ends up in rivers that wend miles away from Monterey Bay, in the Salinas Valley, also finds its way into Monterey Bay.

- (f) Mistaking it for food, marine animals and birds often ingest polystyrene foam, which can damage their digestive tracts, often leading to death.
- (g) Polystyrene foam is manufactured from petroleum, a non-renewable resource.
- (h) Scientific evidence indicates that styrene leaches from polystyrene foam containers into food and drink. The Environmental Protection Agency (EPA) has found that there are short- and long-term adverse health effects associated with exposure to styrene.
- (i) It is not economically feasible at this time to recycle polystyrene foam in or near the city/county.
- (j) When products are recycled, natural resources are conserved, less energy is used for the production of new products, and valuable landfill space is preserved. When biodegradable products are turned into compost they can reduce water use and reduce the need for fertilizer. Take-out food packaging that is biodegradable, compostable, or recyclable is the most responsible and sustainable choice for the tourist economy, the citizenry and the environment.
- (k) Biodegradable takeout packaging (such as cups, plates, clamshell containers and cutlery) made from paper, sugarcane, corn bi-products and potato starch is available locally. As these products degrade, they do not harm the environment and are not a permanent blight on the landscape.
- (l) Eliminating the use of polystyrene foam and other non-biodegradable, non-compostable, non-returnable and non-recyclable food packaging material from all establishments within the city/county will help protect the local environment, including the Monterey Bay National Marine Sanctuary and the vast Salinas Valley, from contamination and degradation, helping to safeguard this area as a tourist destination and a major grower of agricultural products. It will also support the city/county's goal of reducing waste and protecting the environment for generations to come.
- (m) Taking the aforementioned action also will be cost-effective, helping to maximize the operating life of landfills and reducing the economic and environmental expense of managing waste and litter.

PROHIBITED DISPOSABLE FOOD SERVICE WARE

- (a) Food providers within the city/county may not provide prepared food in any disposable food service ware that contains polystyrene foam.
- (b) Disposable food service ware that contains polystyrene foam is prohibited from use in all city/county facilities.
- (c) City/county contractors in the performance of city/county contracts and special events promoters may not provide prepared food in disposable food service ware that contains polystyrene foam.
- (d) It shall also be a policy goal of the city/county that business establishments located outside the city/county shall not package any non-food product in any package which utilizes polystyrene foam both block polystyrene or packaging peanuts, or purchase, obtain, keep, distribute or sell for home or personal use, or give, or otherwise provide to customers any packaging which utilizes polystyrene foam. The city/county shall promote and encourage, on a voluntary basis, the elimination of all polystyrene foam packaging (How can we propose this, particularly the first long sentence immediately above? Also see (e) under "Exemptions for Biodegradable . . .")

REQUIRED BIODEGRADABLE, COMPOSTABLE, OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE

- (a) All food providers within the city/county utilizing disposable food service ware shall use biodegradable, compostable or recyclable products, unless there is no affordable alternative available as determined by the designated official (see definition of “Affordable” and Section _____ Exemptions). Food providers may charge a “take-out fee” to cover the difference in cost.
- (b) All city/county facilities utilizing disposable food service ware shall use products that are biodegradable, compostable or recyclable.
- (c) City/county contractors, and special events promoters utilizing disposable food service ware shall use biodegradable, compostable, or recyclable products while performing under a city/county contract or permit.

EXEMPTIONS FOR BIODEGRADABLE, COMPOSTABLE OR RECYCLABLE FOOD SERVICE WARE

- a) There are no exemptions that allow for the use of polystyrene foam disposable food service ware.
- b) The city/county may exempt a food provider from the requirement set forth in section _____ of this ordinance for a non-renewable, one-year period upon the food provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The city/county officer shall put the decision to grant or deny a one-year exemption in writing, and his or her decision shall be final.
- c) An exemption application shall include all information necessary for the city/county officer to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The officer may require the applicant to provide additional information.
- d) The city/county officer may approve the exemption application in whole or in part, with or without conditions.
- e) Foods prepared or packaged outside the city/county and sold inside the city/county are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the city/county are encouraged to follow the provisions of this Chapter as it is a policy goal of this city/county to eliminate the use of polystyrene foam for packaging unprepared food.

ENFORCEMENT AND NOTICE OF VIOLATION

- a) Violations of this ordinance may be enforced in accordance with Chapter _____ of this Code.
- b) The city/county officer shall be responsible for enforcing this Chapter and shall have authority to issue citations for violations.
- c) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.
- d) The city/county Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter.
- e) The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.
- f) The city/county in accordance with applicable law, may inspect any vendor or food provider’s premises to verify compliance.

- g) Food vendors shall state that they are in compliance with this ordinance on their annual business license renewal forms.

PENALTIES AND FINES FOR VIOLATIONS

Violations of this ordinance shall be enforced as follows:

1. For the first violation, city/county official shall issue a written warning to the food provider specifying that a violation of this chapter has occurred and which further notified the food provider of the appropriate penalties to be assessed in the event of future violations. The food provider will have 30 days to comply.
2. The following penalties will apply for subsequent violations of this ordinance:
 - a) A fine not exceeding one hundred dollars (\$100.) for the first violation 30 days after the first warning. The city/county official may allow the violator in lieu of payment of the fine, to submit receipts demonstrating the purchase after the citation date, of at least \$100 worth of biodegradable, compostable, or recyclable products appropriate as an alternative disposable food service ware for the items, which led to the violation.
 - b) A fine not exceeding two hundred dollars (\$200.) for the second violation 60 days after the first warning.
 - c) A fine not exceeding five hundred dollars (\$500.) for the third violation 90 days after the first warning and for each additional 30-day period during which the food provider is not in compliance.
3. Food providers who violate this ordinance in connection with commercial or non-commercial special events authorized by Chapters _____ shall be assessed fines as follows:
 - a) A fine not to exceed \$200 for an event of 1 to 200 Persons
 - b) A fine not to exceed \$400 for an event of 201 to 400 Persons
 - c) A fine not to exceed \$600 for an event of 401 to 600 Persons
 - d) A fine not to exceed \$1,000 for an event of 600 or more Persons.

EFFECTIVE DATE

This ordinance shall take effect with a six-month voluntary period to allow vendors to use up any remaining stock of prohibited product. The first of the month following the six-month voluntary period this ordinance shall be mandatory.

APPENDIX

DEFINITIONS

Unless otherwise expressly stated, whenever used in this chapter the following terms shall have the meanings set forth below:

- (a) "Affordable" means that a biodegradable, compostable or recyclable product may cost up to 15 percent more than the purchase cost of the non-biodegradable, non-compostable or non-recyclable alternative(s).
- (b) "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, as those standards may be amended.
- (c) "Biodegradable" means the ability of organic matter to break down from a complex to a more simple form.
- (d) "City/county Facility" means any building, structure or vehicle owned and operated by the city/county, its agents, agencies, and departments.

- (e) “City/county Contractor” means any person or entity that has a contract with the city/county for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be donated or to be purchased at the expense of the city/county.
- (f) “Compostable” means all the materials in the product or package will break down, or otherwise become part of usable compost (e.g. soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic.
- (g) “Disposable Food Service Ware” 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 plastic straws, cup lids, or utensils
- (h) “Food Provider” means any vendor located or providing food within the city/county which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, supermarket, 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.
- (i) “Person” means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.
- (j) “Polystyrene Foam” means and includes expanded polystyrene that 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).
- (k) “Prepared Food” means 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, poultry, fish or eggs unless provided for consumption without further food preparation. It is a policy goal of this city/county to encourage supermarkets and other vendors to eliminate the use of polystyrene foam for packaging unprepared food.
- (l) “Recyclable” means any material that is accepted by the city/county or special district recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs. Recyclable plastics comprise those plastics coded with the recycling symbols #1 through #5.
- (m) “Retail Food Establishment” shall include but is not limited to, any place where food is prepared to include any fixed or mobile restaurant, drive-in, coffee shop, public food market, produce stand, or similar place which food or drink is prepared for sale or for service on the premises or elsewhere.
- (n) “Special Events Promoter” means an applicant for any special events permit issued by the City or any City employee(s) responsible for any city/county-organized special event.