

COMMON COUNCIL ORDINANCE COMMITTEE

REGULAR MEETING

June 18, 2019

7:00 p.m. – Room 231

Norwalk City Hall-125 East Avenue, Norwalk, CT

AMENDED AGENDA

- 1. ROLL CALL:**
- 2. PUBLIC HEARING (possible action on):**
 - Discuss and vote on Chapter 42A – Inspections by Fire Marshal
 - Discuss and vote on Chapter 42A – Abatement of Fire Hazards
 - Discuss and vote on Code of Ethics Section 32-1 – Title; administration
 - Discuss and vote on Code of Ethics Section 32-2 – Declaration of policy
 - Discuss and vote on Code of Ethics Section 32-3 – Definitions
- 3. PUBLIC HEARING DISCUSSION:**
- 4. PUBLIC COMMENT:**
- 5. ACCEPTANCE OF MINUTES:**
 - May 21, 2019 - ordinance committee meeting
- 6. OLD BUSINESS:**
 - Discuss Code of Ethics Section 32-5 – Prohibited representation
 - Discuss Code of Ethics Section 32-6 – Prohibited use of City property and facilities
 - Discuss Code of Ethics Section 32-7 – Prohibited use of influence and information
 - Discuss Code of Ethics Section 32-10 – Negotiation of future employment
 - Discuss Code of Ethics Section 32-11 – Subsequent employment
 - Discuss Use of Single-Use Plastic Straws and Stirrers by Food or Beverage Establishments
- 7. NEW BUSINESS:**
 - Discuss Chapter 37 Environmental Hazards – compliance with ordinance and unwrapped prepared food
 - Discuss proposed ordinance concerning Polystyrene (Styrofoam)
- 8. DISCUSSION ITEM:**

9. ADJOURNMENT

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Chapter 42A

Inspections by Fire Marshal

Abatement of Fire Hazards

Chapter 42A. Inspections by Fire Marshal

§ 42A-____. Inspections by Fire Marshal

A. Purpose

Pursuant to the Fire Safety Code and Connecticut General Statutes § 29-305, as amended from time to time, the Fire Marshal is required to conduct inspections for a variety of occupancy classifications to ensure that the requirements specified in said code or statute have been satisfied. Depending on the type of occupancy, these inspections are mandated to occur as often as annually, or up to every four years.

The purpose of this ordinance is to streamline the Fire Marshal's inspection process for all occupancy classifications that are regulated by the Fire Safety Code and the Connecticut General Statutes § 29-305, as amended from time to time. These inspections are conducted to ensure that the occupants are safe and that the requirements specified in said code or statute have been satisfied.

B. Inspections

Pursuant to the Fire Safety Code and Connecticut General Statutes § 29-305, as amended from time to time, all occupancy classifications are required to undergo periodic annual inspections by the Fire Marshal. The Fire Marshal shall be provided with access, by the owner, designee or legal occupant, to the structures subject to the occupancy classifications to complete the inspection to ensure that the requirements specified in the Fire Safety Code and Connecticut General Statutes § 29-305, as amended from time to time, have been satisfied.

The owner and/or designee must schedule an inspection with the Fire Marshal within the time period mandated by the Fire Safety Code and Connecticut General Statutes § 29-305, as amended from time to time. If the owner and/or designee schedules and completes an inspection prior to the expiration date as prescribed in the Fire Safety Code and Connecticut General Statutes § 29-305, as amended from time to time, then the Fire Marshal shall not charge the owner and/or designee a fee. However, if the owner and/or designee fails to schedule and complete the inspection prior to the expiration date, as prescribed in the Fire Safety Code and Connecticut General Statutes § 29-305, as amended from time to time, then the Fire Marshal shall send a letter to the owner and/or designee advising that the inspection is delinquent. The owner and/or designee shall have thirty (30) days from the date of the initial letter to schedule and complete the inspection. If a delinquent inspection occurs, the Fire Marshal shall charge the owner and/or designee an amount as established in the Office of the Fire Marshal's schedule of fees for permits and licenses.

C. Duration of Inspection

The duration of an inspection is based upon the occupancy classification as identified in the Fire Safety Code. Depending on the type of occupancy, these inspections are mandated to occur as often as annually, or up to every four years.

D. Penalty for Offenses

Any person violating this ordinance shall be punished as follows:

- (1) an owner and/or designee that fails to complete an inspection in a timely manner, as prescribed in the Fire Safety Code and Connecticut General Statutes § 29-305, as amended from time to time, shall be subject to an initial fine of \$250.00;
- (2) each day that the violation exists shall constitute a separate violation; and
- (3) following the initial violation, each subsequent day that the violation exists shall be subject to a \$100.00 fine.

Chapter 42A. Inspections by Fire Marshal

§ 42A-___. Abatement of Fire Hazards: Order to remove or remedy; penalties; notifications of officials; order to vacate; review by State Fire Marshal

- (a) When the Fire Marshal ascertains that there exists in any building, or upon any premises, (1) combustible or explosive matter, dangerous accumulation of rubbish or any flammable material especially liable to fire, that is so situated as to endanger life or property, (2) obstructions or conditions that present a fire hazard to the occupants or interfere with their egress in case of fire, or (3) a condition in violation of the statutes relating to fire prevention or safety, or any regulation made pursuant thereto, the remedy of which requires construction or a change in structure, the Fire Marshal shall order such materials to be immediately removed or the conditions remedied by the owner or occupant of such building or premises. Any such removal or remedy shall be in conformance with all building codes, ordinances, rules and regulations of the City of Norwalk ~~municipality~~ involved. Any person, firm or corporation which violates any provision of this subsection shall be fined not more than one hundred dollars or be imprisoned not more than three months, or both, and, in addition, may be fined fifty dollars a day for each day's continuance of each violation, to be recovered in a proper action in the name of the City of Norwalk.
- (b) Upon failure of an owner, designee or occupant to abate a hazard or remedy a condition pursuant to subsection (a) of this section within a reasonable period of time as specified by the Fire Marshal, such Fire Marshal shall promptly notify in writing the prosecuting attorney having jurisdiction in the City of Norwalk ~~municipality~~ in which such hazard exists of all the facts pertaining thereto, and such official shall promptly take such action as the facts may require, and a copy of such notification shall be forwarded promptly to the State Fire Marshal. The Fire Marshal may request the chief executive officer or any official of the City of Norwalk ~~municipality~~ authorized to institute actions on behalf of the City of Norwalk ~~municipality~~ in which the hazard exists, or the State Fire Marshal, for the purpose of closing or restricting from public service or use such place or premises until such hazard has been remedied, to apply to any court of equitable jurisdiction for an injunction against such owner, designee or occupant; or the State Fire Marshal, on his/her own initiative, may apply to such court for such injunction. When such hazard is found to exist upon premises supervised or licensed by a state department or agency, the Fire Marshal shall promptly notify the administrator of such department or agency of his findings and shall issue orders for the elimination of such hazard.
- (c) If the Fire Marshal, his or her designee, the Fire Department, or the Norwalk Police Department determines that there exists in a building a risk of death or injury from (1) blocked, insufficient or impeded egress, (2) failure to maintain or the shutting off of any fire protection or fire warning system required by the Fire Safety Code (Connecticut State Agency Regulations § 29-292-1e, et seq., as amended from time to time) or State Fire Prevention Code (Connecticut General Statutes § 29-291 et seq., as amended from time to time), (3) the storage of any flammable or explosive material

without a permit or in quantities in excess of any allowable limits pursuant to a permit, (4) the use of any firework or pyrotechnic device without a permit, or (5) exceeding the occupancy limit established by the State Fire Marshal or the Fire Marshal, such Fire Marshal, his or her designee, or Police Officer may issue a verbal or written order to immediately vacate the building. Such Fire Marshal, his or her designee, or Police Officer shall notify or submit a copy of such order to the State Fire Marshal if such Fire Marshal, his or her designee, ~~marshal,~~ or Police Officer ~~officer-~~ anticipates that any of the conditions specified in subdivisions (1) to (5), inclusive, of this subsection cannot be abated in four hours or less from the time of such order. Upon receipt of any such notification or copy, the State Fire Marshal shall review such order to vacate, and after consultation with the Fire Marshal, his or her designee, or Police Officer, determine whether to uphold, modify or reverse such order, with any further conditions the State Fire Marshal deems appropriate to protect any person from injury.

- (d) Any person, firm or corporation who violates subsection (c) of this ordinance shall be subject to penalties and/or fines in the manner authorized in Section 29-295 of the General Statutes, as amended from time to time.

Code of Ethics

Section 32-1 – Title; administration

Section 32-2 – Declaration of Policy

Section 32-3 - Definitions

Board Code of Ethics Revisions through 4-16-19 5/2/2017

Chapter 32. Code of Ethics

[HISTORY: Adopted by the City of Norwalk Common Council 6-26-2007.[1] Amendments noted where applicable.]

GENERAL REFERENCES

Administration — See Ch. 9.

[1] Editor's Note: This ordinance also superseded former Ch. 32, Code of Ethics, adopted 9-12-1967, effective 9-30-1967.

§ 32-1. Title; administration.

This chapter shall be known and referred to as "the Norwalk Code of Ethics." The Common Council of the City of Norwalk shall be charged with the administration of the Norwalk Code of Ethics. Accordingly, there shall be established an independent committee of five members and two alternates to be known as the "Board of Ethics." The Board of Ethics (the Board) shall be appointed by the Common Council and comprised as provided for in § 32-12 of this chapter.

§ 32-2. Declaration of policy.

- A. Public service is a public trust, and the proper operation of the City of Norwalk requires that all City Officers ~~officers and~~ Employees ~~employees~~, whether elected or appointed, paid or unpaid, be impartial and responsible to the public. Public office and employment must not be used for unfair personal or financial advantage. The public needs and deserves to have confidence in the integrity of the municipal government of our City.
- B. Officers and Employees ~~employees~~ of the City of Norwalk must refrain from personal, business, and financial activities that adversely affect the individual's fidelity and impartiality, having regard for the nature and scope of their official responsibilities.
- C. In recognition of the aforementioned principles, there is hereby established a Code of Ethics which shall apply for all City Officers ~~officers and employees~~ Employees.

§ 32-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AGENCY

A board, agency, commission, department or other entity of the City, including but not limited to the Common Council, Board of Education and the Norwalk Public School System.

CLEAR AND CONVINCING EVIDENCE

Sufficient evidence to support the allegation that the Respondent ~~respondent~~ has violated the Code of Ethics, when such evidence is considered fairly and impartially, and induces a reasonable belief in the minds of the ethics- ~~hearing board~~ Hearing Board -members that the allegations are true. Such evidence must indicate to the ethics- ~~hearing board~~ Hearing Board -members that the probability that the Respondent ~~respondent~~ has committed the alleged violation is substantially greater than the probability he or she has not.

EMPLOYEE

An individual employed by the City or any of its agencies, whether as a classified employeeEmployee, unclassified, permanent or temporary, full-time or part-time employeeEmployee or individual employed by contract on a continuing basis, and all employeeEmployees of the Norwalk Public School System.

FINANCIAL BENEFIT

Shall mean the receipt of an improper financial-benefitcompensation, which may include including-but is not limited to, financial compensation, tangible and intangible Employee benefits, or the award of a municipal contract or grant to a third party or independent contractor, who is an Immediate Family member benefits and/or compensation to an Employee's or Officer's Immediate Family.

HEARING BOARD

Shall be comprised of three members of the Board of Ethics or, in the event of a conflict or vacancy, one or more of the alternates to the Board of Ethics who shall be appointed by a majority vote of the Board of Ethics. In the event the Board of Ethics members have a conflict or an interest in the complaint at issue, the Common Council, by majority vote, may appoint one or more City officials, who are electors of the City of Norwalk, to serve on a ~~hearing board~~ Hearing Board -for that particular complaint. Once impaneled, the ~~hearing board~~ Hearing Board -shall continue to serve until it completes the hearing process specified in this Code of Ethics. No more than two members of a ~~hearing board~~ Hearing Board -shall be registered members of the same political party. The ~~hearing board~~ Hearing Board -shall be permitted to hold a public hearing(s) and to determine whether there is eClear aAnd eConvincing eEvidence that the Respondent ~~respondent~~ has violated the Code of Ethics.

IMMEDIATE FAMILY

~~Includes, but is not limited to,~~ A pPerson having legal residence or living in an Officer's or Employee's place of residence ("household member") or, in addition to any other definition, any pPerson who is related to an Officer or Employee, whether by blood, marriage or adoption, including but not limited to, a spouse, child, grandchild, brother, sister, in-law, parent or grandparent, stepparents and stepchildren, or pPersons who reside in the same household. [K(M1)]

INDIVIDUAL

A natural person.

INVESTIGATING PANEL

Shall consist of ~~three~~ ^{individual electors}_[KM2], from the City of Norwalk, each of who shall be appointed by the Board of Ethics to investigate an ethics complaint and to determine whether there is ~~p~~Probable ~~e~~Cause to proceed to a public hearing on such a complaint. No two members of an Investigating Panel ~~investigating panel~~ shall be registered members of the same political party, and ~~at least one member of the Investigating Panel~~ ~~investigating panel~~ shall ~~be include~~ an unaffiliated voter.

OFFICER

An ~~individual~~ elected or appointed to an Agency, including but not limited to ad hoc or advisory committee members. ~~a City office by the Mayor and/or Common Council, including, but not limited to, ad hoc committee members and members of the Board of Education.~~

ORDINANCE LIST EMPLOYEE

~~_____~~ ^[Corporation Counsel's office to provide definition]_[HW3] Non-union Employees, including management and confidential Employees.

PERSON

Includes associations, firms, partnerships and bodies politic and corporate, as well as ~~individuals~~.

PROBABLE CAUSE

A state of facts, which constitutes ~~constituting~~ more than a mere suspicion and establishing that a state of facts is more likely than not to have occurred. To establish ~~p~~Probable ~~e~~Cause there must be facts and circumstances within the ~~investigating panel~~ ^{Investigating Panel} members' knowledge, based upon trustworthy information, sufficient to justify the belief of a reasonable ~~p~~Person that a violation of the Code of Ethics has occurred. The Investigating Panel ~~investigating panel~~ shall be guided by established law in the State of Connecticut in making a determination of what constitutes ~~p~~Probable ~~e~~Cause.

YEAR

Year shall mean the municipal fiscal year as established by the Connecticut General Statutes._[KM4]

§ 32-4. Conflicts of interests; interference with duties; prohibited interests; exceptions.

A. ~~A.~~ Prohibited Actions and Transactions

A Municipal Employee or Officer shall:

**Draft Meeting Minutes from
the 5/21/2019 Ordinance
Committee Meeting**

**CITY OF NORWALK
ORDINANCE COMMITTEE
REGULAR MEETING
MAY 21, 2019**

ATTENDANCE: Eloisa Melendez, Chair; Michael Corsello, Douglas Hempstead,
Colin Hosten, Thomas Livingston, Beth Siegelbaum

STAFF: Atty. Brian Candela, Corporation Counsel's Office,

OTHERS: Fire Chief Gino Gatto; Fire Marshal Broderick Sawyer;
Atty. Cara Murphy, Board of Ethics

ROLL CALL

Ms. Melendez called the meeting to order at 7:05 p.m. A quorum was present.

PUBLIC HEARINGS

Discuss and vote on Code of Ethics Section 32-12(E)(1)(a) – Review of complaint

There was no one present who wished to comment on the Code of Ethics Section 32-12(E)(1)(a) – Review of complaint.

Discuss and vote on Code of Ethics Section 32-12(E)(1)(b) – Appointment of Investigating Panel.

There was no one present who wished to comment on the Code of Ethics Section 32-12(E)(1)(a) – Appointment of Investigating Panel.

Discuss and vote on Code of Ethics Section 32-12(E)(2)(c) – Investigation of Probable Cause; Confidentiality of Initial Proceedings.

There was no one present who wished to comment on the Code of Ethics Section 32-12(E)(2)(c) – Investigation of Probable Cause; Confidentiality of Initial Proceedings.

PUBLIC HEARING DISCUSSIONS:

Ms. Murphy spoke with the Committee about confidentiality versus free speech.

**** MR. LIVINGSTON MOVED TO THE FOLLOWING ITEMS TO THE
COMMON COUNCIL FOR CONSIDERATION:**

CODE OF ETHICS SECTION 32-12(E)(1)(A) – REVIEW OF COMPLAINT.

CODE OF ETHICS SECTION 32-12(E)(1)(B) – APPOINTMENT OF INVESTIGATING PANEL.

CODE OF ETHICS SECTION 32-12(E)(2)(C) – INVESTIGATION OF PROBABLE CAUSE; CONFIDENTIALITY OF INITIAL PROCEEDINGS.

**** THE MOTION PASSED UNANIMOUSLY.**

PUBLIC COMMENT.

There was no one present who wished to address the Committee at this time.

ACCEPTANCE OF MINUTES.

April 16, 2019 – Ordinance Committee meeting

**** MR. LIVINGSTON MOVED THE MINUTES OF THE APRIL 16, 2019 ORDINANCE COMMITTEE MEETING.**

**** THE MOTION TO ACCEPT THE MINUTES OF THE APRIL 16, 2019 ORDINANCE COMMITTEE MEETING AS SUBMITTED PASSED UNANIMOUSLY.**

OLD BUSINESS.

Discuss Code of Ethics Section 32-1 – Title; administration

Discuss Code of Ethics Section 32-2 – Declaration of policy

Discuss Code of Ethics Section 32-3 – Definitions.

The Committee discussed all three items. There was a brief description of these three sections. The Ordinance Committee was interested in an updated report from the Board of Ethics about the work they have done over the past year.

NEW BUSINESS.

Discuss Chapter 42A – Inspections by Fire Marshal – Abatement of Fire Hazards.

Fire Marshal Sawyer came forward to give an overview of the inspection by his office and the hazard abatement issues. These ordinances were crafted to protect the City from liability. There were four fatal fires due to hoarding according to the Fire Marshal. If they don't "hold the scene", they would need an administrative warrant to get back in the residence according to Fire Marshal Sawyer. He reviewed in depth four examples and displayed photographs showing potential exposure, which illustrated the dangers of not

having these sites inspected. The Committee discussed CGS 29-05 and CGS 29-306. The Committee suggested some minor changes.

**** MR. LIVINGSTON MOVED THAT BOTH THE INSPECTIONS BY FIRE MARSHAL AND THE ABATEMENT OF FIRE HAZARDS BE SCHEDULED FOR PUBLIC HEARINGS.**

**** THE MOTION PASSED UNANIMOUSLY.**

Discuss Use of Single-Use Plastic Straws and Stirrers by Food and Beverage Establishments.

The Committee discussed the item and decided that they would like to ban plastic straws and stirrers with the exception of medical disability. If people want to bring their own stirrers or straws, that would be acceptable. There was a question as to when this would be effective, so this will be discussed further.

The topic of banning Styrofoam also was briefly mentioned as it is very harmful because it can not be recycled. Westport, Connecticut and Suffolk County, New York both have bans in place. This will be discussed at the next meeting.

DISCUSSION ITEMS.

Mr. Hempstead requested that the Committee consider a discussion on Solar Power on a future agenda.

ADJOURNMENT

**** MR. LIVINGSTON MOVED TO ADJOURN.**

**** THE MOTION PASSED UNANIMOUSLY.**

The meeting adjourned at 9:05 p.m.

Respectfully submitted,

Cheryl Telesco Blois
Telesco Secretarial Services

Code of Ethics

Section 32-5 – Prohibited representation

Section 32-6 – Prohibited use of City property and facilities

Section 32-10 – Negotiation of future employment

Section 32-11 – Subsequent employment

~~—(9)—~~

(9) An officer or employee participating in any program offered by the City to employees and officers generally, including such programs as discount purchase programs, health and education programs, and recreational events.

§ 32-5. Prohibited representation.

~~—A.—~~

A. No officer or employee shall represent a person or entity, other than the City, before or on behalf of any agency of which he or she is a member, by which he or she is employed, or which is under his or her supervisory authority. This provision shall not preclude an officer or employee of the City from representing constituents in the course of his or her responsibilities for the City, provided that the officer or employee may accept no compensation or gift for such representation.

~~—B.—~~

B. An officer or employee who or whose immediate family member is employed or under retainer by a person having a matter pending before the agency of which the officer or employee is an officer or employee shall disclose that fact in writing to the agency and the City Clerk and shall abstain from participation in any deliberation, discussion, vote or other action relating to the matter.^[KM13]

§ 32-6. Prohibited use of City property and facilities.

No officer or employee shall use or authorize others to use City-owned property, including vehicles and facilities, for any purpose other than the conduct of City business, except as follows:

~~—A.—~~

A. For purposes and on terms generally available to members of the public or other officers and employees of the City generally;

~~—B.—~~

B. In accordance with such officer's or employee's work or employment with the City in which the use of such property by such officer or employee is an element of his or her compensation, term of employment, or performance for the City;

~~—C.~~

C. A minor or incidental use for personal purposes that is without cost to the City or a minor or nonincidental use for personal purposes that is authorized by the City; or

~~—D.~~

D. For charitable, professional or volunteer work, provided the use is authorized by the City.

§ 32-7. Prohibited use of influence and information.

~~—A.~~

A. An officerOfficer or employeeEmployee shall not attempt to influence any other officerOfficer, employeeEmployee or aAgency concerning the handling of any matter or transaction of any business in which such officerOfficer or employeeEmployee, or his or her immediate familyImmediate Family, has an interest, or from which he or she would be likely to gain or lose any material benefit that is not shared in common with the general public. This subsection does not prohibit an officerOfficer or employeeEmployee from communicating with other officerOfficers, employeeEmployees or agencies about a matter in which he or she has a financial or other legally protected interest, if such contact does not have as its goal the exertion of undue influence over the outcome and if the communication conforms to the following:

~~—(1)~~

(1) It is limited to communications with an officerOfficer, employeeEmployee or aAgency responsible for the matter on behalf of the City; and

~~—(2)~~

(2) It is reasonable and necessary in terms of the customary conduct of the matter and is limited to lawful means and terms available to members of the public generally in similar circumstances.

~~—B.~~

B. ~~Unless otherwise required by federal, state or local law, an officerOfficer or employeeEmployee shall not disclose confidential City information, other than in accordance with established City procedure or with appropriate authorization from the City.~~ Unless otherwise required by federal, state or local law, an Officer or Employee shall not disclose confidential City information other than in accordance with established City procedures or with appropriate authorization from the City.

~~—C.~~

C. An ~~officer~~Officer or ~~employee~~Employee shall not use to his or her advantage, any confidential City information for the purpose of advancing his or her financial or personal interest, or the interest of their employer (if they are not an Employee of the City), or the interest of a member of his or her- Immediate Family-~~immediate family~~.

~~—D.~~

D. No ~~officer~~Officer or ~~employee~~Employee shall be required to participate in political campaigns for candidates, parties, political organizations or public issues. Nothing in this Code of Ethics shall preclude an ~~officer~~Officer or ~~employee~~Employee from seeking elective office and campaigning in connection therewith or in voluntarily participating in any political campaigns, parties, political organizations or public issues.

§ 32-8. Prohibited gifts.

- A. An Officer or Employee in the course of his or her work for the City shall not, directly or indirectly, solicit or accept any gift, form of service, compensation or any item of property of a value exceeding \$150~~400~~ in aggregate over the period of one yYear, from anyone or any institution, including but not limited to an Immediate Family member covered by this code.
- B. No Officer or Employee shall knowingly or unknowingly, give, directly or indirectly, any gift in violation of this subsection.

~~—A.~~

~~An Officer or Employee officer or employee in the course of his or her work for the City shall not, directly or indirectly, personally solicit or accept any gift, form of service, compensation or any item of property of a value exceeding \$50 \$100 in aggregate over the period of one year, from anyone or any institution, including but not limited to an Immediate Family member covered by this code.~~

~~B. — No Officer or Employee shall knowingly or unknowingly, give, directly or indirectly, any gift in violation of this subsection.~~

C. ~~G.~~ Notwithstanding the foregoing, this subsection does not prohibit the following:

~~—(1)~~

§ 32-10. Negotiation of future employment.

An ~~officer~~Officer or ~~employee~~Employee shall not solicit future-employment with any ~~p~~Person or company who has a substantial matter pending before the ~~a~~Agency for which the ~~officer~~Officer serves or by whom the ~~employee~~Employee is employed. A matter is "substantial" if it involves a financial value of \$1,000 or more or involves a question of significant public policy for the City.

§ 32-11. Subsequent employment.

~~A.~~

- A. An ~~i~~Individual who has served as an ~~officer~~Officer or ~~employee~~Employee shall not within one year after termination of his or her service, assist any ~~p~~Person, other than the City, for monetary or other valuable compensation, before the ~~a~~Agency for which the ~~officer~~Officer or ~~employee~~Employee served or was employed, in any matter in which said ~~officer~~Officer or ~~employee~~Employee participated personally and substantially during his or her service with the City; or appear before the Agency in which he or she was a member or employed. For example, an Officer or Employee of the Zoning Commission could not appear before the Zoning Commission within one year after termination, but could appear before any other City agency immediately after terminating his or her service from the Zoning Commission.

~~B.~~

- B. No ~~a~~Agency shall employ any ~~i~~Individual who has served as an ~~officer~~Officer of the ~~a~~Agency during the preceding 18 months or any ~~immediate family~~Immediate Family member of an ~~i~~Individual who has served as an ~~officer~~Officer of the ~~a~~Agency during the preceding 18 months. No ~~officer~~Officer of an ~~a~~Agency or any ~~immediate family~~Immediate Family member of an ~~officer~~Officer of an ~~a~~Agency shall apply for or accept employment by that ~~a~~Agency during the time that said ~~officer~~Officer is serving for the ~~a~~Agency and for a period of 18 months after said ~~officer~~Officer ceases to serve in the ~~a~~Agency.

§ 32-12. Board of Ethics.

~~A.~~

- A. Appointment of members. The Board of Ethics shall be comprised of five full members and two alternate members, each of whom shall be electors of the City of Norwalk. No more than two of the members of the Board and one of the alternates shall be registered members of the same political party, and no member of the Board of Ethics shall be an ~~employee~~Employee or ~~officer~~Officer of the City. Except for the original appointments, replacement members shall be appointed each year after the effective date of the enactment of this chapter to serve for terms of three years. At the origination of the Board of Ethics after the first effective date of this

**Use of Single-Use Plastic Straws
and Stirrers by Food or Beverage
Establishments Ordinance**

USE OF SINGLE-USE PLASTIC STRAWS AND STIRRERS BY FOOD OR BEVERAGE ESTABLISHMENTS

§____-1. – Purpose.

The purpose of this article is to preserve and protect the environment in the City of Norwalk by prohibiting the sale, provision, or distribution of Single-Use Plastic Straws and Single-Use Plastic Stirrers by Food or Beverage Establishments.

§____-2. – Definitions.

As used in this article, the following terms shall have the meanings indicated:

FOOD OR BEVERAGE ESTABLISHMENT

A place where food or beverages of any kind are provided directly to a consumer, whether such food is provided free of charge or sold and whether consumption occurs on or off the premises. The term includes, by way of example and not limitation, any restaurant, bar, liquor store, delicatessen, coffee shop, movie theater, convenience store, food truck, take-out restaurant, delivery service, or caterer. The term shall not include hospitals, nursing homes, long-term care facilities, or other medical or dental facilities.

SINGLE-USE

A product that is intended to be only used one time in its same form.

SINGLE-USE PLASTIC STRAW

A Single-Use tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, used to transfer a beverage from a container to the mouth of the person drinking the beverage. “Single-Use Plastic Straw” does not include a straw made from non-plastic materials, including, but not limited to, paper, metal, pasta, sugar cane, wood, or bamboo.

SINGLE-USE PLASTIC STIRRER

A Single-Use device, implement, or utensil made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, designed solely for the purpose of mixing liquids intended for internal human consumption. “Single-Use Plastic Stirrer” does not include a stirrer made from non-plastic materials, including, but not limited to, paper, metal, pasta, sugar cane, wood, or bamboo.

§ ____-3. – **Prohibition on Straws and Stirrers.**

- A. No Food or Beverage Establishment shall sell, provide, or distribute a Single-Use Plastic Straw or Single-Use Plastic Stirrer in the City of Norwalk.

§ ____-4. – **Exceptions.**

- A. The prohibition set forth in Section 3 of this article shall not apply to:
1. The sale, provision, or distribution of Single-Use Plastic Straws to persons who may require use of same due to a disability or medical condition; and
 2. The sale, provision, or distribution of beverages packaged and sealed prior to receipt by the Food or Beverage Establishment.
- B. The prohibition set forth in Section 3 of this article shall not apply to the extent it would violate the laws of the United States or the State of Connecticut.

§ ____-5. – **Enforcement and penalties for violation.**

- A. This article shall be enforced by the Code Enforcement Office or its designee.
- B. Upon determination that a violation has occurred, the Food or Beverage Establishment shall be liable for the following:
1. Upon the initial violation, written warning notice that a violation has occurred shall be issued to the Food or Beverage Establishment. No penalty shall be imposed for the initial violation;
 2. For the second violation, a penalty of one hundred fifty dollars (\$150.00); and
 3. For the third and each subsequent violation, a penalty of two hundred fifty dollars (\$250.00).
- C. No more than one penalty shall be imposed upon a Food or Beverage Establishment in one 24 hour period.

§ ____-6. – **Severability.**

If any section, clause, sentence or provision of this article shall be adjudged by a court of competent jurisdiction to be invalid or unenforceable, such adjudication shall not affect the validity or enforceability of any other provision hereof, and the applicability thereof to other persons or circumstances shall not be affected thereby.

§ ____-7. – **Effective date.**

This article shall become effective three months following its adoption by the Common Council.

Chapter 37
Environmental Hazards
Plastic Bags

MEMORANDUM TO FILE

Date: June 13, 2019

From: Brian Candela

RE: Chapter 37 – Environmental Hazards

- 1) A few businesses in the food industry have raised issues about allowing customers to bring in reusable bags to avoid paying the 10 cent charge. This would also impact the required signage (English & Spanish): “All paper carryout bags provided by this store to a consumer shall be subject to a fee of ten cents per bag. One business wants to remove the following language: “Carryout bags brought by customers into this store to carry purchased goods shall not be subject to a fee.” This business is citing food safety concerns and is trying to have this language removed or be granted a waiver.

Analysis: Carry-Out Bag is defined in section 37-2 as follows: “A bag of any material, commonly plastic or kraft paper, that is provided to a consumer at the point of sale to carry purchases out of the establishment.” However, the term shall not include: “(A) Bags used by consumers inside a retail establishment to ... (5) Contain unwrapped prepared foods or bakery goods.”

This exemption specifically applies to all retail establishments that provide unwrapped prepared foods or baked goods (fast food restaurants, delis and food trucks). If part of the order contains unwrapped prepared food, then the retail establishment would be exempt from charging 10 cents for the use of a paper bag. The Health Department has indicated that this could potentially be a food safety issue for any Retail Establishment providing food for takeout without having it covered/wrapped or placed in containers. However, if all the food provided by these retail establishments in a specific order were wrapped and protected from exposure then the establishment would have to charge the 10 cent fee or allow customers to take the food in a re-useable bag.

- 2) One business has indicated that its paper bags meet all the requirements of Section 3.B except that they do not have the word “Reusable” printed on the outside of the bag. The business claims that it is due to health and food safety concerns. This business indicates that Greenwich’s Director of Environmental Affairs agreed with its concerns and granted a waiver with regard to the word “Reusable”.

Analysis: We have been advised that McDonalds was only given an exemption in Greenwich on the “wording” on their paper bags to exclude the word “reusable”. Greenwich’s ordinance language is as follows: “*Recycled paper checkout bag* means a bag that contains no old growth fiber and a minimum of forty percent (40%) post-consumer recycled content, is one hundred percent (100%) recyclable, and has printed in a highly visible manner on the bag the words “Reusable” and “Recyclable”, the name and location of the manufacturer, and the percentage of post-consumer recycled content.”

- 3) A few businesses have indicated the following: companies have either already placed orders of plastic bags prior to the enactment of the ordinance or they are ordering bags to come into compliance with the ordinance. These companies are asking for additional time to comply.

Analysis: Based on prior discussions by this committee, it would appear reasonable to provide these businesses additional time if they can prove that they made a purchase for their business prior to receiving notice of the plastic bag ordinance or are in the process of attempting to comply (good faith effort). Either way, it is recommended that these businesses, in order to obtain additional time, must provide documentary proof of purchases or evidence of how they are attempting to comply.

City of Norwalk, CT
Thursday, June 13, 2019

Chapter 37. Environmental Hazards

Article I. Carry-Out Bags

§ 37-1. Purpose.

The purpose of this article is to preserve and protect the environment in the City of Norwalk and encourage the use of reusable carry-out bags by reducing the use of carry-out bags made of plastic and prohibiting the use of carry-out bags made of nonrecyclable paper.

§ 37-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CARRY-OUT BAG

A bag of any material, commonly plastic or kraft paper, that is provided to a consumer at the point of sale to carry purchases out of the establishment. The term shall not include:

- A. Bags used by consumers inside a retail establishment to:
 - (1) Package bulk items, such as fruit, vegetables, nuts, grains, candy, or small hardware items;
 - (2) Contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
 - (3) Contain or wrap flowers, potted plants, or other items where dampness may be a problem;
 - (4) Segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a bag; or
 - (5) Contain unwrapped prepared foods or bakery goods.
- B. Newspaper bags, door-hanger bags, or laundry-dry-cleaning or garment bags.
- C. Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.
- D. Bags of any type that customers bring to a retail establishment for their own use.
- E. Bags provided by pharmacists to contain prescription drugs.

RETAIL ESTABLISHMENT

Any person, corporation, partnership, business, or other organization or group, however organized, that transfers merchandise, goods, or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a consumer in exchange for payment. The term includes, by way of example and not limitation, any grocery store, grocery delivery service, department store, clothing store, hardware store, hospital, pharmacy, liquor store, restaurant, delicatessen, convenience store, food truck, sidewalk vendor, farmers' market, flea market, and

any other retail store or vendor. The term shall not include the sale of goods at yard sales, tag sales, or other sales by residents at their home.

REUSABLE CARRY-OUT BAG

A bag with handles that is specifically designed and manufactured for multiple reuse that 1) is made of a) cloth, fiber, or other machine washable fabric or b) durable plastic that is at least 12.0 mils (thousandths of an inch) thick, and 2) does not contain lead, cadmium, or any other toxic material, as defined by applicable state and federal standards and regulations for packaging or reusable bags.

§ 37-3. Restrictions.

- A. No retail establishment shall sell, provide, or distribute carry-out bags made of plastic, other than reusable carry-out bags, in the City of Norwalk.
- B. No retail establishment shall sell, provide, or distribute carry-out bags made of paper in the City of Norwalk, unless such bags:
 - (1) Are 100% recyclable;
 - (2) Contain a minimum of 40% post-consumer recycled content (except that an eight-pound or smaller paper bag shall contain a minimum of 20% post-consumer recycled content); and
 - (3) Conspicuously display the phrase "reusable" and "recyclable" on the outside of the bag and the percentage of post-consumer recycled content.

§ 37-4. Fees for retail establishment provision of bags.

- A. Any retail establishment that elects to provide carry-out bags made of paper consistent with § 37-3B of this article shall charge the consumer at the point of purchase \$0.10 for each such bag.
- B. The charge imposed by a retail establishment as provided in Subsection A of this section shall be retained solely by the retail establishment.
- C. All retail establishments shall post signs at or near the point of purchase to notify consumers of the provisions of this article. Such signs shall be in both English and Spanish and shall read substantially as follows: "All paper carry-out bags provided by this store to a consumer shall be subject to a fee of ten cents per bag. Carry-out bags brought by consumers into this store to carry purchased goods from this store shall not be subject to a fee."
- D. All retail establishments shall indicate on the consumer transaction receipt the number of carry-out bags provided and the total amount of charge imposed. It shall be a violation of this article for a retail establishment to fail to separately itemize the charge upon a consumer's purchase of such bag.
- E. No retail establishment shall rebate or otherwise reimburse a customer for any portion of the charge provided in Subsection A of this section.
- F. Nothing in this article shall prohibit a retail establishment from providing reusable carry-out bags for no or nominal cost or encouraging and providing incentives for the use of reusable carry-out bags, including credits or rebates for customers that bring their own reusable carry-out bags for the purpose of carrying purchases out of the retail establishment.
- G. Nothing in this article shall prohibit a consumer from using bags or containers of any type that they bring to a retail establishment or from carrying away goods that are not placed in bags.

- H. It shall be presumed that all carry-out bags sold or used by a retail establishment are subject to the charge provided in Subsection **A** of this section until the contrary is established. The burden of proving that such carry-out bags are not subject to the charge hereunder shall be upon the retail establishment so claiming.

§ 37-5. Exceptions.

- A. The charge reflected in § 37-4 of this article shall not apply to the extent it would violate the laws of the United States or the State of Connecticut.
- B. The charge reflected in § 37-4 of this article shall not apply to the use of carry-out bags to carry items purchased pursuant to the Supplemental Nutritional Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), or a similar governmental food assistance program.

§ 37-6. Enforcement; penalties for offenses.

- A. This article shall be enforced by the Code Enforcement Office or its designee.
- B. Upon determination that a violation has occurred, the retail establishment shall be liable for the following:
- (1) Upon the initial violation, written warning notice that a violation has occurred shall be issued to the retail establishment. No penalty shall be imposed for the initial violation;
 - (2) For the second violation, a penalty of \$150; and
 - (3) For the third and each subsequent violation, a penalty of \$250.
- C. No more than one penalty shall be imposed upon a retail establishment in one twenty-four-hour period.

§ 37-7. Severability.

If any section, clause, sentence or provision of this article shall be adjudged by a court of competent jurisdiction to be invalid or unenforceable, such adjudication shall not affect the validity or enforceability of any other provision hereof, and the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 37-8. When effective.

This article shall become effective six months following its adoption by the Common Council in order to allow retail establishments time to dispose of their existing inventory of carry-out bags made of plastic and convert to alternative packaging materials compliant with this article.

Polystyrene (Styrofoam)

USE AND SALE OF POLYSTYRENE PRODUCTS

§ ____-1. – Purpose.

The purpose of this article is to preserve and protect the environment in the City of Norwalk by prohibiting the sale, provision, or distribution of Polystyrene products by Food Packagers and Retail Establishments.

§ ____-2. – Definitions.

As used in this article, the following terms shall have the meanings indicated:

FOOD PACKAGER

Any person, corporation, partnership, business, or other organization or group, however organized, located in the City of Norwalk that places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.

PREPARED FOOD

Means any food or beverage served or sold at a Retail Establishment, either for consumption on the premises or for takeout, that has been prepared at the Retail Establishment's location or elsewhere by cooking, chopping, slicing, mixing, brewing, freezing, squeezing, or other food preparation technique. The term includes leftovers from partially consumed Prepared Food.

POLYSTYRENE

Means and includes blown polystyrene and expanded and extruded foams (sometimes referred to as Styrofoam, a Dow Chemical Company 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 FOOD SERVICE PRODUCT

Means any product made in whole or in part of Polystyrene and used in the restaurant or food service industry for serving or transporting Prepared Food. The term includes, by way of example and not limitation, cups, bowls, lids, sleeves, utensils, plates, trays, hinged or lidded containers (clamshells), coolers, and egg cartons.

POLYSTYRENE LOOSE FILL PACKAGING

Commonly known as packing peanuts, means a void-filling packaging product made of Polystyrene that is used as packaging fill.

RETAIL ESTABLISHMENT

Any person, corporation, partnership, business, or other organization or group, however organized, that transfers merchandise, goods, or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a consumer in exchange for payment. The term includes, by way of example and not limitation, any grocery store, grocery delivery service, department store, clothing store, hardware store, hospital, pharmacy, liquor store, restaurant, delicatessen, convenience store, caterer, food truck, sidewalk vendor, farmers' market, flea market, and any other retail store or vendor. The term shall not include the sale of goods at yard sales, tag sales, or other sales by residents at their home.

§ ____-3. – Prohibitions

- A. No Retail Establishment in the City of Norwalk shall serve, sell, distribute, or provide Prepared Food in or on a Polystyrene Food Service Product.
- B. No Food Packager shall package meat, eggs, bakery products, or other food in or on a Polystyrene Food Service Product.
- C. No Retail Establishment in the City of Norwalk shall sell, offer for sale, distribute, or provide Polystyrene Food Service Products or Polystyrene Loose Fill Packaging.
- D. The City of Norwalk shall not use or provide Polystyrene Food Service Products or Polystyrene Loose Fill Packaging at any City facility or City-sponsored event.
- E. No City of Norwalk department or facility shall purchase or acquire Polystyrene Food Service Products or Polystyrene Loose Fill Packaging.
- F. All parties who contract with the City of Norwalk shall be prohibited from using Polystyrene Food Service Products or Polystyrene Loose Fill Packaging in City facilities or on City-funded projects within the City.

§ ____-4. – Exceptions.

- A. The prohibition set forth in Section 3 of this article shall not apply to:
 - 1. Polystyrene Food Service Products used for prepackaged food that have been filled and sealed prior to receipt by the Retail Establishment;
 - 2. Polystyrene Food Service Products used to contain or store raw meat or seafood sold from a butcher case or similar retail appliance; or
 - 3. Polystyrene coolers and ice chests, provided that such Polystyrene is fully encased in another material.
- B. The prohibitions set forth in Section 3 of this article shall not apply to the extent it would violate the laws of the United States or the State of Connecticut.

**ORDINANCE COMMITTEE
DRAFT – 6/18/19**

§ ____-5. – **Enforcement and penalties for violation.**

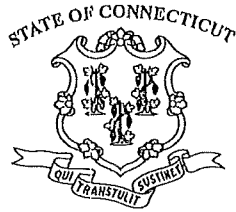
- A. This article shall be enforced by the Code Enforcement Office or its designee.
- B. Upon determination that a violation has occurred, the Food Packager or Retail Establishment, as the case may be, shall be liable for the following:
 - 1. Upon the initial violation, written warning notice that a violation has occurred shall be issued. No penalty shall be imposed for the initial violation;
 - 2. For the second violation, a penalty of one hundred fifty dollars (\$150.00); and
 - 3. For the third and each subsequent violation, a penalty of two hundred fifty dollars (\$250.00).
- C. No more than one penalty shall be imposed upon a single Food Packager or Retail Establishment in one 24 hour period.

§ ____-6. – **Severability.**

If any section, clause, sentence or provision of this article shall be adjudged by a court of competent jurisdiction to be invalid or unenforceable, such adjudication shall not affect the validity or enforceability of any other provision hereof, and the applicability thereof to other persons or circumstances shall not be affected thereby.

§ ____-7. – **Effective date.**

This article shall become effective [six] months following its adoption by the Common Council.



House of Representatives

File No. 980

General Assembly

January Session, 2019

(Reprint of File No. 648)

Substitute House Bill No. 5384
As Amended by House Amendment
Schedule "B"

Approved by the Legislative Commissioner
May 23, 2019

AN ACT REQUIRING THE ELIMINATION OF SINGLE-USE STYROFOAM CONTAINERS.

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2021*) (a) For purposes of this
2 section:

3 (1) "Consumer" means any business invitee of a restaurant or
4 caterer;

5 (2) "Expanded polystyrene" means blown polystyrene and
6 expanded and extruded foams that are thermoplastic petrochemical
7 materials utilizing a styrene monomer and processed by any number
8 of techniques including, but not limited to, fusion of polymer spheres,
9 injection molding, foam molding and extrusion-blown molding;

10 (3) "Single-use container" means any container made of expanded
11 polystyrene intended for the containment of food or beverage
12 provided by a restaurant or caterer to a consumer and customarily
13 disposed of by the consumer after such use;

14 (4) "Restaurant" has the same meaning as provided in subsection (b)
15 of section 19a-342 of the general statutes; and

16 (5) "Caterer" has the same meaning as "catering food service
17 establishment", as provided in section 19a-36g of the general statutes.

18 (b) (1) No owner or operator of a restaurant or catering business
19 shall provide or distribute a single-use container to a consumer.

20 (2) Any owner or operator who violates the provisions of this
21 section shall be fined two hundred fifty dollars for the first violation,
22 five hundred dollars for a second violation and one thousand dollars
23 for a third or any subsequent violation.

24 (c) The provisions of this section shall not be construed to prohibit
25 the provision or distribution of a single-use container that is: (1) Filled
26 and sealed prior to receipt by a restaurant or caterer and that is
27 subsequently sold to a consumer, or (2) utilized by a butcher or store to
28 contain raw meat, including, but not limited to, beef, poultry, seafood
29 or pork that is sold to a consumer.

30 (d) Any local health department or health district or agent of the
31 Departments of Public Health, Consumer Protection and Energy and
32 Environmental Protection may enforce the provisions of this section. In
33 the event of enforcement by a local health department or health
34 district, one-half of any fine imposed pursuant to this section shall be
35 remitted to the municipality where such violation occurred.

36 (e) Not later than February 1, 2022, the Commissioners of Public
37 Health, Consumer Protection and Energy and Environmental
38 Protection shall jointly submit a report, in accordance with the
39 provisions of section 11-4a of the general statutes, to the joint standing
40 committees of the General Assembly having cognizance of matters
41 relating to the environment, public health and consumer protection on
42 the enforcement of the provisions of this section and the need to
43 establish a hardship waiver from the provisions of this section for any
44 restaurant or caterer with a demonstrated financial hardship directly

45 caused by the provisions of this section.

46 (f) Nothing in this section shall be construed to prohibit the
47 manufacture of single-use containers in this state or the sale of such
48 single-use containers by a person other than a restaurant or caterer.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2021</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill prohibits restaurants owners or caterers from distributing expanded polystyrene single-use containers. This has no fiscal impact as the effective date is July 1, 2021 (FY 22).

House "B" replaces the underlying bill with the provisions and fiscal impact described above.

The Out Years

There may be a minimal revenue gain to the state and municipalities anticipated to be less than \$2,500 annually, associated from fines from violations. This potential revenue gain would continue into the future subject to the number of violations that occur.

OLR Bill Analysis**sHB 5384 (as amended by House "B")******AN ACT REQUIRING THE ELIMINATION OF SINGLE-USE
STYROFOAM CONTAINERS.*****SUMMARY**

Beginning July 1, 2021, this bill prohibits restaurants and caterers from providing or distributing to consumers single-use containers made of expanded polystyrene (see definitions below). However, the bill allows restaurants and caterers to continue using or distributing single-use containers that are (1) filled and sealed before the entity receives them and subsequently sold to consumers (e.g., prepackaged food or beverage) or (2) used by a butcher or store to contain raw meat or seafood that is sold to a consumer.

Under the bill, a restaurant or catering business owner or operator who violates the prohibition is subject to a fine of \$250 for a first violation, \$500 for a second violation, and \$1,000 for any subsequent violation. A local health department or district or the departments of Consumer Protection (DCP), Energy and Environmental Protection (DEEP), or Public Health (DPH) may enforce the bill's prohibition. If a local health department or district enforces it, half of the fine imposed must be remitted to the municipality where the violation occurred.

The bill specifies that it does not prohibit the (1) manufacture of single-use containers in the state or (2) sale of such containers by a person other than a restaurant or caterer.

Lastly, the bill requires the DCP, DEEP, and DPH commissioners to submit a report by February 1, 2022, to the General Law, Environment, and Public Health committees on the (1) prohibition's enforcement and (2) need to establish a hardship waiver for a restaurant or caterer with a demonstrated financial hardship directly caused by the bill's

provisions.

*House Amendment "B" (1) applies the single-use container prohibition to restaurants and caterers instead of all food establishments; (2) extends the prohibition to beverage containers as well as food containers; and (3) delays the effective date by six months from January 1, 2021, to July 1, 2021. It also specifies that the bill's provisions do not prohibit the (1) manufacture of single-use containers in the state or (2) sale of such containers by a person other than a restaurant or caterer.

EFFECTIVE DATE: July 1, 2021

DEFINITIONS

Restaurant

Under the bill, a "restaurant" is a space in a suitable and permanent building that is kept, used, maintained, advertised, and held out to the public as a place where meals are regularly served to the public.

Caterer

A "caterer" is a business that (1) sells or distributes food and drink prepared in bulk in one location for retail service in individual portions at another location or (2) prepares or serves food in a public or private venue that is not under the caterer's ownership or control.

Single-use Container

"Single-use container" means a container made of expanded polystyrene that contains food or beverage provided by a restaurant or caterer to a consumer and that the consumer usually disposes of after such use.

Expanded Polystyrene

"Expanded polystyrene" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials using a styrene monomer and processed by any number of techniques, including fusion of polymer spheres or injection, foam, or extrusion-

blown molding.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 21 Nay 8 (03/25/2019)

OLR Bill Analysis

sHB 5384 (as amended by House "B")*

AN ACT REQUIRING THE ELIMINATION OF SINGLE-USE STYROFOAM CONTAINERS.

SUMMARY

Beginning July 1, 2021, this bill prohibits restaurants and caterers from providing or distributing to consumers single-use containers made of expanded polystyrene (see definitions below). However, the bill allows restaurants and caterers to continue using or distributing single-use containers that are (1) filled and sealed before the entity receives them and subsequently sold to consumers (e.g., prepackaged food or beverage) or (2) used by a butcher or store to contain raw meat or seafood that is sold to a consumer.

Under the bill, a restaurant or catering business owner or operator who violates the prohibition is subject to a fine of \$250 for a first violation, \$500 for a second violation, and \$1,000 for any subsequent violation. A local health department or district or the departments of Consumer Protection (DCP), Energy and Environmental Protection (DEEP), or Public Health (DPH) may enforce the bill's prohibition. If a local health department or district enforces it, half of the fine imposed must be remitted to the municipality where the violation occurred.

The bill specifies that it does not prohibit the (1) manufacture of single-use containers in the state or (2) sale of such containers by a person other than a restaurant or caterer.

Lastly, the bill requires the DCP, DEEP, and DPH commissioners to submit a report by February 1, 2022, to the General Law, Environment, and Public Health committees on the (1) prohibition's enforcement and (2) need to establish a hardship waiver for a restaurant or caterer with a demonstrated financial hardship directly caused by the bill's provisions.

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Under the bill, a "restaurant" is a space in a suitable and permanent building that is kept, used, maintained, advertised, and held out to the public as a place where meals are regularly served to the public.

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A "caterer" is a business that (1) sells or distributes food and drink prepared in bulk in one location for retail service in individual portions at another location or (2) prepares or serves food in a public or private venue that is not under the caterer's ownership or control.

Single-use Container

"Single-use container" means a container made of expanded polystyrene that contains food or beverage provided by a restaurant or caterer to a consumer and that the consumer usually disposes of after such use.

Expanded Polystyrene

"Expanded polystyrene" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials using a styrene monomer and processed by any number of techniques, including fusion of polymer spheres or injection, foam, or extrusion-blown molding.

COMMITTEE ACTION

2019HB-05384-R01-BA.DOCX

Environment Committee

Joint Favorable Substitute

Yea 21 Nay 8 (03/25/2019)

Environment Committee JOINT FAVORABLE REPORT

Bill No.: SB-229
AN ACT PROHIBITING THE USE OF STYROFOAM TRAYS IN CONNECTICUT
Title: SCHOOLS.
Vote Date: 3/18/2019
Vote Action: Joint Favorable
PH Date: 3/11/2019
File No.: 563

***Disclaimer:** The following JOINT FAVORABLE Report is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.*

SPONSORS OF BILL:

Sen. James J. Maroney, 14th Dist.

Rep. Dorinda Borer, 115th Dist.
Rep. Anne Meiman Hughes, 135th Dist.
Rep. David Michel, 146th Dist.
Rep. Kim Rose, 118th Dist.

REASONS FOR BILL:

Many have expressed concerns regarding the negative impact polystyrene, commonly known as Styrofoam, products have on the environment. Polystyrene products are not easily recyclable and are not biodegradable. Additionally, many have argued that these products also have negative public health implications. When heated, the chemical components that make up polystyrene, styrene and benzene, are broken down and released. According to the Department of Health and Human Services, these chemicals are potential carcinogens. However, due to its low cost, school districts often choose to use polystyrene trays to serve food to school children. This bill seeks to protect school children, while limiting the introduction of polystyrene products to the environment, by prohibiting the use of polystyrene trays in Connecticut schools.

RESPONSE FROM ADMINISTRATION/AGENCY:

None Expressed.

NATURE AND SOURCES OF SUPPORT:

Lori Brown, Executive Director, Connecticut League of Conservation Voters (CTLCV):

CTLCV supports the bill for the following reasons: (1) polystyrene products fill up the states landfills, account for 30% of landfill space in the United States, and are easily replaced by biodegradable alternatives, (2) polystyrene is often contaminated with food waste and cannot be reused or recycled – there is not a single recycling center that accepts polystyrene trays and containers in Connecticut, (3) polystyrene is hazardous to wildlife, (4) the chemicals, styrene and benzene are potential carcinogens, as identified by the Department of Health and Human Services, which can leak from polystyrene products when exposed to heat, (5) there are numerous biodegradable alternatives to polystyrene, and (6) cities, such as Seattle WA, that have banned polystyrene containers have not suffered negative economic impacts.

Priscilla Feral, President, Friends of Animals: Many states and municipalities, such as Rahway NJ, New York City, Los Angeles, Chicago, Miami, Orlando, and Dallas, have banned single-use foams and plastics with proven results.

Kruttika Gopal, Student, Jonathan Law High School: Shared personal testimony as the co-founder of the Environmental Club at Jonathan Law High School. Polystyrene is not recyclable and not biodegradable. If polystyrene trays are incinerated, like it is at Jonathan Law High School, the toxic chemical components of such product are released into the air. The Environmental Club has been in contact with with companies such as the Huhtamaki food packaging and labeling company, which manufactures compostable paper trays for the Urban Food Alliance. If purchased in bulk, the school could get a comparable price for the same compostable trays.

Ming-May Hu, Student Jonathan Law High School: Shared personal testimony as the co-founder of the Environmental Club at Jonathan Law High School. All of the trash at Jonathan Law High School I incinerated, as a result toxic pollutants from polystyrene trays are released into the atmosphere. Additionally, styrene monomers, known to cause nerve damage, hormonal disruption and possibly cancer, are released from heat. These chemicals are ingested every time a student eats a hot meal off the tray. Many cities have already banned polystyrene lunch trays. The local school districts want to use such products to save money; however, there are many economically friendly alternatives. Compostable trays used in Philadelphia cost one cent more than traditional polystyrene trays.

Representative Kim Rose, 118th Assembly Dist.: Styrofoam trays offered for school lunches are used once for a short time period then thrown away. Guilford schools have abandoned Styrofoam trays and moved to 100% recycled paper trays. What is particularly special about using alternative recyclable products is that the advocates are the students themselves. The Connecticut school system teaches students of the importance of caring for the environment, while at the same time our schools are using massive amounts of plastics and Styrofoam.

The Environment Committee received approximately 20 supporting testimonies explaining that (1) polystyrene products cannot be reused and are difficult to recycle, (2) polystyrene products are hazardous to wildlife and the environment, and (3) chemicals released from polystyrene products, when heated, are toxic and possibly carcinogenic.

NATURE AND SOURCES OF OPPOSITION:

Connecticut Association of School Business Officials: If this bill is enacted into legislation, School districts will have few good options implementing a ban on Styrofoam trays. An alternative are paper trays; however, these products cost three times more than Styrofoam trays, have limited product selections, and are not as durable for certain uses. Another alternative are reusable trays; however, many schools are not built to accommodate tray washing or the additional labor and utility costs that come along with this option. For many school districts, this proposal is another unfunded mandate.

American Chemistry Council (ACC): Environmental concerns regarding polystyrene and plastic products should be addressed through litter education prevention, waste minimization, and recycling. ACC opposes the bill for the following reasons: (1) a ban on polystyrene would have significant fiscal impacts on the state because it would mandate the use of alternatives, (2) alternatives to polystyrene products will not result in the use of more environmentally friendly products as all packaging leaves an environmental footprint regardless of material type, (3) biodegradable containers only biodegrade in a controlled composting environment, (4) polystyrene food service products are safe, low cost, and effective packaging products that have been approved by the US Food and Drug Administration, and (5) AAC supports polystyrene foam recycling programs such as the Foam Recycling Coalition.

American Chemistry Council's Plastics Foodservice Packaging Group (AAC/PFPG):

This bill fails to recognize that litter and improper waste management are independent of material type and is unlikely to be effective in addressing litter. Litter studies on material bans have shown greater increases in the litter of alternative materials, than in the decline of a banned material. AAC/PFPG recommends that a full life cycle analysis of the environmental impacts of alternatives needs to be conducted before considering a ban on polystyrene foam. A full environmental study will reveal the truth behind many myths. An examples include (1) polystyrene foam cups requires 50% less energy to produce, effectively creating fewer greenhouse gas emissions, than similar coated paper products, and (2) most compostable foodservice containers only degrade in a controlled composting environment.

Susan Maffe, President, School Nutrition Association of Connecticut: Many schools currently have difficulty offsetting the cost of free and reduced meals served to school children and cannot afford the additional cost of alternative trays. Many Connecticut schools were not built to accommodate tray washing and have no dishwashing machines. Furthermore, alternate tray products are not readily available to schools in large quantities.

Reported by: Steve Smith / Ussawin R. Bumpen Date: 4/4/2019



OLR RESEARCH REPORT

October 3, 2003

2003-R-0707

BANNING STYROFOAM

By: Joseph Holstead, Research Analyst

You asked what the Maine and New York legislatures have done to eliminate the use of Styrofoam (polystyrene foam) packaging and products. We have also provided background on Connecticut's law.

SUMMARY

Maine law prohibits the use of polystyrene foam by food services serving at state and local government facilities and in certain packaging. New York, in 2003, considered legislation to prohibit the use of polystyrene foam by state concessionaires and as packaging material. The New York bills were referred to the Environmental Conservation Committee, where similar bills have died since the early 1990s. Polystyrene is not bio-degradable and clogs land fills, according to advocates of the New York bills.

Connecticut law allows towns to prohibit the sale or use of polystyrene packaging products unless vendor, commercial, or retail users can prove that they are actively recycling the material (the law exempts towns that had bans before October 1, 1989 and March 15, 1990 from the recycling exception). It also prohibits (1) the sale of polystyrene foam made with a controlled substance (i.e., one that depletes the ozone layer) and (2) the state from buying anything packaged in or made of polystyrene foam that was made using a controlled substance (CGS §§ 22a-229 and 22a-194a and g). Attachment 1 is copies of these laws.

MAINE

Maine law prohibits food services that serve individual food portions or beverages at state and political subdivision facilities (including most schools but excluding certain elderly food services) or functions from using polystyrene foam containers unless the food service recycles the containers after use (Maine Revised Statutes, Title 38, § 1652). Maine prohibits the sale of polystyrene foam sheets or boards that were made with any fully halogenated chlorofluorocarbon that the U.S. Environmental Protection Agency found to be ozone-depleting (Maine Revised Statutes, Title 38, § 1603). It also prohibits the use of polystyrene foam containers for selling baitfish (Maine Revised Statutes, Title 12, § 7606). Attachment 2 is copies of these laws.

NEW YORK

6/6/2019

BANNING STYROFOAM

Assembly Bill 4502 is similar to Maine's law in that it would prohibit the use of polystyrene foam packaging by state concessionaires in state buildings and on state grounds (prior legislative history shows similar bills have been proposed and died since 1993). Assembly Bills 4271 and 4878 prohibit the use of polystyrene foam as packaging material (prior legislative history shows similar bills have been proposed and died since 1995 and 1993 respectively). Attachment 3 is copies of the proposed legislation.

JH:ro

LEGAL NOTICE TO BE PUBLISHED IN THE WESTPORT NEWS ON FRIDAY, MAY 10, 2019.

LEGAL NOTICE

At the meeting of the Representative Town Meeting held Tuesday, May 7, 2019 the following ordinance was adopted as follows:

An Ordinance Prohibiting the use of single use plastics/styrofoam materials in food service businesses

Chapter 46: Solid Waste Management

Article VII: Single Use Plastic Food Service Products

Section 46-120: Purpose

To prohibit the use of expanded polystyrene and single use plastic food service containers, plastic straws, plastic stirrers and plastic cups, and require food service businesses to transition from disposable plastic food service ware to compostable and recyclable alternatives.

Section 46-121: Justification

Single use plastics, whether made of recyclable material or not, and expanded polystyrene pose a threat to Westport's aquatic and terrestrial ecosystems. By prohibiting these items, Westport seeks to protect the environment, eliminate a major source of waste and protect the public health, safety and welfare of Westport and its citizens.

Section 46-122: Definitions

For purposes of this section, the following definitions shall apply.

- (a) "Food Service Businesses" means full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, vending trucks or carts, take-out food businesses, caterers, business or institutional cafeterias, or other businesses located in Westport that sell or provide food within the Town of Westport for consumption on or off the premises.
- (b) "Single Use Plastic Food Service Products" means any food containers, straws, stirrers, plates, "clamshells," hot and cold beverage cups, meat and vegetable trays, egg cartons, and other products, other than utensils, made primarily of plastic, including, but not limited to, blown polystyrene and expanded and extruded foams (including Styrofoam™), which are used for selling or providing food for consumption on or off the premises and are designed to be used only one time in its same form by a Food Service Business.
- (c) "Take-Out Food Orders" means prepared meals or other food or beverage items that a customer purchases at a Food Service Business and intends to eat elsewhere.
- (d) "Recyclable" means made solely of materials that are capable of being separated from a waste stream by a Food Service Business and made available for collection and delivery to a processor for reuse or remanufacture into the same or other products.

Section 46-123 : Prohibitions; Exemptions

- (a) Food Service Businesses shall not sell or provide food, for consumption on or off the premises, in or with Single Use Plastic Food Service Products; except that Food Service Businesses shall be permitted to use Single Use Plastic Food Service Products containing prepackaged foods that Food Service Businesses sell or otherwise provide to their customers that have been filled and sealed prior to receipt by the Food Service Businesses.
- (b) Food Service Businesses shall not provide utensils for Take-Out Food Orders unless requested by a patron.
- (c) Straws and stirrers shall not be provided except upon request by a patron within a Food Service Business. Such straws and stirrers shall be biodegradable unless the patron needs a

plastic straw for a medical or physical condition. Food Service Businesses will be allowed to carry no more than two boxes of 200 plastic straws at any time.

(d) Facilities required under Section 4-502.12 of the Food Code, 2017 Recommendations of the United States Public Health Service, Food and Drug Administration to provide only single use kitchenware, single service articles, and single use articles for use by food employees and single service articles for use by consumers may apply to the Director of Health for exemption after exhausting all viable alternatives.

Section 46-124: Enforcement

(a) Authority

The Conservation Department is hereby authorized to enforce violations of this Article as provided in this Section.

(b) Notice of Violation

- (i) Prior to the issuance of an initial citation pursuant to this Section, the Conservation Department shall provide written notice to Food Service Businesses violating this Article.
- (ii) The notice of violation shall state the violation and the date by which said violation shall be remedied.
- (iii) Upon the failure to remedy the violation within the time period specified within the notice, the Conservation Department shall issue a citation as provided for in subsection (c) hereof. Repeat offenders shall be issued additional citations without first receiving a new notice of violation.

(c) Issuance of Citation

- (i) The Conservation Department shall issue a citation when a violation persists beyond the date by which the Conservation Department required that the violation be remedied.
- (ii) Any citation issued by the Conservation Department shall state:
- A description of the violation.
 - The initial fine of \$150.00 plus such other penalties, costs and/or fees due for each violation.
 - That after ten days from the date of the citation, each day thereafter that the violator has not sent notification of compliance to the Conservation Department shall constitute a separate violation and shall be subject to an additional \$150.00 fine.
 - That the uncontested payment of such fine(s), penalties, costs and/or fees shall be made within ten days of the date of the citation.
 - That such person may contest the liability before a citation hearing officer by delivering in person or by mail within ten days of the date of the citation a written demand for a hearing.
 - That if such a hearing is not demanded, it shall be deemed an admission of liability and an assessment and judgment shall be entered against the person, and that such judgment may issue without further notice.
- (iii) Any notice of violation or citation issued hereunder shall be sent to the person named in the citation by certified mail, return receipt requested and simultaneously by regular United States Postal Service mail.
- (iv) Once a written demand for a hearing has been received by the Conservation Department, no additional citations shall be issued for the violation, nor shall daily fines be imposed until after the conclusion of the hearing procedure as set forth in Subsection (e) hereof.
- (d) Civil Infractions Amount; Continuing Violations**
- (i) The fine for each occurrence of a violation shall be \$150.00 and shall be payable to the Town.
- (ii) The person to whom a citation has been issued shall be responsible for reporting, in writing, their subsequent compliance to the Conservation Department.
- (iii) After ten days from the date of the citation, each day thereafter that the violator has not sent notification of compliance to the Conservation Department shall constitute a separate violation subject to a separate fine.
- (e) Hearing Procedure For Citations**
- (i) The First Selectman shall appoint one or more hearing officers, other than any employee of the Town, to conduct the hearings resulting from violations of this article. Any assessment by a hearing officer shall be entered as a judgment against the violator

(ii) A person who chooses to appeal a citation and requests a hearing to this effect shall be given written notice of the date, time and place for the hearing. Such hearing shall be held not less than fifteen days nor more than thirty days from the date of the citation notice, provided the hearing officer shall grant upon good cause shown any reasonable request by an interested party for postponement or continuance. An original or certified copy of the citation issued by the Conservation Department shall be filed and retained by the Town and shall be deemed to be a business record and evidence of the facts contained therein. Upon request of the person appealing the citation, the presence of the Conservation Department employee who issued the citation shall be required at the hearing. A designated Town employee other than the hearing officer may present evidence on behalf of the Town. A person wishing to contest liability shall appear at the hearing and may present evidence. If the person who received the citation fails to appear, the hearing officer may enter an assessment by default upon a finding of proper notice and liability under the ordinance.

(iii) The hearing officer shall conduct the hearing in the order and form and with such methods of proof as he/she deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation. The hearing officer shall announce his/her decision at the end of the hearing. If the hearing officer determines that the person is not liable, he/she shall dismiss the matter and enter his/her determination, in writing, accordingly. If the hearing officer determines that the person who received the citation is liable for the violation, the hearing officer shall then enter and assess the fines, penalties, costs or fees against the person as provided by this article.

(iv) If such assessment is not paid on the date of its entry, the hearing officer shall send by first class mail a notice of the assessment to the person found liable and shall file, not less than thirty days nor more than twelve months after such mailing, a certified copy of the notice of assessment with the Clerk of the Superior Court for the geographical area in which the Town is located, together with the applicable entry or filing fee. The certified copy of the notice of assessment shall constitute a record of assessment. Within such twelve-month period, all assessments against the same person may be accrued and filed as one record of assessment. The Clerk shall enter judgment, in the amount of the hearing officer's record of assessment, as well as court costs, against such person in favor of the Town. The hearing officer's assessment, when so entered as a judgment, shall have the effect of a civil money judgment and a levy of execution on such judgment may be issued without further notice to such person.

(v) A person against whom an assessment has been entered pursuant to this article is entitled to judicial review by way of appeal in accordance with C.G.S. § 7-152c(g).

Section 46-125: Effective Date

This ordinance shall become effective six months after its adoption.

Patricia H. Strauss
Town Clerk

Intro. Res. No. 1112-2019

Laid on Table 2/13/2019

Introduced by Legislators Hahn, Spencer, Muratore, Anker and Krupski

**RESOLUTION NO. 275-2019, ADOPTING LOCAL LAW
NO. 14 -2019, A LOCAL LAW TO PROHIBIT THE USE OF
POLYSTYRENE FOAM CONTAINERS IN SUFFOLK COUNTY**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on February 13, 2019, a proposed local law entitled, "**A LOCAL LAW TO PROHIBIT THE USE OF POLYSTYRENE FOAM CONTAINERS IN SUFFOLK COUNTY**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 14 -2019, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO PROHIBIT THE USE OF POLYSTYRENE
FOAM CONTAINERS IN SUFFOLK COUNTY**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that polystyrene foam is a petroleum-based plastic made from a styrene monomer. Styrene has been classified as a probable human carcinogen by the International Agency for Research on Cancer (IARC), a non-governmental body of the World Health Organization and a potential human carcinogen by the United States Department of Health and Human Services.

This Legislature finds that the Environmental Protection Agency has determined that the polystyrene manufacturing process is the fifth largest creator of hazardous waste in the United States.

This Legislature also finds and determines that polystyrene foam is a common environmental pollutant and non-biodegradable substance commonly used in food service items. There exists no practical method to recycle polystyrene and incineration of polystyrene releases toxic fumes.

This Legislature further determines that alternative biodegradable food service items are readily available to meet the vast majority of food service needs.

This Legislature finds that the use of biodegradable and/or compostable food service products will reduce the waste stream in Suffolk County and provide a commensurate reduction in waste disposal costs.

This Legislature determines that the County should encourage the use of biodegradable food service containers by all food service businesses and should restrict the use of polystyrene containers.

This Legislature also finds that polystyrene foam is also used frequently in packaging that is being transported in order to protect fragile items.

This Legislature further finds that there are many environmentally friendly alternatives that can be used when shipping delicate items.

This Legislature also determines that to further protect the County from polystyrene pollution, certain types of polystyrene items should be banned from use.

Therefore, the purpose of this law is to ban the use of certain polystyrene items in Suffolk County.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

DISPOSABLE FOOD SERVICE ITEM – cups, containers, lids, closures, trays, plates, knives, forks, spoons, stoppers, paddles, straws, place mats, napkins, dollies, wrapping materials, tooth picks and all similar articles that are intended by the manufacturer to be used once for the purposes of eating or drinking or that are generally recognized by the public as items to be discarded after one use.

FOOD SERVICE ESTABLISHMENT – a premises or part of a premises where food is prepared and served or given directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle. This definition shall include, but not be limited to, full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks, vending carts and cafeterias.

MANUFACTURER – Any natural person, firm or corporation that produces or imports either polystyrene foam or loose fill packaging.

MOBILE FOOD COMMISSARY – any facility which provides services to food service establishments that are located in or is a pushcart, stand or vehicle, including, but not limited to: access to potable water, waste water and refuse disposal, the provision of supplies for food service, storage for food and supplies, or commercial cooking facilities.

POLYSTYRENE FOAM – any blown polystyrene foam, including expanded or extruded foams (commonly referred to as Styrofoam) which are thermoplastic petrochemical materials which utilize a styrene monomer and are 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. This definition shall not include products composed of rigid polystyrene.

POLYSTYRENE LOOSE FILL PACKAGING – a void-filling packaging product made of expanded polystyrene foam that is used as a packaging fill, commonly referred to as packing peanuts.

RIGID POLYSTYRENE – thermoplastic petrochemical materials which utilize a styrene monomer but are not blown polystyrene foam.

STORE – a retail or wholesale establishment other than a food service establishment.

Section 3. Prohibition.

- A. No food service establishment, mobile food commissary or store shall possess, sell or offer for use any disposable food service item that consists of polystyrene foam. This prohibition shall not apply to packaging that is used for prepackaged foods that have been filled and sealed prior to receipt by the food service establishment, mobile food commissary, or store or to containers used to store uncooked eggs, raw meat, pork, fish, seafood or poultry sold from a butcher case or similar retail use.
- B. No manufacturer or store shall sell or offer for sale polystyrene loose fill packaging. This prohibition shall not apply to the retail sale of electronics that are packaged in polystyrene loose fill packaging prior to entering the store.

Section 4. Enforcement.

- A. This law shall be enforced by the Department of Health Services.
- B. Enforcement shall be done upon inspection by the Department of Health Services, where applicable, or upon complaint.

Section 5. Penalties.

- A. Violation of this law shall be punishable by a civil fine. First offenses shall be punishable by a fine of up to \$500. Second offenses shall be punishable by a fine of up to \$1,000. Third and subsequent offenses shall be punishable by a fine of up to \$2,500. Each violation of this law shall be considered separate and distinct.
- B. No fine shall be imposed until an alleged violator has had a hearing and opportunity to be heard by the Commissioner of the Department of Health Services.

Section 6. Rules and Regulations.

The Commissioner of the Department of Health Services is hereby authorized to promulgate rules and regulations necessary to implement and enforce this local law.

Section 7. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 8. Reverse Preemption.

This local law shall be null and void on the day that federal and statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Suffolk. The County Legislature may determine via duly enacted resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purpose of triggering the provision of this section.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(26) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as routine or continuing administration and management not including new programs or major reordering of priorities that may affect the environment. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect on January 1, 2020.

DATED: April 9, 2019

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: April 26, 2019

After a public hearing duly held on April 25, 2019
Filed with the Secretary of State on May 9, 2019

Recommendations for Reducing or Banning Foam Food Service Containers

An Analysis of Economic and Environmental Impacts of Polystyrene Policies



Equinox Project
Center for Sustainable Energy

Prepared by
Stephen Heverly, project manager
(former), Equinox Project, Center for
Sustainable Energy

Jocelyn Lu, research fellow (2016),
Equinox Project, Center for Sustainable
Energy

Anne Middleton, water resources
specialist, San Diego County Water
Authority

Sumeeta Ghal, government affairs
analyst, Center for Sustainable Energy

March 2017

Expanded polystyrene (EPS), more commonly but incorrectly known as Styrofoam™, is a lightweight, insulating plastic material commonly used in thermal insulation and food service containers. Single-use EPS food takeout ware is used in a multitude of industries, including food retail, hospitals and schools.

However, the qualities that make single-use EPS food service containers desirable also make them unsustainable. Most EPS food service containers are utilized once and discarded and ultimately make their way to the landfill or end up as litter.¹

EPS reduction policies that limit use and encourage replacement with recyclable or compostable alternatives have become increasingly popular throughout California. Supporters of EPS reduction policies and ordinances often cite the negative environmental impacts of EPS in marine ecosystems—specifically with its propensity to break into smaller pieces that are easily ingested by wildlife—and the negative economic impact on tourism, with EPS being a noticeable source of trash along California's coastline.

While many municipalities have successfully implemented regulations targeting EPS food service takeout containers, opposition has been substantial and constant. Those who oppose EPS reduction policies cite negative economic impacts on the restaurant industry—which already has a low profit margin—and the subsequent impacts on customers. They point out that litter is a human problem, not a product problem, and argue for an increase in EPS recycling rather than banning EPS takeout containers.

In this report, Equinox Project examines the environmental and economic impacts of EPS reduction policies. The report focuses on California and West Coast activities, but the information and examples can be applied in any area when considering EPS reduction strategies. This analysis is based on a review of literature, including reports produced by environmental groups, industry associations and municipalities; an analysis of existing municipal policies; and interviews with key stakeholders.

While many municipalities have successfully implemented regulations targeting EPS food service takeout containers, opposition has been substantial and constant.

EPS Food Service Containers

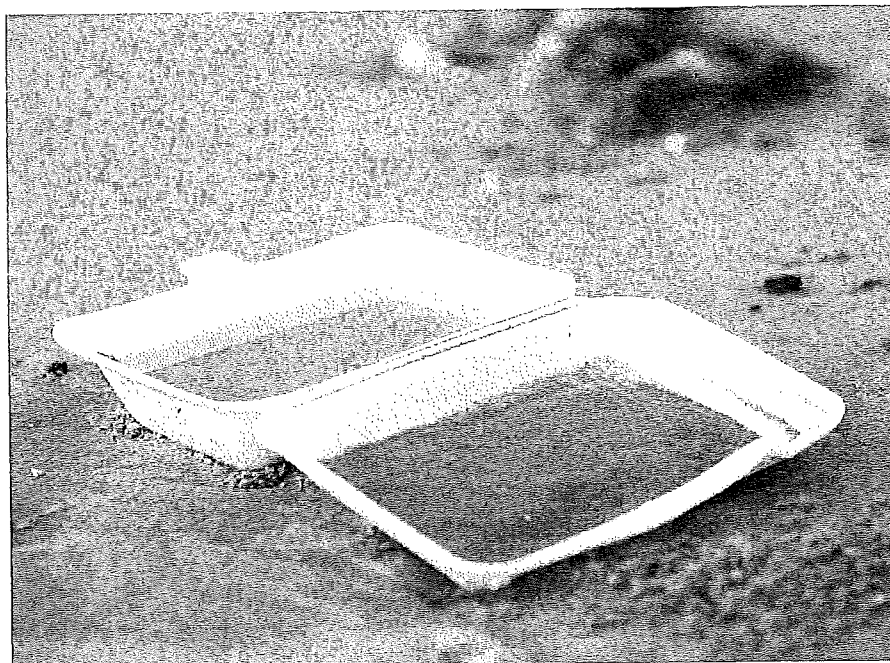
EPS is in many ways a uniquely well-suited material for use in disposable food service containers. However, there are numerous drawbacks that must be taken into consideration. Below is a review of the benefits and problems with using EPS disposable food service containers.

Benefits of EPS

- **EPS is heat resistant.** EPS does not conduct heat, which prevents the need to use multiple cups or cardboard sleeves for drinks, and keeps takeout food warm.
- **EPS is lightweight and sturdy.** Food containers made from EPS can hold heavy and oily products without leaking or tearing.
- **EPS is inert and stable.** EPS is not chemically reactive or conducive to bacterial growth. These characteristics make it sanitary and safe for food service.
- **EPS can be produced at a low cost.** This makes EPS products cheaper than many other disposable food service packaging materials. Compared to reusable dishes, EPS and other disposable materials do not require dishwashing equipment or labor.

Problems of EPS

- **EPS is not biodegradable and persists in the environment.** Researchers have not tracked EPS in the ocean long enough to document its disappearance. Instead, plastic waste tends to degrade into smaller pieces that pose an even greater threat to marine life.²
- **EPS constitutes thousands of tons of waste each year.** In 1999, an estimated 300,000 tons of EPS was landfilled in California, which represents 0.8 percent of total waste. This translates to a total disposal cost of \$30 million per year.³ Although the weight-based percentage is small, EPS is very light, so it represents a larger percentage of the total waste stream by volume.



In a trash assessment study conducted by the Southern California Coastal Water Research Project (SCCWRP) in Orange County, foamed plastics were the second most abundant form of trash found on beaches in terms of number of pieces (second only to preproduction plastic pellets).

- **EPS litter builds up in storm drains, resulting in cleanup costs.** In 2000, a litter study by the California Department of Transportation (Caltrans) found that Styrofoam (with no delineation of EPS content) was 15 percent by volume of all litter found in a sample of storm drains in the Los Angeles basin.⁴ A 2012 study found that West Coast communities located in watersheds that drain into the Pacific Ocean, regardless of their distance from the ocean, spend approximately \$13 per resident to clean up litter, much of which would otherwise become marine debris.⁵
- **EPS foam is beach litter, which can impact tourism.** In San Diego County, environmental groups such as San Diego Coastkeeper conduct regular beach cleanups. In their 2015 San Diego County Beach Cleanup Data Report, 7 percent of the waste collected was plastic foam, at 13,970 items.⁶ EPS is consistently one of the top items of concern in Coastkeeper's beach cleanup reports. In a trash assessment study conducted by the Southern California Coastal Water Research Project (SCCWRP) in Orange County, foamed plastics were the second most abundant form of trash found on beaches in terms of number of pieces (second only to preproduction plastic pellets).⁷
- **EPS foam is marine pollution, which impacts wildlife.** Plastics, such as EPS, are the most common type of marine litter worldwide; estimates of the proportion of plastic in marine debris range from 60 to 80 percent.⁸ Plastic-derived fragments, including EPS, floating through the ocean are a transport mechanism for toxic substances through the marine environment.⁹ Seabirds that feed near the ocean surface are especially prone to ingesting plastic debris that floats.
- **EPS food service containers are difficult to recycle.** While the ability to recycle large pieces of foam packaging has increased, recycling for food service containers is not widely available; in many places recycling for EPS

is nonexistent. This is largely due to a lack of viable markets for recycled EPS food service containers. In addition, once containers are dirty, they are difficult to clean for recycling. Groups like the Foam Recycling Coalition (FRC) have attempted to accelerate this process.¹⁰ In San Diego County, Escondido Disposal Inc. has started allowing their customers to place "Styrofoam Packaging" in their blue recycling bins, but emphasizes that "soiled disposable plates or cups" should not be recycled.¹¹ As of December 2014, the City of San Diego accepts block packaging Styrofoam for recycling, but not food containers or peanuts.¹²

EPS Reduction Policies

Because of the negative environmental impacts of EPS food service containers, there has been a movement to eliminate their use through a variety of EPS reduction policies. To date, cities within 10 states throughout the United States have chosen to enforce some sort of EPS reduction policy, including California, Florida, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Texas and Washington. Washington, D.C., passed an EPS ordinance in 2014 that banned the use of plastic-foam food and drink containers that became effective January 2016.¹³ Some entire countries outside of the United States have adopted EPS reduction policies, including Guyana (2014) and Haiti (2012).¹⁴

The majority of U.S.-based EPS reduction policies have been in California. To date, 99 California cities and counties have chosen to adopt some sort of EPS ordinance. (See Appendix A for a list of jurisdictions with EPS bans.) Major players include the City and County of Los Angeles (2008), City of San Jose (2013), City of San Francisco (2007) and the City of Oakland (2007); in Orange County, the coastal communities of Dana Point, Laguna Niguel and San Clemente have EPS bans. In October 2015, Solana Beach became the first city in San Diego County to ban EPS.¹⁵

EPS reduction policies range from city and county ordinances to voluntary programs. Citywide ordinances that specifically ban EPS foam food service ware constitute the most popular type of EPS reduction policy. The rest of this section provides a review of different types of EPS reduction policies at different scales.

State Level: Proposed California Ban on EPS Food Service Ware

In 2011, a statewide California ban on EPS food service containers was proposed through Senate Bill 568. The bill would have prohibited any food vendors from dispensing prepared food to customers in EPS containers, with possible exceptions for school districts and food vendors in cities or counties with EPS recycling programs (where it could be shown that at least 60 percent of the containers would, in fact, be recycled). The bill passed the Senate but failed to pass the Assembly.¹⁶ The full bill is included in Appendix B.

City Level: Citywide Ordinances

Citywide ordinances that specifically ban EPS food service containers for all businesses are the most common type of EPS reduction policy. Ordinances vary between locations.

- **Types of materials:** Bans typically focus on EPS food service containers (as opposed to EPS packaging and other materials) because they are difficult

Citywide ordinances that specifically ban EPS foam food service ware constitute the most popular type of EPS reduction policy.

Example: Ocean Friendly Restaurants Program

In San Diego, the nonprofit Surfrider Foundation runs a voluntary EPS reduction program called Ocean Friendly Restaurants. Participating restaurants agree to abide by a number of sustainability criteria, including avoiding the use of EPS. In exchange, Surfrider Foundation provides marketing by promoting the businesses as “ocean friendly” to their members. Voluntary partnerships like this can provide an incentive for restaurants to stop using EPS; however, their reach may be limited to businesses that are already making an effort to implement more sustainable practices.

to recycle due to food contamination and their takeout retail usage makes them more likely to become litter. Some bans, however, include other materials as well. For example, Solana Beach’s 2015 ban also extends to packing materials such as foam peanuts.

- **Acceptable alternatives:** There are many alternatives to EPS foam food service ware, including recyclable (paperboard), compostable (bagasse) and biodegradable (bioplastics) options. Some ordinances simply ban EPS foam food service ware and do not require the use of specific alternatives (for example, Newport Beach, 2008), while others not only ban EPS foam ware but also mandate that specific alternatives must be used, like recyclable or compostable products (for example, San Francisco, 2008).
- **Scope of ban:** In some cases, EPS bans only include municipal service contracts, rather than extending to all businesses. The City of San Diego, for example, currently has a ban on EPS for service contracts with the city. This ban is enacted through the city’s Environmentally Preferable Purchasing Program (EP3). Any vendor who does business with the city must use recycled, biodegradable or compostable materials for city business.
- **Phase-in period:** Most ordinances are implemented in phases, giving retailers time to use up any existing stock before switching. This time period differs from city to city; for example, the District of Columbia’s 2014 initiative went into effect in 2016.¹⁷
- **Enforcement:** Many ordinances have a monetary fine built in to encourage businesses to comply. The amount and severity of the fine differs from ordinance to ordinance, with some allowing for a warning buffer before charging the business (for example, San Jose, 2013).

Voluntary and Self-Regulated EPS Reduction Efforts

Voluntary programs work to educate businesses and customers about the problems with EPS food service packaging in an effort to motivate businesses to take action and customers to support those businesses. Voluntary programs have several benefits: they can be implemented immediately (there are no delays due to lawsuits or other challenges), they do not require an enforcement program and they allow more flexibility for businesses.

However, because EPS is less expensive than many alternatives, businesses may choose not to switch under a voluntary program. For example, Santa Cruz first established a voluntary EPS foam takeout food service ban in 1989. Despite ongoing education and outreach, the voluntary reductions were not meeting the target goals. As a result, after 18 years, Santa Cruz decided to adopt mandatory restrictions. Voluntary programs require extensive outreach and education for success.

Examples of EPS Ordinances in Major Cities

Analyzing how EPS ordinances have been enacted in various locations provides insight into strategies, challenges and successes in enacting EPS bans. Here, we examine three large coastal cities with vibrant restaurant communities: San Francisco, San Jose and Seattle.

San Francisco, California (2006)

In 2006, San Francisco passed a food service waste reduction ordinance prohibiting the use of EPS disposable food service ware and requiring the use of biodegradable/compostable or recyclable disposable food service ware by restaurants, retail food vendors, municipal departments and municipal contractors (see Appendix C).¹⁸ It allowed individuals and entities to apply for a one-year waiver with proof of "undue hardship."¹⁹

The ordinance affected approximately 4,500 food establishments, with compliance rates jumping from 80 percent the first year to 98 percent in 2012. Part of what made San Francisco's action unique was the extensive outreach conducted in advance. San Francisco made an effort to visit and educate every single establishment—a process that took four years.²⁰ Litter audits completed in 2007, 2008 and 2009 found a 41 percent decrease in EPS litter in streets over the three-year period.²¹

Seattle, Washington (2008)

Before passage of an EPS ordinance, the Seattle Public Utilities first studied the local environmental impact of EPS. According to a State of Washington litter study conducted in 2004, 1.6 percent of total litter collected (prior to the ban) was single-use takeout food containers. The city put the annual cost for collection, recycling, disposal and litter cleanup of disposable food items at about \$620,000.²²

Seattle's ordinance took place in two phases. The first phase (effective January 1, 2009) banned EPS food service ware without a requirement of specific alternatives. At 18 months (by July 1, 2010), all single-use food service ware had to be compostable or recyclable.²³ (For complete ordinance language, see Appendix D.) Seattle worked with waste haulers to accept more materials

In 2006, San Francisco passed a food service waste reduction ordinance prohibiting the use of EPS disposable food service ware and requiring the use of biodegradable/compostable or recyclable disposable food service ware by restaurants, retail food vendors, municipal departments and municipal contractors



San Jose chose to prohibit the use of EPS disposable food service ware by food vendors in September 2013; the ordinance became effective January 1, 2014

for recycling and signed a new collection contract that ensured acceptance of all plastic and coated paper for recycling. Seattle also expanded its limited composting program to accept all food composting for commercial and residential spaces.²⁴ In 2011, over 95 percent of businesses were in compliance, with only six establishments fined.²⁵

San Jose, California (2013)

The City of San Jose focused on EPS food service ware after finding that it comprised a majority of the EPS litter observed in storm drains.²⁶ San Jose chose to prohibit the use of EPS disposable food service ware by food vendors in September 2013; the ordinance became effective January 1, 2014 (see Appendix E). Their ordinance occurred in two vendor-specific phases. As of January 1, 2014, “national vendors” were prohibited from using EPS food service ware, with a national vendor defined as a vendor that is a chain of corporately owned establishments located in more than one state. On January 1, 2015, the ordinance expanded to all vendors within the city. Exceptions exist for restaurants experiencing a “unique packaging hardship” or “financial hardship.”²⁷ Businesses were provided with a comprehensive EPS alternatives list compiled by Cascadia Consulting for the city (Appendix F).

Impacts of EPS Reduction Policies

For EPS reduction policies to effectively mitigate the problems caused by single-use EPS food containers, several goals must be achieved.

- **Environmental goals:** Confirm that bans are successful at reducing EPS litter and that the alternative materials are actually better for the environment from a litter perspective.
- **Economic goals:** Ensure that local businesses and the economy are not negatively impacted in the long term.

In the following section we review environmental and economic impacts of EPS policies.

Environmental Impacts of EPS Reduction Policies

Analysis of EPS reduction policies in various locations found the following environmental impacts.

Success in reducing the volume of EPS food service containers in circulation

EPS reduction policies and ordinances are successful at reducing the volume of EPS food service containers used in those cities. Many of the cities contacted declared a high level of compliance with few complaints. Major players like San Francisco, Palo Alto and San Jose all boast a high percentage of compliance.

Success in reducing EPS food container litter

Where quantified, EPS ordinances are successful in reducing the quantity of EPS food container litter. For example, San Francisco experienced a 41 percent decrease in EPS litter over the three years following passage of its ordinance.²⁸ In a case study of the City of San Leandro, it found there was a 61 percent decrease in EPS food container litter after the passage of their ordinance. Other cities, like San Jose, have yet to quantify their environmental changes.

Life cycle analysis: Alternative materials to EPS should be carefully considered

While EPS is clearly problematic in terms of litter, it is cheap and easy to produce. According to a life cycle assessment study comparing different types of disposable food service containers,²⁹ the production of alternative food service containers may have a greater environmental impact than EPS production, since EPS requires relatively little energy and water to produce. However, the end-of-life impacts of EPS food containers in terms of litter and marine debris were not considered in the study. These end-of-life impacts are the fulcrum of this report as EPS often ends up as litter and does not biodegrade. If EPS food ware recycling is available, it typically requires cleaning, which uses water.

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Economic Impacts of EPS Reduction Policies

Analysis of EPS reduction policies in various locations found the following economic impacts.

Economic impacts on retailers: Increased costs of alternatives

In many cases, products made from alternative materials cost more than their EPS counterparts. The California Restaurant Association has cited as much as a three times increase for alternative packaging materials.³⁰ Any such increases vary based on geographic location and product type.

The following figure places this assertion in context by providing an overview of cost differences between commonly used EPS products and alternatives. Prices are from the food service industry website WebstaurantStore.com.

Figure 1: Price Comparison of Selected Food Service Items

Product	Official Product Name	Unit Cost	Cost Difference
8 oz. White Foam Coffee Cup	8 oz. White Foam Cup - 1000/case	\$ 0.015/cup	
8 oz. Paper Coffee Cup	Choice 8 oz. White Poly Paper Hot Cup - 1000/case	\$ 0.025/cup	\$ 0.01 cost difference
Polystyrene plate	Dart 9"WC Concorde 9" White Non-Laminated Road Foam Plate - 500/case	\$ 0.025/plate	
Paper plate	EcoChoice Biodegradable, Compostable Sugarcane/Bagasse 9" Plate - 500/case	\$ 0.056/plate	\$ 0.03 cost difference
Polystyrene Takeout Container	Dart 90HTPF1R 9" x 9" x 3" White Foam Square Take Out Container with Perforated Hinged Lid - 200/case	\$ 0.07/container	
Paper Takeout Container	EcoChoice 9" x 9" x 3" Biodegradable, Compostable Sugarcane/Bagasse 1 Compartment Takeout Box - 200/case	\$ 0.15/container	\$ 0.08 cost difference

All prices from the WebstaurantStore, February 2017

As the figure shows, prices vary by a few cents per item. For hot cups, plates and takeout containers, which are three common products restaurants and catering services purchase, the cost difference is eight cents or less between the EPS product and the paper product. Despite fears of the costs of EPS

...businesses may be able to overcome cost barriers through organized bulk purchasing, which is a cost-effective strategy already widely used by the restaurant community.

alternatives, some retailers have actually saved money by shifting away from EPS. For example, McDonald's stopped using polystyrene clamshell containers in 1990. According to the Environmental Defense Fund, this and other changes in packaging actually saved the company an estimated \$6 million per year, and in the decade following the packaging changes, McDonald's reduced restaurant waste by 30 percent.³¹

Many restaurants may find that the cost impacts of an EPS ban are negligible. In a survey of San Diego restaurants conducted by the Surfrider Foundation, only 17 percent of the 59 restaurants surveyed said they currently use EPS for takeout orders. Out of those currently using EPS for takeout, only 20 percent—or 3 percent of the overall businesses surveyed—said that an EPS ban by the city would represent an “extreme hardship” to their business. It is possible that some restaurants could lose business for failure to adhere to an EPS ban; the decision of McDonald's to end EPS use in 1990 was partially due to consumer pressure.³²

Several options exist to make a transition to EPS easier for businesses. First, businesses may be able to overcome cost barriers through organized bulk purchasing, which is a cost-effective strategy already widely used by the restaurant community. Second, some ordinances (for example, the City of San Jose) include exemptions for food vendors who may not have access to EPS alternatives or who do not have the necessary profit margin to incur the burden of those extra costs.

Economic impacts on consumers: Potential for slight cost increases

Because EPS alternatives are more costly, restaurants may have to raise their prices to cover costs, which could potentially impact consumers. In a study conducted by Cascadia Consulting for the City of Milpitas, residents were polled to see if they would continue to support a business that had to increase its prices. More than 50 percent (146 responses) said yes, 27 percent (78 responses) said maybe and 23 percent (66 responses) said no.³³

However, our analysis shows that even if businesses pass along the entire price increase to their customers, the price increase would be minimal. The following figure lists the percentages that costs would have to increase to cover the differences in costs between EPS and non-EPS packaging. As the figure shows, when the difference is considered as a percentage of the total cost of the food item, cost increases are minimal. A mandatory program ensures that compliance will not lead to a competitive cost disadvantage within the jurisdiction, assuming that everyone complies.

Figure 2: Effect of Packaging Price Increase on Food Item Cost

Packaging Price Increase	Percentage Cost Increase for \$2.00 Food Item	Percentage Cost Increase for \$6.00 Food Item	Percentage Cost Increase for \$10.00 Food Item
\$ 0.01 per Item	0.5%	0.17%	0.1%
\$ 0.03 per item	1.5%	0.5%	0.3%
\$ 0.08 per Item	4%	1.3%	0.8%

Economic impacts on city governments

Some opponents of EPS bans suggest that purchase of EPS alternatives will come at a cost to city governments. However, in reality, economic impacts on cities would be minimal. For example, in 2008 the City of Santa Monica successfully passed a ban on nonrecyclable plastic disposable food service containers, including EPS. In a presentation to the Los Angeles City Council, Santa Monica's manager of the Environmental Programs Division stated that the cost to the city for switching to non-EPS products was only \$600 a year.³⁴

The City of San Diego already has an Environmentally Preferable Purchasing Program in place. This program requires city departments to purchase environmentally preferable products whenever possible.³⁵ EPS foam food service ware is explicitly prohibited in the administrative regulation, and the City of San Diego also has written this provision into food concession contracts (for example, in Balboa Park).³⁶ Thus adoption of a broader EPS ordinance applicable to all businesses would not directly impact the City of San Diego.

Positive economic impacts of reducing EPS

EPS reduction policies may have long-term economic benefits in terms of savings from avoided cleanup of litter. The estimated \$13 per resident West Coast cities spend on annual litter cleanups may decline as EPS food container waste decreases.³⁷ Additionally, coastal areas with a large tourism economy could benefit from reduction in beach litter.

Responses to Common Arguments Against EPS Ordinances

Several arguments are commonly made against EPS ordinances. In this section we review these arguments and respond to them.

The portion of waste streams and litter comprised of EPS food service packaging is too small to justify action.

Response: EPS food service packaging may comprise only a small fraction of local waste streams and litter composition, but the long-term environmental impacts are pervasive and perpetual. There is still no conclusive evidence on how long it takes EPS to fully degrade, if it ever does.³⁸ Instead of biodegrading, EPS breaks down into small pieces that are potentially harmful to marine life. Thus it can have a disproportionately large and negative environmental impact.

EPS food packaging waste should be recycled instead of banning it entirely.

Response: EPS recycling is technically possible, and it is preferable to throwing food packaging in the landfill. However, recycling of food service EPS containers is not widely available. In a 2001 estimate provided by the Integrated Waste Management Board, only 0.2 percent of the 154,808 tons of EPS food service packaging waste that California produced was recycled.³⁹ Recycling for EPS food service containers is particularly difficult for several reasons. First, it is generally economically unfeasible. Recycling of any product relies upon the existence of markets for the raw material. There is a lack of demand for recycled EPS, which is hard to turn into new products. Second, EPS is often contaminated with food, grease and other substances, making it difficult and expensive to clean, not to mention the additional use of water, especially crucial during periods of drought. Contamination degrades the quality of the recycled foam and makes

Some opponents of EPS bans suggest that purchase of EPS alternatives will come at a cost to city governments. However, in reality, economic impacts on cities would be minimal.

recycling even less economically feasible. The City of San Diego, for example, recycles larger packaging foam but does not accept EPS food service containers in its curbside recycling program.⁴⁰

Banning EPS food service packaging is only going to change the composition of litter, not eliminate it.

Response: While there was a significant decrease in EPS litter seen in San Francisco's litter audits in 2007, 2008 and 2009, there was also an increase in alternative packaging, like "paper food wrap," "plastic packaging other" and hot and cold "paper cups."⁴¹ Littering is very much a human problem, and the inevitability of packaging items being littered likely will not change based on the product. However, many EPS alternatives are made out of biodegradable materials such as paper and thus have less of an impact on the environment.

Municipalities make rules, but they do not help businesses cope with the impacts.

Response: Many cities assist businesses in switching to EPS alternatives. Some cities help by providing a list of approved EPS alternatives along with their respective supplier. This list may identify local suppliers, the use of which should reduce shipping costs.⁴² For example, San Jose provided a list to businesses that includes type, sizes, style, vendor and price of suppliers in the area (see Appendix F).⁴³ Other cities have coordinated bulk purchasing and distribution of alternatives for small businesses, provided exemptions for businesses struggling to comply or have introduced EPS ordinances in phases to give businesses more time to adapt to the changes.

Recommendations and Conclusions

EPS bans have successfully reduced EPS litter, which reduces cleanup costs and is beneficial for wildlife and the environment.

EPS bans have successfully reduced EPS litter, which reduces cleanup costs and is beneficial for wildlife and the environment. The economic impacts of EPS reduction policies are most clearly visible in the costs that restaurants incur in order to switch to alternatives. However, the costs are minimal and many customers prefer to support businesses that do not use EPS. In addition, EPS bans may help cities save money on costs to clean up litter.

The following are recommendations for implementing citywide EPS bans and suggestions for cities that are trying to reduce EPS but are not prepared to implement a ban.

Recommendations for implementation of citywide EPS reduction ordinances

If municipalities consider implementing an ordinance that bans the use of EPS food service containers, the following are recommended steps in creation and implementation of ordinances.

1. **Research:** Examine EPS ordinances implemented in other cities of a similar size to determine what types of policies others have chosen to enforce.
2. **Scope:** Determine whether the ban will apply to all businesses or a smaller subset, for example municipal contracts only.
3. **EPS alternatives:** Evaluate whether specific alternatives will be required, such as recyclable or biodegradable/compostable products. If these

alternatives are mandated, ensure that municipal recycling and composting programs are robust enough to handle the increase in volume.

4. **Exemptions:** Determine whether there will be any potential exemptions from the EPS ordinance due to financial hardship or lack of access to alternatives.
5. **Partnerships:** Consider a partnership with the private sector to donate biodegradable food service containers to facilities that would experience an immediate hardship as a result of an EPS ban.
6. **Enforcement:** Determine how the ordinance will be enforced and on what timeline.
7. **Education:** Before the ordinance is passed, reach out to and educate retailers about the ordinance, what alternatives are available and how to purchase them.
8. **Evaluate litter impacts:** Perform a pre- and post-ordinance litter audit in order to evaluate ordinance performance and impact on litter composition.
9. **Evaluate economic impacts:** Conduct a quantitative analysis on employment, as well as revenue and costs, for retailers and consumers before and after the ordinance to better assess economic impacts of EPS reduction policies.

Other recommendations

If municipalities choose not to pass an EPS ordinance, the following actions are recommended in order to limit negative environmental impacts of EPS food service containers.

Support voluntary EPS reduction programs: Provide services to support voluntary programs that incentivize businesses to reduce their use of EPS.

Retailer education: Increase education to retailers about the negative impacts of EPS food service packaging to encourage switching to alternatives.

Consumer education: Increase education to consumers about the negative impacts of EPS food service packaging as litter in the environment. This will raise awareness and, in turn, may help to encourage behavioral change and reduce littering.

Guide for Polystyrene Reduction Policies

For a visual representation, view the *Guide for Polystyrene Reduction Policies* at www.energycenter.org/resources

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Appendix A: List of California cities with EPS bans

The following list of California cities with EPS bans was compiled by the California Restaurant Association and Californians Against Waste, and was last updated 2/15/2016.^{1,2}

- Alameda. 2008 Expanded polystyrene ban, requirement that all takeout food packaging be compostable.
- Alameda County. 2015 Polystyrene ban for all disposable food service items, with a requirement for recyclable or biodegradable replacements.
- Albany. 2008 Expanded polystyrene ban, requirement that all takeout food packaging be compostable or recyclable.
- Aliso Viejo. 2005 Government facility expanded polystyrene ban. Ordinance #2004-060
- Arcata. October 2015 Expanded polystyrene ban.
- Arroyo Grande. 2016 Expanded polystyrene ban for both distribution and sale, with a requirement that all disposable food containers be biodegradable, compostable or recyclable. Effective August 9, 2016.
- Belmont. 2012 Expanded polystyrene ban.
- Berkeley. 1988 Expanded polystyrene ban, requirement that 50% of takeout food packaging be recyclable or compostable.
- Burlingame. 2012 Expanded polystyrene ban, referencing San Mateo County's ordinance.
- Calabasas. 2008 Expanded polystyrene ban, requirement that all takeout food packaging be recyclable or compostable.
- Campbell. June 1, 2015 Expanded Polystyrene Ban.
- Capitola. 2009 Requirement that all disposable takeout food packaging be compostable.
- Carmel. 1989 Expanded polystyrene ban, requirement that 50% of takeout food packaging be recyclable, compostable or reusable.
- Carpinteria. 2009 Ban on non-recyclable plastic food takeout containers, including expanded polystyrene.
- Cupertino. 2014 Food vendors prohibited from using expanded polystyrene food takeout containers.
- Dana Point. 2012 Ban on expanded polystyrene food containers. Effective six months after adoption date.
- Del Ray Oaks. 2010 Expanded polystyrene ban, requirement that all takeout food packaging be recyclable or compostable.
- El Cerrito. January, 1, 2014 Expanded polystyrene foodware ban, requirement that food packaging be recyclable, compostable, or reusable.
- Emeryville. 2008 Expanded polystyrene ban, requirement that all takeout food packaging be recyclable or compostable.
- Encinitas. November 16, 2016 Expanded polystyrene food service ware prohibition ordinance.
- Fairfax. 1993 Expanded polystyrene ban for all restaurants and food retail vendors. Fort Bragg, March 2015 Expanded Polystyrene ban.
- Fort Bragg. 2014 Eps foodware ban effective March 2015.
- Foster City. 2012 Polystyrene ban for restaurants and food vendors.
- Fremont. 2011 Expanded polystyrene ban for food vendors, requirement that all takeout food packaging be recyclable or compostable.
- Gonzales. January 1, 2015. Expanded Polystyrene Ban.
- Greenfield. February 12, 2015 Expanded Polystyrene ban.
- Half Moon Bay. 2011 Passed an ordinance, referencing San Mateo County's polystyrene food container ban.
- Hayward. 2011 Expanded polystyrene ban for restaurant vendors, requirement that takeout food packaging be recyclable or compostable.
- Hercules. 2008 Expanded polystyrene ban.
- Hermosa Beach. 2012 Polystyrene container ban.
- Huntington Beach. 2005 Government facility expanded polystyrene ban.
- Lafayette. July 1, 2015 Expanded polystyrene ban.
- Laguna Beach. 2008 Polystyrene ban, requirement that all plastic takeout food packaging be recyclable.
- Laguna Hills. 2008 Government facility expanded polystyrene ban.

- Laguna Woods. 2004 Government facility expanded polystyrene ban.
- Livermore. 2010 Food vendors are required to use recyclable or compostable takeout food packaging.
- Los Altos. 2014 Prohibits the distribution and sale of expanded polystyrene foam food containers.
- Los Altos Hills. 2012 Ban on expanded polystyrene and non-recyclable plastic food containers.
- Los Angeles City. 2008 Government facility expanded polystyrene ban. Chapter IV, Article 13 of Municipal Code.
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- Los Gatos. 2015 Expanded Polystyrene ban.
- Malibu. 2005 Expanded polystyrene ban.
- Manhattan Beach. 2013 Adopted a polystyrene food packaging ban.
- Marin County. 2010 Expanded polystyrene ban.
- Marina. 2011 Expanded polystyrene food container ban. Requires the use of recyclable or compostable takeout food packaging unless alternatives are unavailable.
- Mendocino County. March 1, 2015 Expanded Polystyrene ban.
- Menlo Park. 2012 Adopted San Mateo County ordinance by reference in August of 2012.
- Millbrae. 2008 Polystyrene ban, requirement that all plastic takeout food packaging be recyclable or compostable.
- Mill Valley. 2009 Food vendors and city facilities are prohibited from using expanded polystyrene foam food containers.
- Monterey City. 2009 Expanded polystyrene ban, requirement that all takeout food packaging be recyclable or compostable.
- Monterey County. 2010 Expanded polystyrene ban.
- Morgan Hill. 2014 An expanded polystyrene ban in restaurants and other food facilities.
- Morro Bay. 2016 Expanded polystyrene ban for both distribution and sale, with a requirement that all disposable food containers be biodegradable, compostable or recyclable. Effective May 1, 2016.
- Mountain View. 2014 A ban on expanded polystyrene products, either distributed in food facilities or sold in retailers.
- Newport Beach. 2008 Expanded polystyrene ban.
- Novato. 2013 Expanded polystyrene ban.
- Oakland. 2007 Expanded polystyrene ban, requirement that all takeout food packaging be compostable.
- Ojai. January 28, 2014 Expanded polystyrene ban for all stores and vendors.
- Orange County. 2005- 2006 Government facility expanded polystyrene ban, including cities of Aliso Viejo, Huntington Beach, Laguna Hills, Laguna Woods, San Clemente, San Juan Capistrano and the Santa Margarita Water District.
- Pacific Grove. 2008 Expanded polystyrene ban, requirement that all takeout food packaging be recyclable or compostable.
- Pacifica. 2010 Expanded polystyrene ban.
- Palo Alto. 2010 Expanded polystyrene ban.
- Pasadena. 2016 Polystyrene ban for all food providers. Effective July 18, 2017.
- Pismo Beach. 2015 Expanded polystyrene disposable food container ban, as well as a ban on the sale of any expanded polystyrene products. Effective January 15, 2016.
- Pittsburg. 1993 Prohibit the use of CFC processed polystyrene ban.
- Pleasanton. 2013. Bans food vendors from using EPS containers.
- Portola Valley. 2012 Expanded polystyrene ban, referencing the San Mateo County ordinance.
- Redwood City. 2013 Expanded polystyrene ban, referencing the San Mateo County ordinance.
- Richmond. 2010 Expanded polystyrene ban for takeout food packaging in restaurants.
- Salinas. 2012 Expanded polystyrene ban on takeout containers.
- San Bruno. 2010 Polystyrene ban, requirement that all plastic takeout food packaging be recyclable or compostable.
- San Carlos. 2012 Adopted the San Mateo County ordinance by reference.
- San Clemente. 2011 Prohibits the use of expanded polystyrene.
- San Francisco. 2007, 2016 Expanded polystyrene ban, requirement that all takeout food packaging be recyclable or compostable. On July 19th, 2016, the Board of Supervisors expanded the ban to include the sale of non-recyclable non-compostable polystyrene food service ware, egg cartons, meat trays, and packing materials, as well as coolers,

pool or beach toys, and floats or buoys that are not encapsulated in a more durable material. San Francisco now has the most comprehensive ban in the nation. Effective January 1, 2017.

- San Jose. January 1, 2014 for chain restaurants, 1/1/2015 for all other food establishments. Expanded polystyrene ban in all food establishments.
- San Juan Capistrano. 2004 Government facility expanded polystyrene ban.
- San Leandro. 2012 Expanded polystyrene food container ban.
- San Luis Obispo City. December 16, 2015 Expanded polystyrene ban.
- San Mateo City. 2013 Polystyrene food packaging ban based on the San Mateo County model was adopted in May 2013.
- San Mateo County. 2008, 2011 Government facility polystyrene ban passed in 2008. An expanded ban for the rest of unincorporated San Mateo County effective July 1, 2011.
- San Rafael. 2013 Polystyrene container ban.
- Santa Clara County. 2013 Expanded polystyrene takeout container ban.
- Santa Cruz City. 2008, 2012 In 2012 the sale of all foam polystyrene products is prohibited. In 2008, the City banned the distribution of expanded polystyrene food containers, with a requirement that the food packaging be recyclable or compostable.
- Santa Cruz County. 2008, 2012 Expanded polystyrene ban, requirement that all takeout food packaging be recyclable or compostable. The ban was expanded to prohibit the sale of all expanded polystyrene products in stores on April 17, 2012.
- Santa Monica. 2007 Polystyrene ban with requirement that all plastic takeout food packaging be recyclable.
- Sausalito. 2008 Food vendors and city facilities and events are prohibited from using expanded polystyrene foam food containers.
- Scotts Valley. 2009 Expanded polystyrene ban, requirement that all takeout food packaging be recyclable or compostable.
- Seaside. 2010 Polystyrene ban with requirement that all plastic takeout food packaging be recyclable or compostable.
- Solana Beach. 2015 Ban on polystyrene and non-recyclable plastic disposable food service containers as well as ban on EPS packing materials.
- Sonoma City. 1989 Government facility expanded polystyrene ban. Chapter 7.30 of the Municipal Code.
- Sonoma County. 1989 Government facility expanded polystyrene ban. Title 19, Section 19-6.1 of Municipal Code.
- South San Francisco. 2008 Polystyrene ban.
- Sunnyvale. 4/22/2014 Expanded polystyrene ban in restaurants
- Ukiah. March 1, 2015. Expanded polystyrene ban.
- Ventura County. 2004 Government facility expanded polystyrene ban.
- Walnut Creek. 12/18/2014 Expanded polystyrene takeout packaging ban.
- Watsonville. 2009 Expanded polystyrene ban, requirement that all takeout food packaging be recyclable or compostable.
- West Hollywood. 1990 Polystyrene ban for restaurants and food vendors.
- Yountville. 1989 Expanded polystyrene food container ban.

1 California Restaurant Association, "Local Expanded Polystyrene Bans." Available at: http://www.calrest.org/uploads/2/6/1/5/26153474/7.13.2015_cra_local_eps_bans_list.pdf

2 Californians Against Waste, "Polystyrene: Local Ordinances." Available at: <http://www.cawrecycles.org/polystyrene-local-ordinances/>

Appendix B: California Senate Bill 568

Below is the complete language of the California Senate Bill 568, introduced in 2011.¹

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 15, 2011

AMENDED IN SENATE MAY 23, 2011

AMENDED IN SENATE APRIL 14, 2011

CALIFORNIA LEGISLATURE — 2011–2012 REGULAR SESSION

SENATE BILL

No. 568

Introduced by Senator Lowenthal
(Coauthor(s): Assembly Member Brownley, Chesbro, Skinner, Wieckowski)

February 17, 2011

An act to add Chapter 6.6 (commencing with Section 42391) to Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 568, as amended, Lowenthal. Recycling: polystyrene food containers. Existing law requires all rigid plastic bottles and rigid plastic containers sold in the state to be labeled with a code that indicates the resin used to produce the rigid plastic bottle or rigid plastic container. The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires every rigid plastic packaging container, as defined, sold or offered for sale in this state to generally meet one of specified criteria. This bill would prohibit a food vendor, on and after January 1, 2016, from dispensing prepared food to a customer in a polystyrene foam food container and would define related terms. The bill would provide that a food vendor that is a school district is not required to comply with the bill's requirements until July 1, 2017, and would allow a food vendor that is a school district to dispense prepared food to a customer in a polystyrene foam food container after that date if the governing board of the school district elects to adopt a policy to implement a verifiable recycling program for polystyrene foam food containers, which would be renewable, as specified. The bill would also allow a food vendor to dispense prepared food to a customer in a polystyrene foam food container after January 1, 2016, in a city or county if the city or county elects to adopt an ordinance establishing a specified recycling program for polystyrene foam food containers, which would be operative, as specified.

The bill would allow a food vendor to dispense prepared food to a customer in a polystyrene foam food container in a city or county if that food vendor demonstrates to the satisfaction of the city or county that compliance with the requirements of the bill would impose an undue economic hardship, as defined. The bill would authorize a city or county to exempt the food vendor until January 1, 2017, or for a period of not more than one year from the date of the demonstration, and would allow a food vendor to reapply for additional one-year exemptions from the bill's requirements.

DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Chapter 6.6 (commencing with Section 42391) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 6.6. Polystyrene Foam Food Containers

42391.

For the purposes of this chapter, the following terms have the following meanings:

- (a) "Customer" means a person obtaining prepared food from a food vendor.
- (b) (1) "Polystyrene foam food container" means a container made of blown polystyrene and expanded and extruded foam that are thermoplastic petrochemical materials utilizing the styrene monomer and the container meets all of the following conditions:
 - (A) Polystyrene is the sole resin used to produce the rigid plastic packaging container.
 - (B) The container is required to be labeled with a "6" pursuant to subdivision (a) of Section 18015.
 - (C) The container is used, or is intended to be used, to hold prepared food.
- (2) A polystyrene foam food container may be processed by a number of techniques, including, but not limited to, fusion of polymer spheres or expandable bead polystyrene.
- (3) Polystyrene foam may also be referred to as Styrofoam™, a Dow Chemical Company trademarked form of polystyrene foam insulation.
- (4) A polystyrene foam food container includes, but is not limited to, a cup, bowl, plate, tray, or clamshell container that is intended for single use.
- (c) (1) "Food vendor" means a food facility, as defined in Section 113789 of the Health and Safety Code, including, but not limited to, a restaurant or retail food and beverage vendor located or operating within the state.
- (2) A food vendor also includes, but is not limited to, an itinerant restaurant, pushcart, vehicular food vendors, a caterer, a cafeteria, a store, a shop, a sales outlet, or other establishment, including a grocery store or a delicatessen.
- (3) A food vendor does not include a correctional facility, including, but not limited to, a state prison, county jail, facility of the Division of Juvenile Justice, county- or city-operated juvenile facility, including juvenile halls, camps, or schools, or other state or local correctional institution.
- (d) "Prepared food" means food, as defined in Section 109935 of the Health and Safety Code, including a beverage, that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption. Prepared food includes "ready-to-eat food," as defined in Section 113881 of the Health and Safety Code.
- (1) "Prepared food" does not include raw, butchered meats, fish, or poultry that is sold from a butcher case or a similar retail appliance.
- (2) "Prepared food" may be eaten either on or off the premises, and includes takeout food.
- (e) "Recycled" means the product or material is reused in the production of another product and is diverted from disposal in a landfill.
- (f) "Undue economic hardship" means a situation unique to a food vendor in which there are no reasonable alternatives to polystyrene foam food containers in use by that food vendor and compliance with Section 42392 would cause significant economic hardship to that food vendor.

42392.

Except as provided in Sections 42393 and, 42394, and 42394.5, on and after January 1, 2016, a food vendor shall not dispense prepared food to a customer in a polystyrene foam food container.

42393.

(a) A food vendor that is a school district, as defined in Section 80 of the Education Code, is not required to comply with Section 42392 until July 1, 2017.

(b) On and after July 1, 2017, a food vendor that is a school district may dispense prepared food to a customer in a polystyrene foam food container if the governing board of the school district elects to adopt a policy to implement a verifiable recycling program for polystyrene foam food containers under which at least 60 percent of the polystyrene foam food containers purchased annually by that school district will be recycled.

(c) If the governing board of a school district elects to adopt a policy to implement a recycling program pursuant to subdivision (b), the recycling program shall be effective for not more than five years, and the school district may elect to renew the policy implementing the program continuously for a period not to exceed five years if, at the time of renewal, the school district demonstrates with empirical data that the recycling program is achieving the goal of recycling at least 60 percent of the polystyrene foam food containers generated annually by the school district.

42394.

(a) On and after January 1, 2016, a food vendor may dispense prepared food to a customer in a polystyrene foam food container in a city or county if either of the following apply:

(1) The city elects to adopt an ordinance establishing a recycling program for polystyrene foam food containers for which the city makes a finding, by a majority vote of the city council at a public hearing, that, based on empirical data, at least 60 percent of the polystyrene foam food containers generated annually in the city will be recycled by that program.

(2) The county elects to adopt an ordinance establishing a recycling program for polystyrene foam food containers for which the county makes a finding, by a majority vote of the board of supervisors at a public hearing, that, based on empirical data, at least 60 percent of the polystyrene foam food containers generated annually in the county will be recycled by that program.

(b) If a city or county elects to adopt an ordinance pursuant to this section, the ordinance shall be operative for no more than five years, and the city or county may elect to readopt the ordinance continuously for an operative period not to exceed five years if, at the time of adoption, the city or county demonstrates with empirical data that the ordinance is achieving the goal of recycling at least 60 percent of the polystyrene foam food containers generated annually in its jurisdiction.

42394.5.

(a) A food vendor may dispense prepared food to a customer in a polystyrene foam food container in a city or county if that food vendor demonstrates to the satisfaction of the city or county that compliance with Section 42392 will impose an undue economic hardship. A city or county may exempt the food vendor pursuant to this subdivision from the requirements of Section 42392 until January 1, 2017, or not more than one year from the date of the demonstration, whichever date is later.

(b) A food vendor granted an exemption pursuant to subdivision (a) may reapply to the city or county prior to the expiration of the exemption.

(c) The city or county may grant additional exemptions, each exemption not to exceed one year, from the requirements of Section 42392, if the food vendor demonstrates, at the time of application, to the satisfaction of the city or county, continued undue economic hardship.

42395.

This chapter does not preempt the authority of a county, city, or city and county to adopt and enforce additional single-use takeout food packaging ordinances, regulations, or policies that are more restrictive than the applicable standards required by this chapter.

42396.

The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

1 California Legislative Information. "SB-568 Recycling: polystyrene food containers.(2011-2012)." Available at: http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=2011201205B568

Appendix C: San Francisco EPS Ordinance

San Francisco's Food Service Waste Reduction Ordinance addresses EPS amongst other waste reduction measures. Full text available at: <https://law.resource.org/pub/us/code/city/ca/SanFrancisco/Environment%20Code/chapter16.pdf> and below. More information on San Francisco's Food Service Waste Reduction Ordinance is available at: <http://www.sfgov2.org/index.aspx?page=886>

CHAPTER 16: FOOD SERVICE WASTE REDUCTION ORDINANCE

SEC. 1601. TITLE.

This Ordinance shall be known as the Food Service Waste Reduction Ordinance. (Ord. 29506, File No. 060944, App. 11/29/2006)

SEC. 1602. DEFINITIONS.

(a) "Affordable" means purchasable for not more than 15 percent more than the purchase cost of the non-Biodegradable non-Compostable or nonrecyclable 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) "Compostable" means all the materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soilconditioning material, mulch) in a safe and timely manner in San Francisco's Composting Program. Compostable Disposable Food Service Ware must meet ASTM Standards for compostability and any bioplastic or plastic like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that San Francisco's compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic. For the purposes of this ordinance the term biodegradable shall have the same meaning as compostable. This ordinance uses the terms biodegradable and compostable interchangeably and in all cases whether the terms are used separately, in the disjunctive or in the conjunctive they shall always be interpreted and applied consistent with this definition of the term "compostable".

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

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

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

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

(h) "Disposable Food Service Ware" means all containers, bowls, plates, trays, carton, cups, lids, straws, forks, spoons, knives, napkins and other items that are designed for one-time use for Prepared Foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Vendors. The term "Disposable Food Service Ware" does not include items composed entirely of aluminum or polystyrene foam coolers and ice chests that are intended for reuse.

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

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

(k) "Polystyrene Foam" means blown polystyrene and expanded and extruded foams (sometimes called Styrofoam™) 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-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

- (l) "Prepared Food" means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared (collectively "prepared") within the City and County of San Francisco for individual customers or consumers. For the purpose of this Chapter, Prepared Food includes take-out food, but does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance.
- (m) "Recyclable" means material that can be sorted, cleansed, and reconstituted using San Francisco's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
- (n) "Restaurant" means any establishment located within the City and County of San Francisco that sells Prepared Food for consumption on, near, or off its premises. For purposes of this Chapter, the term includes a Restaurant operating from a temporary facility, cart, vehicle or mobile unit.
- (o) "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 and County of San Francisco that sells Prepared Food. (Ord. 295-06, File No. 060944, App. 11/29/2006)

SEC. 1603. PROHIBITED DISPOSABLE FOOD SERVICE WARE.

- (a) Food Vendors may not sell Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam.
- (b) City Facility Food Providers may not provide Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam.
- (c) City Departments may not purchase, acquire or use Disposable Food Service Ware that contains Polystyrene Foam.
- (d) City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. (Ord. 295-06, File No. 060944, App. 11/29/2006)

SEC. 1604. REQUIRED BIODEGRADABLE/COMPOSTABLE OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE.

- (a) All Food Vendors using any Disposable Food Service Ware shall use a suitable Affordable alternative Biodegradable/Compostable or Recyclable product, unless there is no suitable Affordable Biodegradable/Compostable or Recyclable product available as determined by the City Administrator in accordance with this subsection. Not later than 30 days before the operative date of this Chapter, and after a public hearing, the City Administrator shall adopt a list of available suitable Affordable Biodegradable/Compostable or Recyclable alternatives for each product type. The City Administrator shall regularly update the list.
- (b) All City Facility Food Providers and City departments using any Disposable Food Service Ware shall use Biodegradable/Compostable or Recyclable Disposable Food Service Ware unless there is no Affordable Biodegradable or Compostable product available as determined by the City Administrator in accordance with Subsection 1604(a).
- (c) City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a). (Ord. 295-06, File No. 060944, App. 11/29/2006)

SEC. 1605. IMPLEMENTATION; CITY CONTRACTS AND LEASES.

- (a) The City Administrator is authorized to promulgate regulations, guidelines and forms and to take any and all other actions reasonable and necessary to implement and enforce this Chapter.
- (b) Any person may seek a waiver from the requirements of Section 1604 of this Chapter by filing a request on a form specified by the City Administrator. The City Administrator, consistent with this Chapter, may waive any specific requirement of this Chapter for a period of up to one year if the person seeking the waiver has demonstrated that strict application of the specific requirement would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The City Administrator's decision to grant or deny a waiver shall be in writing and shall be final.
- (c) All City contracts and leases, including without limitation, contracts with City Facility Food Providers, shall contain the following minimum language: "Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this agreement as though fully set forth. This provision is a material term of this

agreement. By entering into this agreement, contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of contractor's failure to comply with this provision." (Ord. 295-06, File No. 060944, App. 11/29/ 2006)

SEC. 1606. ENFORCEMENT AND PENALTIES.

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

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

(c) The City Administrator may issue an administrative civil liability citation to such person in an amount not exceeding \$100.00 for the first violation, an amount not exceeding \$200.00 for the second violation in the same year, and an amount not exceeding \$500.00 for each subsequent violation in the same year. In determining administrative civil penalties, the City Administrator shall consider the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, the frequency of past violations, any action taken to mitigate the violation, and the financial burden to the violator. Any person to whom the City Administrator issues a written warning of violation or an administrative civil liability citation may request an administrative hearing to appeal such warning or determination of liability. Not later than 30 days before the operative date of this Chapter, and after a public hearing, the City Administrator shall promulgate rules and procedures for requesting and conducting an administrative hearing under this Chapter. In any administrative hearing under this Article, all parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all documents and other information the City relies on in the proceeding, and to confront and cross-examine any witnesses against them. A decision by the hearing officer shall be final. Any person assessed a penalty under this subsection may contest such decision to the Superior Court within 20 days after service of the City's decision.

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

(e) The City may not recover both administrative and civil penalties pursuant to Subsections (c) and (d) of this Section for the same violation. Penalties collected under Subsections (c) and (d) of this Section, which may include recovery of enforcement costs, shall be used to fund implementation and enforcement of this Chapter. (Ord. 295-06, File No. 060944, App. 11/29/2006)

SEC. 1607. REPORT TO THE BOARD OF SUPERVISORS.

No later than June 1, 2008, the Director of the Department of the Environment, in consultation with the City Administrator and with input from members of the public, shall submit to the Board of Supervisors a report recommending changes, if any, to this Chapter, including whether the ban imposed by this Chapter should be extended to other products, as supported by the report. If the Director recommends banning additional products, the report must include an estimate of the costs and benefits of compliance with a ban on additional products, including the increased costs to the City as well as to the City's food service industry. (Ord. 295-06, File No. 060944, App. 11/29/2006)

SEC. 1608. OPERATIVE DATE.

This ordinance shall become operative on June 1, 2007. (Ord. 295-06, File No. 060944, App. 11/29/2006)

SEC. 1609. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Chapter 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 the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional. (Ord. 295-06, File No. 060944, App. 11/29/ 2006)

SEC. 1610. 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. (Ord. 295-06, File No. 060944, App. 11/29/2006)

SEC. 1611. UNDERTAKING FOR THE GENERAL WELFARE.

In undertaking the Implementation of this Chapter, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Ord. 295-06, File No. 060944, App. 11/29/ 2006)

Appendix D: Seattle EPS Ordinance

The full text of Seattle's EPS ordinance is below. More information, including information for businesses and resources on compostable packaging, is available at: <http://www.seattle.gov/util/ForBusinesses/SolidWaste/FoodYardBusinesses/Commercial/FoodPackagingRequirements/index.htm>

Council Bill Number: 116853

Ordinance Number: 123307

AN ORDINANCE relating to the City of Seattle's solid waste system, providing for the collection of compostable and recyclable food service ware from certain food service businesses, and amending Section 21.36.086 of the Seattle Municipal Code.

Status: Passed

Date passed by Full Council: May 17, 2010

Vote: 7-0 (Excused: Burgess, Conlin)

Date filed with the City Clerk: May 24, 2010

Date of Mayor's signature: May 20, 2010

Date introduced/referred to committee: May 3, 2010

Committee: Seattle Public Utilities and Neighborhoods

Sponsor: O'BRIEN

Text:

AN ORDINANCE relating to the City of Seattle's solid waste system, providing for the collection of compostable and recyclable food service ware from certain food service businesses, and amending Section 21.36.086 of the Seattle Municipal Code.

WHEREAS, the Washington State Legislature in RCW 70.95.010(8)(a) established waste reduction as the first priority for the collection, handling, and management of solid waste; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(6)(c) found it is the responsibility of city governments "to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies"; and

WHEREAS, the City Council in 2007 adopted, the Mayor concurring, Resolution 30990, which reaffirmed the City's 60% recycling goal and set a longer-term goal of 70% recycling along with targets for waste reduction; and

WHEREAS, Resolution 30990 called for studies on how to reduce Seattleites' use of hard-to-recycle materials, many of them plastics, and specifically required Seattle Public Utilities ("SPU") to propose strategies, including bans, to discourage the use and landfilling of disposable food service containers and food service ware; and

WHEREAS, SPU has completed those studies, finding that the production, use and disposal of expanded polystyrene food service products and disposable food service ware have significant adverse impacts on the environment and that compostable or recyclable alternative products are available; and

WHEREAS, costs associated with the use and disposal of one-time-use food service ware in Seattle creates burdens on the City's solid waste disposal system; and

WHEREAS, to discourage and decrease the use of certain disposable food service ware in the city, the City enacted Ordinance 122751, amending Chapter 21.36 of the Seattle Municipal Code, to prohibit food service businesses from selling or providing food in or with one-time-use disposable food service ware; and

WHEREAS, to divert from landfill and further promote the efficient collection and processing of compostable and recyclable food service ware, the City intends to adopt requirements for such collection and processing; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 21.36.086 of the Seattle Municipal Code is amended as follows:

21.36.086 Compostable or recyclable food service ware required

A. Effective July 1, 2010, food service businesses shall be prohibited from selling or providing food, for consumption on or off the premises, in or with disposable food service ware. Acceptable alternatives for prohibited disposable food service ware shall be compostable or recyclable.

B. Food service businesses providing food for consumption on premises using compostable or recyclable food service ware must provide conveniently located and clearly marked containers where customers may discard compostable and recyclable food service ware and must provide for the collection and delivery of these materials to appropriate processing facilities.

C. On such commercially reasonable terms as determined by the landlord, landlords of food service businesses subject to the requirements of this section shall make adequate space and/or services available to such food service businesses for the collection and pick up of the compostable and recyclable materials generated by such food service businesses.

D. Landlords operating food courts or similar settings that include food service businesses and common areas set aside and maintained for the consumption of food and beverages shall provide in such common areas the services required in subsection B of this section.

E. The Director is authorized to promulgate rules, in accordance with the provisions of the Administrative Code, SMC Chapter 3.02, for purposes of interpreting and clarifying the requirements of this section. Such rules may provide temporary waivers or other relief that apply to use of certain food service ware products for an initial period of up to one year from July 1, 2010, with the option for an up to one year extension to expire no later than June 30, 2012. Such waivers or relief shall be granted only for circumstances where commonly used recycling and composting technology cannot process the food service ware, or where suitable alternative products that meet performance and food health and safety standards are unavailable.

F. ((B)). For purposes of this section, the following definitions shall apply.

1. "Compostable" means made solely of organic substances that break down into a stable product due to the action of bacteria in a controlled, aerobic commercial process that results in a material safe and desirable as a soil amendment meeting the compost quality standards found under WAC 173-350-220 for metals, physical parameters, pathogens, manufactured inert material and other testing parameters set by the local Health Department and has been found to degrade satisfactorily at the composting facility receiving the material.

2. "Disposable ~~((plastic))~~ food service ware" means non-compostable and non-recyclable containers, plates, "clamshells," serving trays, meat and vegetable trays, hot and cold beverage cups, wrappers, and utensils that are ~~((made of plastic or plastic-coated paper and))~~ intended only for one-time use, including so called biodegradable products where any portion is not compostable.

3. "Food service businesses" means full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts, business or institutional cafeterias, and other businesses, selling or providing food within the City of Seattle for consumption on or off the premises.

4. "Recyclable" means made solely of materials that are capable of being separated from a waste stream by a food service business and made available for collection and delivery to a processor for reuse or remanufacture into the same or other products.

5. "Consumed on premises" means consumption of food or beverages in the public areas of a food service business, common areas of a food court, outside seating areas and parking lots exclusively for customers of the food service business, rather than taken out for consumption elsewhere.

6. "Food court" means an area of a retail mall, office building, sports facility or other premises where one or more food service businesses are located and customer seating for dining and consumption of beverages is provided in a common area.

Section 2. This ordinance shall take effect and be in force 30 days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Appendix E: San Jose EPS Ordinance

Complete text available at: <http://sanjoseca.gov/DocumentCenter/View/31718>

ORDINANCE NO. 29298

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 9.10 OF TITLE 9 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW PART 17 TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS

WHEREAS, plastic debris and in particular expanded polystyrene foam ("EPS") is a distinctive litter concern because it is lightweight, floats, and readily travels from land to inland waterways and out to the ocean where it breaks down into small pieces to be mistaken for food by birds and other marine wildlife; and

WHEREAS, EPS disposable food service ware comprises a majority of EPS litter observed in storm drains; and

WHEREAS, the proposed phase-out of EPS disposable food service ware would require food vendors to use alternative disposable food service ware that should result in a reduction of EPS litter, reduce the risk of harm to aquatic wildlife, and improve water quality in the San Jose creeks and the Southern San Francisco Bay; and

WHEREAS, on August 27, 2013, prior to taking action on the Ordinance, the City Council reviewed, considered and adopted by separate Council resolution, the proposed Negative Declaration analyzing the regional environmental impacts of the Ordinance to phase-out of EPS disposable food service ware (File NO. PP13-043);

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 9.10 of Title 9 of the San Jose Municipal Code is hereby amended by adding a new Part, to be numbered, entitled and to read as follows:

Part 17: Polystyrene Foam Disposable Food Service Ware

9.10.3100 Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Part.

A. "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving prepared food and includes, but is not limited to, plates, trays, cups, bowls, trays, and hinged or lidded containers (clamshells). Disposable food service ware does not include straws, utensils, drink lids, or ice chests.

B. "Food vendor" means any establishment located in the City of San Jose that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand. A "food vendor" does not include a food service provider that is associated with either a nonprofit organization with Section 501(c)(3) status under the Internal Revenue Code or a public agency sponsored program.

C. "National food vendor" means a food vendor that is a chain of franchised or corporate owned establishments located in more than one state.

D. "Polystyrene foam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). "Polystyrene foam" is commonly made in disposable food service ware products. "Polystyrene foam" does not include clear or solid polystyrene (oriented polystyrene).

E. "Prepared food" means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. "Prepared food" does not include (1) any raw, uncooked meat products or fruits or vegetables unless it can be consumed without further preparation; or (2) prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.

9.10.3110 Polystyrene Foam Disposable Food Service Ware Prohibited

A. No national food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2014.

B. No food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2015.

9.10.3120 Exemptions to the Polystyrene Foam Disposable Food Service Ware Prohibition

A. A national food vendor or food vendor may seek an exemption from the prohibition under Section 9.10.3110 due to a "unique packaging hardship" under Subsection B of this Section or a "financial hardship" under Subsection C of this Section.

B. The national food vendor or food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a "unique packaging hardship" exemption.

C. The national food vendor or food vendor must demonstrate both of the following to qualify for a "financial hardship" exemption: (1) a gross income under \$300,000 on their annual income tax filing for the most recent tax year, and (2) with respect to each specific and necessary polystyrene foam disposable food service ware, that there is no feasible alternative that would cost the same or less than the polystyrene foam disposable food service ware.

D. The national food vendor or food vendor may submit a written application for an exemption on a form provided by the Department of Environmental Services. The Director of Environmental Services or designee ("Director") may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The national food vendor or food vendor must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Director shall be final and is not subject to appeal.

SECTION 2. This ordinance shall be effective on January 1, 2014.

PASSED FOR PUBLICATION of title this 27th day of August, 2013, by the following vote:

AYES: CAMPOS, CHU, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, ROCHA; REED.

NOES: CONSTANT, KHAMIS.

ABSENT: NONE.

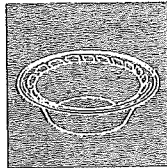
DISQUALIFIED: NONE

Appendix F: List of EPS alternatives compiled for City of San Jose

San Jose has compiled a set of materials to assist businesses in complying with the city's EPS ordinance³.

The city provides a document listing "Alternatives to Foam Food Containers" for different product categories. The complete document is available at: <http://www.sanjoseca.gov/DocumentCenter/View/34104>. Along with this document the city provides a Reference Guide, available at: <http://www.sanjoseca.gov/DocumentCenter/View/46910>. The reference guide provides a glossary of products, glossary of materials, and a listing of vendors.

Below is a sample of the "Alternatives to Foam Food Containers" document.



Alternatives to Foam Food Containers

PRODUCT CATEGORY: BOWLS

Product Availability and Pricing



SIZE / MATERIAL	IMAGE	VENDOR	PRODUCT NAME	Nº.	RETAIL		BULK 1		BULK 2		HEAT SAFE?
					UNITS / CASE	PRICE / UNIT	UNITS / CASE	PRICE / UNIT	UNITS / CASE	PRICE / UNIT	
6 oz Bagasse		Blomasspackagingstore.com	BagasseWare 6-oz. Flat Bottom Round Bowl (4.5" x 1.5")	226-1015-6 oz	1,000	\$0.07					
8 oz Miscellaneous Plastic		Foodservicewarehouse.com	Dart (DCC SBWWF) - 6 oz Impact Plastic Bowl	DCC SBWWF	1,000	\$0.09					
11.5 oz Wheat Straw		Worldcentric	11.5oz Plant Fiber Bowls (Lid sold separately: BOL-SC-U24)	BO-SC-U11-11.5oz	20	\$0.17	1,000	\$0.06			
12 oz Bagasse		Blomasspackagingstore.com	BagasseWare 12-oz. Round Bowl (6.25" x 1.5")	357-8L-12	1,000	\$0.07					
12 oz Bagasse		Cash&Carry	EARTHCHOICE BOWL MOLDED FIBER 12Z	22709	125	\$0.07	1,000	\$0.06			
12 oz Bagasse		Costco Online	12 oz. Compostable Sugarcane Bowl	862043	200	\$0.05					
12 oz Bagasse		Costco Online	eco Kloud 12 oz Compostable Bowl Bagasse Sugarcane	487730	1,000	\$0.06					
12 oz Bagasse		Foodservicewarehouse.com	Biodegradable 100 Percent Sugarcane Round Bowl	WEECEP BL12	1,000	\$0.14					
12 oz Fiber		Costco Online	Dixie Ultra Paper Bowl 12oz 175ct	1115	100	\$0.06	175	\$0.06			

KEY: = Hot or Cold Contents = Microwaveable * Heat Safe indicates that product is suitable for hot food and/or hot liquids. Review full product details prior to purchase.

Alternatives to Foam Food Containers

PRODUCT CATEGORY: BOWLS

¹ City of San Jose, "Foam Food Container Ordinance." Available at: <http://www.sanjoseca.gov/eps>

Research for this paper was conducted by the Equinox Project, an initiative of the Center for Sustainable Energy.



CSE thanks Patagonia Cardiff for providing underwriting for this research project.



This report is available online at energycenter.org/equinox.

Recommendations for Reducing or Banning Foam Food Service Containers, Center for Sustainable Energy, San Diego, CA
© March 2017, Center for Sustainable Energy

Offices

San Diego (Headquarters)

9325 Sky Park Court, Suite 100
San Diego, CA 92123
Phone: 858-244-1177

Los Angeles

617 West 7th Street, Suite 305
Los Angeles, CA 90017
Phone: 213-481-6115

Oakland

426 17th Street, Suite 700
Oakland, CA 94612
Phone: 415-692-1500

Boston

50 Milk Street, 16th Floor
Boston, MA 02109
Phone: 857-243-2021

EnergyCenter.org

ORDINANCE NO. 432

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING TITLE 9 (PUBLIC PEACE AND WELFARE) OF THE MALIBU MUNICIPAL CODE, CHAPTER 9.24 TO REGULATE PLASTIC STRAWS, STIRRERS, AND CUTLERY

The City Council of the City of Malibu does ordain as follows:

SECTION 1. Recitals.

A. The state Legislature recognized that littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs. (California Public Resources Code §42355.) The state Legislature further declared its intent to ensure that environmental marketing claims, including claims of biodegradation of plastics, do not lead to an increase in environmental harm associated with plastic litter by providing consumers with a false belief that certain plastic products are less harmful to the environment. (*Id.*)

B. Although plastics are generally recyclable, plastics synthesized from petroleum and natural gas do not biodegrade. Even with the emergence of bioplastics, which are derived from renewable biomass sources, such as plants and microorganisms, there is no certified type of bioplastic that biodegrades in a marine environment.

C. To fulfill the City of Malibu's goals of reducing littered plastic products, the Malibu City Council adopted an ordinance banning polystyrene foam food packaging containers (Malibu Municipal Code Section 9.24) and plastic shopping bags (Malibu Municipal Code Section 9.28).

D. Despite these efforts, the City continues to confront littered plastic, namely plastic straws, stirrers, and cutlery. Plastic straws, stirrers, and cutlery are generally made from polystyrene or polypropylene. Although the City has already banned polystyrene, it intends to make clear, through the adoption of the instant ordinance, that commercial use of all plastic straws, stirrers, and cutlery is banned within the City's jurisdiction. A ban on plastic straws, stirrers, and cutlery will further serve the City's goal of reducing plastic litter. Non-plastic, compostable alternatives are available.

SECTION 2. The Title of Chapter 9.24 of the Malibu Municipal Code is hereby amended to read as follows:

"Chapter 9.24 Ban on Plastic Food Packaging and Other Plasticware"

SECTION 3. Section 9.24.010 of the Malibu Municipal Code is hereby amended by adding the following definitions in alphabetical order:

“Beverage Provider” means any business, organization, entity, group, or individual located in the City of Malibu that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption.

“City-Sponsored Event” means any event organized or sponsored by the City of Malibu or any department of the City of Malibu.

“Plastic Cutlery” means any utensil, such as a fork, spoon, spork, or knife, made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources intended for only one-time use. “Plastic cutlery” includes compostable and biodegradable petroleum or biologically based polymer forms of cutlery, but does not include forms of cutlery that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.

“Plastic Beverage Straw” means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, for transferring a beverage from its container to the mouth of the drinker. “Plastic Beverage Straw” includes compostable and biodegradable petroleum or biologically based polymer straws, but does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.

“Plastic Stirrer” means a device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources.. “Plastic stirrer” includes compostable and biodegradable petroleum or a biologically based polymer stirrers, but does not include stirrers that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.

SECTION 3. Section 9.24.010 of the Malibu Municipal Code is hereby amended by amending the following definition:

“Food service ware” means all containers, bowls, plates, trays, cups, lids, napkins, and other like items that are designed for one-time use for prepared foods, including, without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by food vendors. The term “food service ware” does not include items composed of aluminum.

SECTION 4. Section 9.24.045 is hereby added to Chapter 9.24 of the Malibu Municipal Code to read as follows:

9.24.045 Sale and Commercial Distribution of Plastic Beverage Straws, Stirrers, and Cutlery Prohibited.

- A. No restaurant, including fast food restaurants, beverage provider, or vendor shall use, provide, distribute, or sell plastic beverage straws, plastic stirrers, or plastic cutlery.

- B. Nothing in this section precludes restaurants, including fast food restaurants, beverage providers, or vendors from using or making non-plastic alternatives, such as those made from paper, sugar cane, or bamboo, available to customers. Non-plastic alternative straws, stirrers, or cutlery shall only be provided upon request by the customer.
- C. No person shall distribute plastic beverage straws, plastic stirrers, or plastic cutlery at any city facility or any city-sponsored event.

SECTION 5. Section 9.24.050 of the Malibu Municipal Code is hereby amended to read as follows:

- A. The City Manager may waive the provisions of Sections 9.24.020, 9.24.030, 9.24.040, 9.24.045 if:

SECTION 6. Environmental Review

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 7. Severability

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

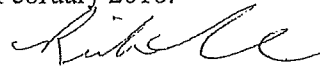
SECTION 8. Effective Date.

This Ordinance shall take effect on June 1, 2018.

SECTION 9. Certification.

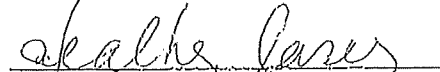
The City Clerk shall certify the passage and adoption of this ordinance and enter it into the book of original ordinances.

PASSED, APPROVED AND ADOPTED this 26th day of February 2018.



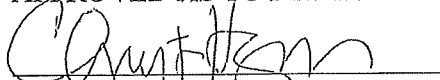
RICK MULLEN, Mayor

ATTEST:


HEATHER GLASER, City Clerk
(seal)

Date: February 26, 2018

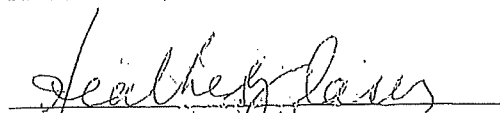
APPROVED AS TO FORM:


CHRISTI HUGIN, City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the Malibu Municipal Code and Code of Civil Procedure.

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 432 was passed and adopted at the Regular City Council meeting of February 26, 2018, by the following vote:

AYES:	5	Councilmembers:	La Monte, Peak, Rosenthal, Wagner, Mullen
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		


HEATHER GLASER, City Clerk
(seal)

ORDINANCE NO. 2017- _____

AN ORDINANCE OF THE CITY OF CULVER CITY,
CALIFORNIA ADDING CHAPTER 11.18, POLYSTYRENE
REGULATIONS, TO TITLE 11, BUSINESS REGULATIONS,
OF THE CULVER CITY MUNICIPAL CODE.

WHEREAS, the Culver City City Council desires to add Chapter 11.18,
Polystyrene Regulations, to Title 11, Business Regulations, of the Culver City Municipal
Code in order to mitigate the environmental impacts of polystyrene products.

WHEREAS, pursuant to the California Environmental Quality Act (CEQA)
Guidelines, approval and implementation of the Polystyrene Regulations does not create
any potentially significant adverse impacts on the environment; and adoption of the
Polystyrene Regulations has been determined by the City Council to be Categorically
Exempt pursuant to Section 15308, Class 8 – Actions by Regulatory Agencies for
Protection of the Environment.

NOW, THEREFORE, the City Council of the City of Culver City, California,
DOES HEREBY ORDAIN as follows:

SECTION 1. Chapter 11.18, Polystyrene Regulations, is hereby added to
Title 11, Business Regulations, of the Culver City Municipal Code to read as follows:

CHAPTER 11.18: POLYSTYRENE REGULATIONS

Sections:

11.18.005	Purpose.
11.18.010	Definitions.
11.18.015	Polystyrene Regulations.
11.18.020	Exemptions.
11.18.025	Operative Date.
11.18.030	Enforcement and Violation--Penalty.

11.18.005 Purpose.

The purpose of this chapter is to regulate the use of polystyrene products in order to reduce and prevent the presence of this type of litter in the environment and to promote environmentally sustainable practices in the City of Culver City.

11.18.010 Definitions.

The following definitions apply to this Chapter:

- A. "City" means the City of Culver City, a charter city located in the state of California.
- B. "City contractor" means any person or business entity that enters into an agreement with the City to furnish products or services to or for the City.
- C. "City facility" means any building, structure, property, park, open space, or vehicle, owned or leased by the City, its agents, agencies or departments.
- D. "City-sponsored event" means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.
- E. "Food service ware" means products used for serving or transporting prepared food including, but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, straws, lids, utensils, or any other container in or on which prepared foods are placed or packaged for consumption.
- F. "Foam polystyrene" is a thermoplastic petrochemical material utilizing the styrene monomer, including polystyrene foam or expanded polystyrene, 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). The International Resin Identification Code assigned to foam polystyrene is "6." Foam polystyrene food ware may be identified by a "6" or "PS," either alone or in combination with other letters. The regulations and prohibitions relating to foam polystyrene in this chapter are intended to apply regardless of the presence or absence of an International Resin Identification Code on the food ware.
- G. "Food provider" means any person or place that provides or sells prepared food within the City to the general public to be consumed on the premises or for take-away consumption. Food provider includes, but is not limited to: (1) a grocery store, supermarket, restaurant, drive-thru, café, coffee shop, snack shop, public food market, farmers' market, convenience store, or similar fixed place where prepared food is available for consumption on the premises or for take-away consumption; and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food provider also includes any organization,

group or individual that regularly provides prepared food to its members or the general public as a part of its activities or services.

H. "Person" means any individual, business, corporation, or an event organizer or promoter; public, nonprofit or private entity, agency or institution; or partnership, association or other organization or group, however they may be organized.

I. "Polystyrene cooler" means any cooler or ice chest made of polystyrene foam, where such foam is not fully encased in another material.

J. "Polystyrene food service ware" means disposable food service ware that contains or utilizes foam polystyrene or solid polystyrene or a combination of the two.

K. "Prepared food" means any food or beverage that is: (1) ready to consume without any further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a food provider using any cooking, packaging or food preparation technique. Prepared food may be eaten either on or off the food provider's premises. Prepared food does not include: (1) any raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers' markets and other food vendors.

L. "Solid polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer, including clear or solid polystyrene (oriented polystyrene). The International Resin Identification Code assigned to solid polystyrene is "6." Solid polystyrene food ware may be identified by a "6" or "PS," either alone or in combination with other letters. The regulations and prohibitions relating to solid polystyrene in this chapter are intended to apply regardless of the presence or absence of an International Resin Identification Code on the food ware.

11.18.015 Polystyrene Regulations.

A. No food provider shall use, distribute or sell any polystyrene food service ware. To demonstrate compliance with this prohibition, any food service ware used, distributed or sold by any food provider must exhibit an International Resin Identification Code other than 6 or PS or, in any instance(s) when any food service ware does not contain such a code, the food provider who uses, distributes or sells such food service ware shall maintain documentation about the composition of their disposable food service ware. Such documentation may include information from the supplier, manufacturer, bulk packaging or any other relevant information demonstrating that the involved food service ware is neither foam polystyrene nor solid polystyrene.

B. No City business shall sell food service ware which contains or utilizes single-use foam polystyrene.

- 1 C. No City business shall sell polystyrene coolers.
- 2 D. No food provider may provide cutlery to any person taking prepared food away from
- 3 the food provider's premises unless the food provider first asks that person whether
- 4 they want to receive the cutlery and they respond that they do.
- 5 E. No one shall use, distribute or sell prepared food in any polystyrene food service
- 6 ware at City facilities that have been rented, leased or are otherwise being used
- 7 with permission of the City. This subsection is limited to use of City facilities for
- 8 which a person has entered into an agreement with, or obtained a permit from, the
- 9 City to rent, lease or otherwise occupy a City facility. All facility rental agreements
- 10 for any City facility shall include a provision requiring contracting parties to assume
- 11 responsibility for preventing the use, sale and/or distribution of polystyrene food
- 12 service ware while using City facilities. The facility rental agreement shall indicate
- 13 that a violating contracting party's security deposit will be forfeited if the City
- 14 Manager or his designee determines that polystyrene food service ware was used,
- 15 sold or distributed in violation of the rental agreement.
- 16 F. No person shall use, sell or distribute polystyrene food service ware at City-
- 17 sponsored events, privately produced events that are open to the public to attend,
- 18 City-managed concessions and City meetings. This subsection shall apply to the
- 19 function organizers, agents of the organizers, City contractors, food providers and
- 20 any other person that enters into an agreement with one or more of the event
- 21 sponsors to sell or distribute prepared food at the event.
- 22 G. The City, its departments, and City contractors, agents, and employees acting in
- 23 their official capacity or on behalf of the City, shall not purchase or acquire
- 24 polystyrene food service ware or distribute it within the City.
- 25 H. All food providers required by the Culver City Municipal Code to have a business
- 26 license shall certify compliance with this chapter upon obtaining a business license
- 27 and once annually when their business license is renewed.

28 **11.18.020 Exemptions.**

- A. The following are exempt from the provisions of this chapter:
1. Food prepared or packaged outside of the City, provided such food is not altered or repackaged within the City limits.
 2. Food brought by individuals for personal consumption to City facilities including but not limited to City parks, provided the City facility is being used for individual recreation and such facility use is not part of an event that is otherwise governed by Section 11.18.015.

1 B. The City Manager or his/her designee may exempt any food provider from the
2 regulations of Section 11.18.015.A of this chapter, as follows:

- 3 1. For a one-year period, upon a showing by the food provider that the
4 conditions of this Chapter would cause undue hardship. An "undue hardship"
5 shall be found in:
 - 6 a. Situations where compliance with this Chapter would cause significant
7 economic hardship to the food provider; or,
 - 8 b. Situations where no reasonably feasible alternative exists to a specific
9 and necessary polystyrene food ware item.
- 10 2. A food provider granted an undue hardship exemption by the City must re-
11 apply prior to the end of the exemption period and demonstrate continued
12 undue hardship, if they wish to have the exemption extended beyond the
13 existing exemption period.
- 14 3. An undue hardship exemption may only be granted for a period lasting no
15 longer than a year.
- 16 4. An undue hardship exemption application shall include all information
17 necessary for the City to make its decision, including but not limited to
18 documentation establishing the undue hardship. The City Manager or his/her
19 designee may require the applicant to provide additional information to permit
20 them to determine facts regarding the exemption application.
- 21 5. The City Manager or his/her designee may approve the undue hardship
22 exemption application, in whole or in part, with or without conditions.
- 23 6. Undue hardship exemption decisions are effective immediately.
- 24 7. Decisions of the City Manager may be appealed, by the person applying for
25 the undue hardship exemption, to the City Council. Appeals shall be filed,
26 in writing, with the City Clerk, within ten (10) days of the applicant receiving
27 written notice of the City Manager's decision and shall be accompanied by
28 any applicable fee set by resolution of the City Council. If the City Council
determines that a hearing is necessary, notice of such hearing shall be
given to the applicant at least ten (10) days prior to the hearing. The City
Council's decision on such appeals will be final.

24 **11.18.025 Operative Date.**

25 This Chapter shall become effective on August 28, 2017.

26
27 / / / / /

1 **11.18.030 Enforcement and Violation--Penalty.**

2 A. A violation of any provision of this Chapter is unlawful.

3 B. A violation of any provision of this Chapter is subject to the penalties and remedies
4 set forth in Chapters 1.01, General Provisions, and 1.02, Administrative Citations, of
5 this Code.

6 **SECTION 2.** Notwithstanding Section 619 of the City Charter, this Ordinance
7 shall take effect on August 28, 2017. Pursuant to Sections 616 and 621 of the City
8 Charter, prior to the expiration of fifteen (15) days after the adoption of this Ordinance, the
9 City Clerk shall cause this Ordinance, or a summary thereof, to be published in the Culver
10 City News and shall post this Ordinance or a summary thereof in at least three places
11 within the City.

12 **SECTION 3.** The City Council hereby declares that, if any provision, section,
13 subsection, paragraph, sentence, phrase or word of this ordinance is rendered or declared
14 invalid or unconstitutional by any final action in a court of competent jurisdiction or by
15 reason of any preemptive legislation, then the City Council would have independently
16 adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases
17 or words of this ordinance and as such they shall remain in full force and effect.

18
19 **APPROVED AND ADOPTED** this _____ day of _____, 2017.

20
21 _____
22 JIM B. CLARKE, Mayor
23 City of Culver City, California

24 ATTEST:

APPROVED AS TO FORM:

25
26
27 _____
JEREMY GREEN, Deputy City Clerk

28

CAROL A. SCHWAB, City Attorney

ORDINANCE NO. 14-0003

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH
AMENDING CHAPTER 5.80 OF TITLE 5 OF THE MANHATTAN
BEACH MUNICIPAL CODE REGARDING THE PROHIBITION
AGAINST THE SALE AND DISTRIBUTION OF CERTAIN
POLYSTYRENE PRODUCTS

WHEREAS, polystyrene, a lightweight petroleum-based plastic material, is commonly littered or blown out of trash receptacles and migrates to the storm drain system and eventually to the ocean and beaches;

WHEREAS, littered polystyrene, especially expanded foam, is difficult to clean up and may cumulatively result in increased litter;

WHEREAS, polystyrene breaks down in the marine environment into smaller pieces, which negatively impacts water quality and harms marine wildlife that often mistake pieces of polystyrene for food;

WHEREAS, reduction of polystyrene in the environment will advance compliance with Federal, State and City clean water mandates, including compliance with the Total Maximum Daily Loads and other requirements of the National Pollutant Discharge Elimination System;

WHEREAS, education about and reduction of food-soiled polystyrene food service ware, which can be difficult to clean and recycle, may advance waste stream reduction and recycling efforts and reduce the presence of this non-biodegradable material in landfills; and

WHEREAS, polystyrene has been shown to pose human health impacts to workers and consumers and these impacts can be mitigated by reducing its use.

THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. CEQA Finding. This Ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for the protection of the environment because it will strengthen the City's regulations regarding the distribution and sale of polystyrene products. Thus, this Ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

SECTION 2. The title of Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code is hereby amended to read "PROHIBITION ON THE DISTRIBUTION AND SALE OF CERTAIN POLYSTYRENE PRODUCTS".

SECTION 3. The City Council hereby amends Section 5.80.010 (Purpose) in Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code to read as follows:

"5.80.010 – Purpose.

The purpose of this chapter is to regulate the use of polystyrene products in order to protect the health of Manhattan Beach citizens and promote environmentally sustainable practices in the City."

SECTION 4. The City Council hereby amends the definition of "Disposable Food Service Ware" or "Disposables" and adds a new definition of "Polystyrene Cooler" in Section 5.80.020 (Definitions) in Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code to read as follows, with all other definitions to remain unchanged:

" "Disposable Food Service Ware" or "Disposables" means single-use, disposable products used for serving or transporting Prepared Food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, straws, lids, utensils, or any other container in or on which Prepared Foods are placed or packaged for consumption."

"Polystyrene Cooler" means any cooler or ice chest made of polystyrene foam, where such foam is not fully encased in another material."

SECTION 5. The City Council hereby amends Municipal Code Section 5.80.030 by removing subsection (F) and amending subsection (A) to read as follows:

"A. No Food Provider shall distribute or sell any Polystyrene Food Service Ware in conjunction with the sale of Prepared Food at any location within the City."

SECTION 6. The City Council hereby adds a new Section 5.80.035 to Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code to read as follows:

"5.80.035 Prohibition against sale of polystyrene food service ware and polystyrene coolers.

No Person shall sell any Polystyrene Food Service Ware or Polystyrene Cooler at any location within the City."

SECTION 7. The City Council hereby amends Section 5.80.040 (Exemptions) in Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code to read as follows:

"5.80.040 Exemptions.

A. The following are exempt from the provisions of this chapter:

1. Food prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits.
2. Coolers and ice chests, other than those defined as Polystyrene Coolers in this chapter.
3. Food brought by individuals for personal consumption to City Facilities, including but not limited to City parks and the beach, provided the City Facility is being

used for individual recreation or similar purposes and such facility use is not part of a larger organized event that is otherwise governed by Section 5.80.030.

B. Food Providers that are obligated to purchase or have purchased Polystyrene Food Service Ware under a contract entered into within the year prior to the operative date of this ordinance are exempt from the provisions of this chapter for six months following its operative date.

C. The City Manager or his/her designee may exempt any Person from section 5.80.030 following the operative date of this ordinance, as follows:

1. A request for an exemption shall be filed in writing with the City Manager or his/her designee and shall include documentation of the reason for the claimed exemption and any other information necessary for the City to make its decision. The City may require the applicant to provide additional information as necessary to make the required determinations.

2. The City Manager or his/her designee may approve the exemption for a maximum of one (1) year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include but not be limited to situations where:

a. There are no reasonable alternatives to Polystyrene Food Service Ware for reasons that are unique to the applicant; or

b. Compliance with the requirements of this chapter would deprive a person of a legally protected right. The exemption may be extended for additional terms of up to one year each, upon a showing of the continuation of the legal right.

3. The City Manager's written decision on the exemption is effective within 10 days of the decision. Decisions of the City Manager may be appealed by the Person applying for the exemption to the City Council. Appeals shall be filed in writing with the City Clerk within 10 days of the decision and shall be accompanied by a fee set by resolution of the City Council. Notice of hearing shall be given to the applicant at least 10 days prior to the hearing. The City Council shall make its decision within 60 days of receiving the appeal."

SECTION 8. The City Council hereby adds a new Section 5.80.045 to Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code to read as follows:

"5.80.045 Certification of compliance.

All businesses that are subject to this chapter shall certify compliance with this chapter on the annual business license renewal application."

SECTION 9. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 10. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 11. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

PASSED, APPROVED AND ADOPTED this _____ of _____, 2014.

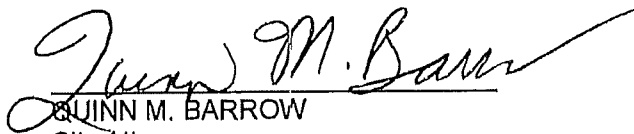
AYES:
NOES:
ABSENT:
ABSTAIN:

AMY HOWORTH
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:



QUINN M. BARROW
City Attorney