CITY OF NEWPORT BEACH
ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE

DATE/TIME: Monday, April 21, 2008 - 7:00 p.m.

LOCATION: Police Department Auditorium
870 Santa Barbara Drive

NOTE

Lobby is under construction.
Please follow directions of Police Explorers to enter the building.

Roll Call

1. Minutes of March 17, 2008 (*draft minutes attached*)
2. Report on Task Force on Green Development *(Attachment)*
3. Discussion of EQAC Mission, recommendations to City Council on changes to Resolution establishing EQAC *(Attachments)*
4. Report on other cities' approaches to polystyrene food packaging ban, and consideration of recommendation to City Council *(Attachments)*
5. Coastal/Bay Water Quality Committee Representative's Report
6. Report from Staff on Current Projects
7. Public Comments
8. Future Agenda Items
9. Adjournment

NEXT MEETING DATE: May 19, 2008

CITY COUNCIL CHAMBERS

*Attachments can be found on the City's website http://www.city.newport-beach.ca.us. Once there, click on ***City Council,*** then scroll to and click on ***Agendas and Minutes*** *then scroll to and click on* ***Environmental Quality Affairs***. If attachment is not on the web page, it is also available in the City of Newport Beach Planning Department, 3300 Newport Boulevard, Building C, 2nd Floor.

CITY OF NEWPORT BEACH
ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE

DRAFT MINUTES 3-17-08

Draft minutes of the Environmental Quality Affairs Committee held at the City of Newport Beach Police Department Auditorium, 870 Santa Barbara Drive, on **Monday, March 17, 2008.**

Members Present:

X	Nancy Gardner, Council Member	X	Sandra Haskell
X	Michael Henn, Council Member		Barry Allen
X	Bruce Asper	X	Kristine Adams
X	Dolores Otting, Vice Chair		Susan Knox - *excused*
X	Kimberly Jameson	X	Arlene Greer
			Timothy Stoaks- *excused*
			Jennifer Winn
	Laura Dietz- *excused*	X	Ray Halowski
X	Kenneth Drellishak, Chair	X	Barbara Thibault
	Laura Curran- *excused*	X	Merritt Van Sant
X	Michael Smith	X	Robert Rush
	Michael Pascale- *excused*		

Staff Representatives: **Guests:**

X	Ass't City Mgr. Sharon Wood

Chairperson Ken Drellishak called the meeting to order at 7:05 p.m.

1. Minutes of February 25, 2008

Bruce Asper moved to approve the minutes. Sandra Haskell seconded the motion.

Motion passed unanimously

2. Report from Subcommittee on Hyatt Regency Hotel

After discussion, Dolores Otting moved to approve the report, with amendments. Sandra Haskell seconded the motion.

Motion passed unanimously

3. Discussion of EQAC Mission, recommendations to City Council on changes to Resolution establishing EQAC

Due to the lateness of the hour, Dolores Otting moved that this be continued to April. Robert Rush seconded the motion.

Motion passed unanimously

4. Discussion of Draft Strategic Plan for Green Building Working Committee

Due to the lateness of the hour, this item was continued to April by Committee consensus.

5. Coastal/Bay Water Quality Committee Representative's Report

No report.

6. Report from Staff on Current Projects

Sharon Wood reported that a revised Mitigated Negative Declaration is being prepared for the Aerie project. Chair Drellishak will finalize subcommittee assignments for review. Sharon Wood also reported that the polystyrene ban proposal would be discussed by the Restaurant Association board on Wednesday, March 19.

7. Public Comments

None

8. Future Agenda Items

April: Mission of EQAC
Energy Subcommittee Strategic Plan and Recommendations
Polystyrene Ban

Future: Project Presentations

9. Adjournment

Chair Drellishak adjourned the meeting at 9:27 p.m.

RESOLUTION NO. 2008- 21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ESTABLISHING THE TASK FORCE ON GREEN DEVELOPMENT

WHEREAS, the Newport Beach General Plan adopted on July 25, 2006, includes policies that promote energy conservation, energy-efficient design, and "green building" programs; and

WHEREAS, the City Council wishes to implement these policies; and

WHEREAS, the Governor's Office of Planning and Research (OPR) is developing CEQA Guidelines for the mitigation of greenhouse gas emissions, on which the City of Newport Beach may wish to have input and which the City will be required to follow; and

WHEREAS, the City Council wishes to involve members of the Environmental Quality Affairs Committee (EQAC) and members of the General Plan/Local Coastal Program Implementation (GP/LCP) Committee and its Technical Advisory Group in implementing these General Plan policies and emerging State requirements;

NOW, THEREFORE, BE IT RESOLVED by the City Council as follows:

Section 1. The City Council establishes the Task Force on Green Development. The Task Force shall be composed of one (1) member of the City Council, three (3) members of EQAC and three (3) members of the GP/LCP Committee or its Technical Advisory Group, appointed by the Mayor and confirmed by the City Council. The Mayor shall appoint the Task Force Chair.

Section 2. All meetings of the Task Force shall be noticed and open to the public.

Section 3. The duties of the Task Force shall be as follows, in order of priority:

a. Make information available to the public concerning programs and materials available to reduce the environmental impacts of new development.

b. Research existing programs, and recommend to EQAC and the GP/LCP Committee a Newport Beach program to encourage "green building," including items such as energy-efficient design, and use of building materials that reduce heat generation, conserve water, reduce runoff and improve water quality.

c. Monitor OPR's development of CEQA Guidelines for the mitigation of greenhouse gas emissions, and recommend City comments on them as needed.

d. Make recommendations to the City Council for implementation of revised CEQA Guidelines for the mitigation of greenhouse gas emissions.

Section 4. The Task Force shall sunset on December 31, 2009, unless extended by action of the City Council.

This Resolution was adopted at a regular meeting of the City Council of the City of Newport Beach held on April 8, 2008, by the following vote, to wit:

AYES, COUNCIL MEMBERS Henn, Rosansky, Daigle, Webb, Curry, Gardener, Mayor Selich

NOES, COUNCIL MEMBERS None

ABSENT, COUNCIL MEMBERS None

MAYOR

ATTEST:

CITY CLERK

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, LaVonne M. Harkless, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2008-21 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 8th day of April 2008, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Henn, Rosansky, Daigle, Webb, Curry, Gardner, Mayor Selich

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 9th day of April 2008.

LaVonne M. Harkless
City Clerk
Newport Beach, California

(Seal)

EQAC MISSION

Suggested revised language in italics.

class=Section2>

Mission:
To protect and enhance the environmental quality of the City for the health and enjoyment of residents and visitors.

Purpose and Responsibilities.
A. To review and submit comments during the public review period (upon publication of the Notice of Preparation (NOP) and/or the Notice of Completion (NOC) with respect to any Environmental Impact Report (EIR) prepared by the City.

B. If requested by the City council or the City Manager, and subject to the approval of the City Council or City Manager, submit, on behalf of the City, comments on any environmental document prepared by another public agency for a Project that has the potential to cause significant adverse environmental impacts in the City of Newport Beach.

C. The Committee may review and submit comments on any negative declaration prepared by the City for any project that is not subject to the review and/or approval of any other Board, Commission or Committee without first receiving a request from the City Council or City Manager.)

D: Advocate for policies , programs and projects that improve the environmental quality of the City and oppose policies, programs or projects that detract from or negatively impact that quality.

E: Provide education on good environmental practices
F. To request the City Manager to schedule presentations from City staff relative to activities with the potential to impact the environment and quality of life issues.

G. To request the City Manager and/or City Council to schedule a presentation from members of the Committee to the City Council relative to any action of the Committee or any activity that the Committee has determined could have a significant effect on Newport Beach.

Suggested by Robert Hawkins:

To schedule, receive, and report to the Council on, presentations from City officials or other parties on activities impacting the environment with proposed solutions for consideration.

POLYSTYRENE INDEX

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CITY of CALABASAS

CITY COUNCIL AGENDA REPORT

DATE: MAY 30, 2006

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: ROBERT YALDA, PUBLIC WORKS DIRECTOR
AF ALEX FARASSATI, PH.D., ENVIRONMENTAL SERVICES MANAGER

SUBJECT: DISCUSSION ON EXPANDED POLYSTERENE BAN

MEETING DATE: JUNE 7, 2006

SUMMARY RECOMMENDATION:

Recommend that the City Council receive this report and direct staff on whether to research and prepare an ordinance to ban the use of Styrofoam (polystyrene) containers by take-out restaurants in Calabasas.

BACKGROUND AND DISCUSSION:

Polystyrene (PS) is estimated at 0.8 percent (by weight) of material landfilled, according to the U.S. EPA. However, because of its light weight, the volume of PS disposed in landfills is much higher than the weight amount would tend to indicate. For example weight/volume estimates range from 9.6 pounds/yard^3 for expanded polystyrene (EPS) packaging to 22.2 pounds/yard^3 for other forms of PS. This compares to 100 pounds/yard^3 for cardboard and 2,160 pounds/yard^3 for broken glass. Attachment A provides detailed information on this issue.

Several cities throughout the U.S. (particularly, beach cities) have adopted ordinances and policies on expanded polystyrene ban, such as:

1. The City of Portland, Oregon, adopted an ordinance in 1989, which was amended in 2002, prohibiting restaurants or retail food vendors from preparing food in any polystyrene foam (PSF) products.

CAL DOC 1

2. On April 19, 2004, the City of Huntington Beach adopted Resolution No. 2004-21 prohibiting the use of expandable polystyrene (commonly referred to by the trade name Styrofoam) food service products within City facilities and at City-sponsored events.

3. The City of San Clemente adopted a resolution on April 20, 2004, prohibiting the use of food service items comprised of expandable polystyrene (commonly referred to by the trade name "Styrofoam) within City facilities and at City-sponsored events.

4. On June 2, 2004 , the City Council of the City of Aliso Viejo adopted an ordinance prohibiting the use of expanded polystyrene food service projects within City facilities and at special events.

5. The cities of Laguna Hills and San Juan Capistrano have also adopted resolutions prohibiting the use of expandable polystyrene (commonly referred to by the trade name Styrofoam) food service products within City facilities and at City-sponsored events.

6. City of Malibu adopted Ordinance No. 286 banning the use of Styrofoam in all take-out restaurants throughout the City. (Exhibit B)

Through a powerpoint presentation, Ms. Jennifer Voccola, City of Malibu Environmental Programs Analyst, will provide council members with experiences gained and results of recent survey on compliance with the City of Malibu expanded polystyrene ban ordinance.

FISCAL IMPACT/SOURCE OF FUNDING:

There is no fiscal impact associated with this informational report.

REQUESTED ACTION:

Recommend that the City Council receive this report and direct staff on whether to research and prepare an ordinance to ban the use of Styrofoam (polystyrene) containers by take-out restaurants in Calabasas.

ATTACHMENT:

A. Use and Disposal of Polystyrene in California – A Report to the California Legislature
B. City of Malibu Ordinance No. 286

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Use and Disposal of Polystyrene in California

A Report to the California Legislature

December 2004

INTEGRATED WASTE MANAGEMENT BOARD

Zero Waste—You Make It Happen!

CALDOC 2

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Secretary, California Environmental Protection Agency

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Acknowledgements

The California Integrated Waste Management Board (CIWMB) and the Department of Conservation (DOC) contracted with NewPoint Group Management Consultants to conduct a research project that included the preparation of this report.

The authors of this report, Jim Gibson and Wendy Pratt of NewPoint Group Management Consultants, wish to thank staff from the CIWMB and the DOC for their assistance on this project. They especially thank Calvin Young from the CIWMB for his input and edits to the report.

They also thank all of the many stakeholders that invested their time and energy providing valuable information and comments to this report.

Executive Summary

In 1999, California disposed of over 3.3 million tons of plastic in landfills, and that amount may well be increasing. (Source 25) That is roughly equivalent to the weight of the nearly 36 million Californians (averaging 185 pounds) being buried in California landfills every year. Plastics represent 8.9 percent (by weight) and perhaps twice as much (by volume) of the material disposed of in California landfills. Polystyrene (PS) is estimated at 0.8 percent (by weight) of the materials landfilled. However, due to its lightweight nature, its volume is much greater. In general, plastics rank behind paper as the second-largest category (by volume) of material being landfilled in California.

The two main types of PS are "general-purpose" (also known as "crystal") PS and "high-impact" (also known as "rubber-modified") PS. When a blowing agent is added to general purpose PS, it is referred to as "expandable (or "expanded") polystyrene" (EPS). Approximately 57 percent of the PS consumed in the U.S. in 1999 was general-purpose.

The total California share of PS production and sales in 2001 is estimated at 377,579 tons. Of this amount, approximately 77,006 tons were for packaging and 156,829 tons were for consumer/institutional applications. The total amount of PS for packaging and food service for California is estimated at 166,135 tons.

Due to changes in PS formulation and improved production processes, PS has achieved significant source reduction benefits. Unfortunately, industry officials claim there are limited opportunities for increased source reduction, especially in transportation packaging and food service. However, the CIWMB believes replacing single-use food service PS, that cannot be effectively recycled, with compostable alternatives may provide additional source reduction potential.

The Plastic Loose Fill Council (PLFC) coordinates reuse of PS loose fill, or "peanuts." Reuse of PS in California is estimated at between 20 and 30 percent, a total of 500 tons. (Source 14)

There are reportedly sufficient end markets available for all the clean EPS collected. PS recycling/reuse consists primarily of the reuse effort by the PLFC, some limited recycling of non-foam PS products (such as CD cases, videocassettes, and agricultural trays), and recycling of transportation packaging. There is no meaningful recycling of food service PS. Recycling of transportation packaging is estimated at 12 percent nationally, with California recycling 19–23 percent (2,500 tons).

In 1999, an estimated 300,000 tons of PS (0.8 percent of total waste) was landfilled, with a total disposal cost of $30 million.

However, not all PS is disposed of legally. The primary environmental impact of PS relates to litter and improperly disposed PS. According to a California Department of Transportation study during 1998–2000, PS represented 15 percent of the total volume of litter recovered from the storm drains. Other significant items include: plastic moldable, (16 percent), plastic film (12 percent), and paper (14 percent).

The CIWMB does not believe that a separate PS initiative is warranted. However, in an effort to minimize some of the side effects of PS, the CIWMB does recommend:

1. Increasing litter education efforts through more effective coordination between all State entities

that spend money on anti-litter education and/or cleanup.

2. That the State conduct a statewide litter study to identify the types and respective amounts (volume and weight) of litter and to quantify the environmental and societal impacts of litter.
3. That the Legislature consider making litter a civil offense, to facilitate issuing litter tickets.
4. That the State perform appropriate studies and testing (including demonstration projects) to determine the effectiveness of compostable and biodegradable plastics as alternatives to nondegradable polystyrene.
5. That the State continue to work with manufacturers and other stakeholders to promote additional manufacturer responsibility and product stewardship of polystyrene.

Introduction

California is faced with the significant challenge of safely and effectively managing the solid waste generated by nearly 36 million people in one of the largest economies in the world. Plastics are a major part of the California economy. In 2001, the California plastics industry employed more workers (152,335) than any other state and was ranked second in the nation in the value of shipments ($27.8 billion). California also leads the nation in the number of people employed and the value of polystyrene products produced. (Source: 1) Ironically, one of the most difficult materials in the state to manage is plastic, especially certain types of PS.

Expanded polystyrene (EPS) transportation packaging represents approximately 3 percent of PS produced nationally and it can be, and to some degree is, recycled. EPS transportation packaging is currently being recycled at 13.1 percent nationally and an estimated 19 percent in California. (Source: 2, p. 3) That is much better than the 6 percent national recycling rate for all plastics. However, additional opportunities exist to work with the EPS transportation packaging industry to voluntarily increase recycling to a much higher level.

Commercial and institutional PS products (including food service PS) represent 42 percent of PS production. Unfortunately, food service PS presents unique challenges in its management due in part to contamination from food residue. Because of these challenges and economic factors, no meaningful recycling of food service PS occurs currently. Food service PS, by its nature, has a useful life that can be measured in minutes or hours. Yet, it takes several decades to hundreds of years to deteriorate in the environment or landfill. Food service PS also represents a significant challenge as litter. Not only does the food service PS break into smaller pieces that may be ingested by wildlife, but materials may also be contaminated with food that decays, creating a health hazard.

PS that is illegally released through various means, including human behavior, as litter may also find its way through the storm drain system and into the marine environment. As an example, the Los Angeles Regional Water Quality Control Board issued a trash total maximum daily load (TMDL) order for the Los Angeles River requiring zero measurable trash in the storm drain system within 10 years. The County of Los Angeles and the cities affected by the TMDL estimate having to spend $373 million or more, over a 10-year period, to reduce the amount of trash in the storm drains in an effort to partially comply with the order. (Comment: 3)

An estimated 0.8 percent (by weight) of the material disposed of in California's landfills is PS. However, because of its light weight, the volume of PS disposed of in landfills is much higher than the weight amount would tend to indicate. For example, weight/volume estimates range from 9.6 pounds per cubic yard for expanded polystyrene (EPS) packaging to 22.2 pounds per cubic yard for other forms of PS. This compares to 100 pounds per cubic yard for cardboard and 2,160 pounds per cubic yard for broken glass. (Source: 4) However, because of the minimal amount of PS disposed of, additional management efforts may have only a minimal impact on the available space at California's landfills.

CITY of CALABASAS

Expanded Polystyrene and High Density Polyethylene Use Survey

What is Expanded Polystyrene (EPS)?

Polystyrene's most common use is as expanded polystyrene (EPS). Expandable polystyrene is the lightweight material of which coffee cups and take-home food containers are made.

What is High Density Polyethylene (HDPE)?

High Density Polyethylene's most common use is as grocery bags. HDPE is typically translucent, but not fully see-through and crackles.

Business Name: _____

Property Owner: _____

Business Address: _____

Phone Number(s): _____

Primary Contact: _____

Alternative Contact: _____

Business Type:
Restaurant ☐ Juice Bar ☐ Ice Cream Shop ☐
Super Market ☐ Coffee Bar ☐ Other: _____

Type of Service:
Full Service/Sit Down ☐ Mostly Take-Out ☐
Mostly Sit Down/Some Take-Out ☐ Only Take-Out ☐

If you offer take-out what type of packaging do you use for: (Check all that apply)

Take-Out Food:
EPS ☐ Plastic ☐ Reusable Container ☐
Aluminum ☐ Cardboard ☐ Other: _____

Take-Out Liquids:
EPS ☐ Plastic ☐ Reusable Container ☐
Aluminum ☐ Cardboard ☐ Other: _____

Take-Out Bagging:
Paper Bag ☐ HDPE Bag ☐ Other: _____

Are your take-out containers provided by a main branch or are they bought by you exclusively for this business?

Bought by branch ☐ Bought by me ☐ Does Not Apply ☐

Are your take-out containers provided by a packaging contract? Yes ☐ No ☐

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How would you quantify your use of EPS?

Never ☐ Sometimes ☐ Often ☐ Regularly ☐

How would you quantify your use of HDPE?

Never ☐ Sometimes ☐ Often ☐ Regularly ☐

Please read the following statement:

The use of EPS and HDPE is a challenging issue for all levels of government. Due to the light-weight nature of EPS and HDPE, these materials are easily blown, float in water, get caught on tree branches and fences, and are often ingested by birds and marine animals. Moreover, EPS and HDPE are not readily recyclable materials and contribute to more than 64% of the trash found at our local beaches and persist for hundreds of years in landfills.

Given this information, the City of Calabasas is considering a ban on EPS and HDPE materials. However, the City wants to assess the ability of its businesses to comply with such an ordinance beforehand. Please answer the following questions regarding your business' willingness to ban EPS and HDPE.

Are you aware of more environmentally friendly packaging that your business could substitute for EPS?

Yes ☐ No ☐

Are you aware of more environmentally friendly packaging that your business could substitute for HDPE?

Yes ☐ No ☐

Would your business be willing to substitute EPS packaging with more environmentally friendly materials?

Yes ☐ No ☐

Would your business be willing to substitute HDPE packaging with more environmentally friendly materials?

Yes ☐ No ☐

If you answered no to the last two questions please state why:

_____

_____

_____

_____

Additional Comments:

_____

_____

_____

_____

_____

26135 Mureau Road
Calabasas, CA 91302-3172
(818) 878-4225
Fax (818) 878-4215

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Calabasas Ordinance No. 2007-233

12:09 pm

Calabasas Retail Food Establishments Need to Certify Their Awareness of the City's Ordinance Banning the Use of Expanded Polystyrene for Food Packaging

PRESS RELEASE
Issued March 21, 2007

Calabasas retail food establishments need to certify their awareness of the City's ordinance banning the use of expanded polystyrene for Food Packaging

By March 31, 2007, the owners of each retail food establishment within the City of Calabasas should report to the City their awareness and compliance of this newly adopted ban on the use of expanded polystyrene for food packaging.

On February 21, 2007, Calabasas City Council members adopted Ordinance 2007-233 banning retail food establishments, nonprofit food providers and City facilities from using food packaging materials made of expanded polystyrene, known popularly by the trademark name Styrofoam. The ordinance requires food service establishments in Calabasas to start using environmentally acceptable packaging (i.e. returnable, recyclable, biodegradable, degradable) by March 31, 2008, and report on-going compliance with this ordinance on the first business day of each calendar year.

The purpose of this ordinance is to protect the natural environment from non-biodegradable litter, reduce solid wastes, and promote public health. Most polystyrene food packaging products consist of disposable food and beverage take-out containers. They make up a majority of visible wastes littering public places and natural environments, and are known to persist in the environment for many years before breaking down into non-biodegradable components, posing potential environmental and public health risks.

The ordinance therefore requires food service providers to purchase packaging that is:

(1) Returnable – food or beverage containers are capable of being returned to the distributor for reuse

(2) Recyclable – material that can be recycled, salvaged, composted, processed, or marketed by any means other than land-filling or burning. Recyclable materials include plastic which can be feasibly recycled by a municipal recycling program in California. Such plastics have recycling symbols #1 through #5 and include PET or PETE, HDPE, LDPE, and PP plastics. Polystyrene bears the recycling symbol #6, but is not feasibly recyclable in Calabasas.

(3) Biodegradable – capable of being broken down by micro-organisms in the environment into non-toxic components within a reasonably short time after disposal

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(4) Degradable – capable of being broken down through natural processes via natural organisms or ultraviolet light.

Restaurants and other food service providers have the choice of many food packaging products made of environmentally friendly alternatives, such as bio-plastics made of corn, paper, and bagasse-ware made of plant pulp, all of which meet the requirements of the ordinance. Several other California cities, such as Berkeley, Oakland, Malibu, Santa Monica, and San Francisco, have already passed similar bans, paving the way for others, like Calabasas, to follow. Food service providers in Calabasas will be seeing the availability of helpful resources posted on the City website in the near future to help make the switch from polystyrene use to environmentally acceptable packaging a smoother transition.

Calabasas Ordinance No. 2007-233 (PDF)
2007 Certification Form (PDF)
EPS Ban Brochure (PDF)

CAL Doc 4
3/2

CITY OF OAKLAND

ONE FRANK OGAWA PLAZA • 2ND FLOOR • OAKLAND, CALIFORNIA 94612

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June 13, 2006

PUBLIC WORKS COMMITTEE
OAKLAND CITY COUNCIL
Oakland, California

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

Members of the Public Works Committee:

I am proposing an ordinance that will institute two distinct practices by all Oakland food vendors and City facilities. The first is that the use of all polystyrene foam disposable food service ware will be prohibited. The second is that all disposable food service ware will be required to be biodegradable or compostable when it is cost-neutral to the Food Vendor to use these products (meaning the cost is the same or less than the non-polystyrene foam, non-biodegradable/compostable alternative).

This ordinance will further the goal of the Mayor and City Council to develop a sustainable city and create a zero waste community and further efforts to align the disposable products used in our community with the waste systems in place. This ordinance will address solid waste, environmental and toxicity impacts of disposable food service ware in Oakland. This ordinance was developed in collaboration with many experts in the field of solid waste and greening of business. Legislation banning polystyrene foam food packaging has been adopted in nearly 100 American cities including Berkeley and Portland. Furthermore, other Bay Area communities including San Francisco, Palo Alto, Berkeley and Marin County are now considering legislation similar to this proposed ordinance.

OAK Doc 1
Y9

Polystyrene foam, a plastics product, is designed for a useful life of minutes or hours but continues to exist in our environment for hundreds or thousands of years. There continues to be no meaningful recycling of polystyrene foam in California.

Biodegradable food service ware can be an affordable, safe, ecologically sound alternative to polystyrene foam and other disposable food service ware. Some Oakland businesses have voluntarily stopped using polystyrene foam products and some utilize biodegradable food service ware as their way of contributing to community health and the environment. Many of these businesses are also realizing waste disposal cost savings because food scrap (biodegradable) waste collection can cost less than garbage collection. Over 155 businesses in Oakland are now recycling organics and this number is growing every year due to overall cost savings.

Non-biodegradable food service ware, especially polystyrene foam, constitutes a large portion of the litter in Oakland and the cost of managing this litter is high and rising. While there are no conclusive medical opinions, there is evidence suggesting that the component styrene, suspected carcinogen and neurotoxin and known hazardous substance, may leach from polystyrene containers into fatty food or drink, posing a potential health risk to people. The EPA National Human Adipose Tissue Survey for 1986 identified styrene residues in 100% of all samples of human fat tissue taken in 1982 in the U.S. Recently, a number of studies and news articles have detailed increased concerns about the cumulative effects of trace chemicals and suspected carcinogens on the human body, especially among children.

FISCAL IMPACT

The City will absorb any increased costs associated with purchasing non-polystyrene foam products for use in City Facilities. There will also be some cost associated with the complaint-based enforcement of the ordinance by the City Administrator.

BACKGROUND

Polystyrene foam, also known by the name "Styrofoam", is formed by adding a blowing agent to polystyrene, a petroleum-based plastic material. Polystyrene foam is light-weight (about 95% air), with good insulation properties and is used in all types of products from cups that keep beverages hot or cold to materials that keeps items safe during shipping. The California Integrated Waste Management Board (CIWMB) estimates that Californians use 165,000 tons of polystyrene each year for packaging and food service purposes alone.[1]

In the past, polystyrene foam was banned by cities due in part to the ozone-depleting gases used as blowing agents; most polystyrene foam is now made with less damaging gases. More recent bans have been enacted because of the litter and marine debris impacts of polystyrene foam food packaging as well as overall environmental health. Nearly 100 cities nationwide including other California coastal cities such as Malibu, Aliso Viejo, San Juan Capistrano, Huntington Beach and San Clemente have banned

[1] *Use and Disposal of Polystyrene in California*, California Integrated Waste Management Board, December 2004.

polystyrene foam food service ware. Polystyrene foam food service ware is also banned across China, Taiwan and India and other types of plastics are being banned all over the world.

This proposed ordinance is consistent with several bills at the state level that seek to move towards zero waste and managing plastics: AB1866 (Karnette) would prohibit any state facility from selling, possessing or distributing polystyrene foam food containers; AB 1940 (Koretz) would convene a multi-agency task force to make progress in reducing marine debris statewide; AB 2147 (Harman) would clarify the definition of "compostable", "biodegradable" and "degradable" compostable plastic food and beverage containers in order to promote compatibility with waste management systems; AB 319 (Chan) bans some plastic products containing Phthalates and Bisphenol-A; SB 1379 (Perata) establishes a biomonitoring program to determine, assess and monitor the presence and concentration of chemicals in the tissue and blood of Californians.

On May 10th, 2006, a public meeting was convened at City Hall to inform food vendors and the community about this proposed ordinance and get feedback on how to make the ordinance more effective. The meeting was attended by community members, several members of the waste disposal community, and at least two Chambers of Commerce. In addition, all major Chambers of Commerce and several franchise owners and food service ware vendors have been consulted about the proposed ordinance.

While using biodegradable disposable food ware is preferable, the use of disposable food service ware in general will continue to have significant impacts on solid waste disposal and consumption of natural resources, local waterways, and litter. All food vendors should evaluate how they can reduce the use of all disposable food service ware and maximize the portion of their food service ware that is reused.

KEY ISSUES AND IMPACTS

Solid Waste and Recycling

The California Integrated Waste Management Act of 1989 requires that all California jurisdictions achieve and maintain a landfill diversion rate of 50%, beginning in 2000. In 2002, the City adopted a goal of 75% reduction of waste going to landfills by 2010 in alliance with a countywide 75% waste reduction goal. In March 2006, Oakland City Council joined cities, counties and states worldwide in adopting a goal of zero waste by the year 2020. Zero waste principals, as applied to municipal solid waste, include improving "downstream" reuse/recycling of end-of-life-products, pursuing "upstream" re-design strategies to reduce the volume and toxicity of discarded products and materials, and promoting low-impact or reduced consumption lifestyles.

Oakland achieved a landfill diversion rate of 55% in 2004[2]. The greatest opportunity for additional solid waste diversion is related to targeting waste reduction and recycling in the commercial sector.[3] Collection of commercial organics, primarily food scraps, is a

[2] Result not yet certified by California Integrated Waste Management Board.

[3] City of Oakland Public Works Agency/Environmental Services Division Strategic Plan for 75% Reduction and Recycling of Solid Waste, February 28, 2006.

key program targeted in the Strategic Plan for 75% Solid Waste Diversion, adopted by Council in March 2006.

There is currently no meaningful recycling of post-consumer polystyrene foam food service ware, due in part to contamination from food residue and in part to the economic unfeasibility of such a service. Polystyrene foam is also non-biodegradable, and a common contaminant in food scraps collection programs. Unlike polystyrene foam food service ware, biodegradable food service ware can be included in commercial and residential food scraps collection programs, and processed at composting facilities rather than landfilled. The natural compost products made from these biodegradable materials are used as soil amendments on farms, commercial nurseries and gardens.

Oakland is already a leader in residential organics recycling. Since the February 2005 rollout of weekly residential recycling services that accepted food scraps along with yard trimmings, yard trimmings tonnage in 2005 increased over 46% compared to 2004, to 33,500 tons. An estimated 15% of households participated in the food scraps collection service in 2005. It is expected that participation will grow as food scraps recycling becomes a mainstream behavior, just as can, bottle and paper recycling did during the 1990s.

This ordinance will support and complement the Public Works Agency's Business Recycling Technical Assistance Project, a targeted program described in the Strategic Plan for 75% Solid Waste Diversion, which commences in July 2006. This project will enroll businesses in organics recycling programs, as well as the new Small Business Recycling Service that is part of the Franchise Agreement with Waste Management of Alameda County, and the Agreement For Residential Recycling with California Waste Solutions. Businesses can realize cost savings by shifting their discards from the garbage service to lower-cost food scrap recycling services. Commercial food scraps collection services are currently provided in Oakland's competitive, open market for source-separated, commercial recyclable materials, by two service providers, Waste Management of Alameda County and Norcal Waste Systems of Alameda County. As noted, over 150 Oakland businesses already are recycling their food scraps and organic discards with these providers.

Litter and Marine Pollution

Polystyrene foam, though inexpensive and effective as a food service ware product, has many drawbacks and hidden costs which are later passed on to the public. Polystyrene foam presents unique management issues because of its lightweight nature, floatability, and prevalence to be blown from disposal sites even when disposed of properly. It is estimated polystyrene foam comprises 15% of the litter collected in storm drains.[4] Pollution of our waterways and waterfront negatively affects tourism and quality of life in Oakland.

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[4] *Use and Disposal of Polystyrene in California*, California Integrated Waste Management Board, December 2004.

Polystyrene foam breaks down into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife. At least 162 marine species including most seabirds have been reported to have eaten plastics and other litter. Studies measuring plastics found up to five kilometers off the California Coast have found high levels of small plastic pieces from land-based sources, especially after storm events.[5] The small pieces are similar in size and sometimes more abundant than plankton, and represent a large risk to filter feeders (marine animals that eat suspended in water).

Toxicity and Health

There are potential health impacts from polystyrene foam disposable food service ware associated with the production of polystyrene and with the leaching of some of its chemical components into food and drink. The general public is not typically warned of these public hazards, particularly in the immigrant and non-English-speaking community.

The process of manufacturing polystyrene pollutes the air and creates large amounts of liquid and solid waste. In the categories of energy consumption, greenhouse gas effect, and total environmental effect, polystyrene's environmental impacts were found to be second highest, behind aluminum.[6] Additionally, the National Bureau of Standards Center for Fire Research identified 57 chemical byproducts released during the combustion of polystyrene foam.[7] Benzene, a chemical component of polystyrene foam, is a known carcinogen and enters the human body either though the skin or respiratory system.[8] Styrene, another component of polystyrene, is a suspected carcinogen and neurotoxin and known hazardous substance. The EPA and FDA state that chemical components of polystyrene may leach from food containers into food and drink; the FDA recommends that plastic takeout containers never be microwaved for this reason.[9]

There have been increasing calls for legislators to protect the public from the cumulative effects chemicals we are exposed to every day in our environment.[10] The cumulative effects of chemicals on the human body, also known as "body burden", are mostly unknown. Body burden studies show that we are exposed to complex mixtures of chemicals that are linked to health harms.[11] It is our responsibility as elected officials to take precautionary steps to protect our citizens from these risks.

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[5] *Use and Disposal of Polystyrene in California*, California Integrated Waste Management Board, December 2004.

[6] *Use and Disposal of Polystyrene in California*, California Integrated Waste Management Board, December 2004.

[7] Earth Resource Foundation http://www.earthresource.org/campaigns/capp/capp-styrofoam.html Accessed April 25, 2006.

[8] US Occupational and Health Administration http://www.osha.gov/SLTC/benzene/index.html Accessed May 23, 2006.

[9] Environmental Protection Agency http://www.epa.gov/safewater/contaminants/dw_contamfs/styrene.html Accessed May 23, 2006, Food and Drug Administration, http://www.fda.gov/fdac/features/2002/602_plastic.html Accessed May 23, 2006.

[10] "Getting Serious About Chemicals", Oakland Tribune, January 31, 2006.

[11] Environmental Working Group http://www.ewg.org/bodyburden/results.php Accessed May 23, 2006

Environmental Obligation
The City of Oakland has a duty to protect the natural environment and natural resources for future generations. The City may exercise environmental stewardship by reducing the amount of polystyrene foam and non-biodegradable food service ware that enters out waste stream, our storm drain, watershed and waterfront.

A common argument against polystyrene foam food service ware bans is that food service litter is not caused by a particular product or material but is instead caused by human behavior and further suggest that the use of biodegradable food service ware may actually increase litter because of the perception that it does not need to be disposed of in a trash receptacles. Some food service litter is unintended and actually a result of drifts from waste receptacles, waste haulers or events. Public education and existing litter laws have not to date eliminated food service litter from our community. Whatever the cause, the high costs of litter cleanup and collection are borne by the City and its residents and several different strategies must be utilized to address the problem. The intent of this ordinance is to deal with one specific and significant issue in Oakland (polystyrene foam) and simultaneously propose an evolution in disposable food service ware in Oakland.

Oakland has steadily moved forward with environmental initiatives and has become the 6th greenest city in the U.S.[12] and is currently positioning itself to become a leader in the emerging green economy.

POLICY DESCRIPTION
This ordinance applies to all food vendors in the City of Oakland, including restaurants, itinerant restaurants or retail food vendors and applies to all disposable food service ware products used by them, including: containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items designed for one-time use both on and off the food vendors' premises. The ordinance also applies to the City of Oakland and its facilities, departments and franchisees. There are two parts to this ordinance:

A. Polystyrene Foam Ban
This ordinance prohibits the use of all polystyrene foam disposable food service ware.

Alternatives to Polystyrene Foam and Their Costs
Alternative products to polystyrene foam are widely available and used widely in other cities with polystyrene foam bans. These alternative materials include

- Uncoated Paper
- Coated paper
- Cardboard
- Aluminum
- Other plastics
- Bio-products (discussed below).

[12] Green Guide Institute, 2006.

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In general, alternatives to polystyrene foam cost a few cents more per item and vary in price with the product type, weight and durability. The actual cost to a food vendor to switch to an alternative product will be largely dependant on the amount and types of disposable food service ware that it currently uses. Overlooking unquantified costs passed on the public such as litter, blight, environmental and possible health costs, polystyrene foam is currently the least expensive food service ware material, although prices continue to rise due to increasing crude oil prices[13].

B. Required Transition to Biodegradable and Compostable Disposable Food Service Ware

This ordinance would require the use of biodegradable and compostable disposable food service ware by all food vendors (not only those transitioning from polystyrene foam), as long as it is cost-neutral.

For the purposes of this ordinance, biodegradable means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal and compostable means all the materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device.

Biodegradable and Compostable Products and Their Costs

Biodegradable and compostable food service ware includes the following:

- Uncoated paper products
- Coated paper products
- Some bio-products (discussed below).

Because of the affordability provision, compliance with this part of the ordinance will be cost-neutral to food vendors. Depending on the product, biodegradable or compostable alternatives often cost the same as their plastic counterparts. Other specific compostable products which are new to the market can cost up to twice as much before prices come down. Some biodegradable or compostable food products already cost the same or less as their counterparts, and therefore food vendors should start to use these products now. For example, compostable plastic cups (for cold drinks) and clamshells (for salads) are generally the same price as plastic cups and plastic clam shells, depending on the distributor. Many restaurants and cafes already use paper cups and plates because they are *affordable and effective.*

For some products such as hot food containers, biodegradable or compostable options are not always as inexpensive as coated paper or plastic containers, so while their use is encouraged, it will only be required when it becomes affordable. As the demand for biodegradable and compostable products increases, we expect to see a larger variety of

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[13] KPMG http://www.kpmginsiders.com/display_analysis.asp?cs_id=140493 Accessed May 23, 2006

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biodegradable and compostable products at lower prices become available to Food Vendors.

We are working with the Public Works Department, CEDA, the Chambers of Commerce and others to understand and meet the education needs of Oakland food vendors and food packaging vendors so that Food Vendors will know which products are appropriate for use in Oakland and packaging vendors will understand which products to supply. It is my intent that Oakland Food vendors will be able to buy all the biodegradable and compostable products that they need from their existing vendors. We are also working with vendors of bio-products to make those products more widely available and affordable in Oakland.

The Oakland Alameda County Coliseum and Arena are transitioning to using compostable food service ware products for their food sales and Oakland restaurants such as the Nomad Café are successfully using compostable products as well.

Bio-products
Bio-products are manufactured from renewable resources such as corn starch, sugar cane, or a combination of bamboo, tapioca and water. "Bio-plastics", a subset of bio-products, are relatively new products with performance and physical characteristics of plastics but made from plant products and byproducts instead of petroleum. Like plastic and paper products, many bio-plastics can be customized with business logos.

Bio-plastic products used to meet the requirements of this ordinance must:

1. meet ASTM Standards. The American Society for Testing and Materials (ASTM) International has established standards for the compostability of bio-products (standards D6400 and D6868). Bio-plastics that meet the ASTM compostability standard demonstrate and ability to break down in a municipal compost system within a certain amount of time.

2. be clearly labeled: preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM-standard compostable plastic from non-ASTM-standard compostable plastic.

It is important to note that all types of disposable food packaging products cause environmental impacts. Most paper products, especially those for hot foods and beverages, are lined with a petroleum-based polyethylene coating. These products are not designed for composting programs but are currently generally accepted in Oakland. The majority of non-polystyrene foam disposable food service ware, with the exception of beverage containers, are made of clear polystyrene rigid plastic containers. Rigid plastic containers are made of petroleum-base polymers and many of these products have poor insulating value and are some are not intended for hot foods or drinks.

Exemptions and Enforcement
Enforcement of the ordinance will be on a complaint basis only. The City Administrator will be authorized to enforce the ordinance and issue fines for violations if a citizen complaint is not remedied. Food Vendors will be exempted for specific items or types of Disposable Food Service Ware if the City Administrator or his/her designee finds that a suitable Affordable Biodegradable or Compostable alternative does not exist and/or that imposing the requirements of this Chapter on that item or type of Disposable Food Service Ware would cause undue hardship.

The City Administrator or his/her designee will determine if a violation of this chapter occurred and will issue a written warning notice to the Food Vendor that a violation has occurred.

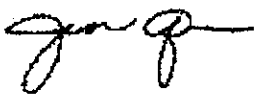
If a Food Vendor has subsequent violations, the following penalties will apply:

a. A fine not exceeding one hundred dollars ($100.00) for the first violation after the warning notice is given.
b. A fine not exceeding two hundred dollars ($200.00) for the second violation after the warning notice is given.
c. A fine not exceeding five hundred dollars ($500.00) for the third and any future violations after the warning notice is given.

Effective Date
This ordinance would become effective January 1, 2007.

Fellow Councilmembers, I urge you to support this proposed ordinance. Restricting the use of polystyrene foam food service ware in Oakland will conserve natural resources, reduce the use of non-renewable resources, protect the City of Oakland's natural environment, waterways and wildlife, and protect the public health of the residents of Oakland. This action would fulfill Article 10 of the Environmental Accords, whereby Oakland partnered with cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year.

Sincerely,



JEAN QUAN
Vice-Mayor and
Councilmember, District 4

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OFFICE OF THE CITY CLERK
OAKLAND

2006 JUN 26 AM 9:32

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

Approved as to Form and Legality

James Utterback

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Ordinance No. 12747 C.M.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 8.07.010 Definitions

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

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

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

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

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

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

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

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

"Polystyrene Foam" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene Foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

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

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

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

Section 8.07.040 Prohibited Food Service Ware

A. Except as provided in Section 8.07.042, Food Vendors are prohibited from providing Prepared Food to Customers in Disposable Food Service Ware that uses Polystyrene Foam.

B. All City Facilities are prohibited from using Polystyrene Foam Disposable Food Service Ware and all City Departments and Agencies will not purchase or acquire Polystyrene Foam Disposable Food Service Ware for use at City Facilities.

C. City franchises, contractors and vendors doing business with the City shall be prohibited from using Polystyrene Foam Disposable Food Service Ware in City facilities or on city projects within the City of Oakland.

Section 8.07.041 Required Biodegradable and Compostable Disposable Food Service Ware

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

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

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

Section 8.07.042 Exemptions

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

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

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

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

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

Section 8.07.043 Liability and Enforcement

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

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

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

Section 8.07.044 Violations - Penalties

1. If the City Administrator or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the Food Vendor that a violation has occurred.

2. If the Food Vendor has subsequent violations of this Chapter, the following penalties will apply:

a. A fine not exceeding one hundred dollars ($100.00) for the first violation after the warning notice is given.
b. A fine not exceeding two hundred dollars ($200.00) for the second violation after the warning notice is given.
c. A fine not exceeding five hundred dollars ($500.00) for the third and any future violations after the warning notice is given.

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

Section 8.07.045 Study

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

Section 8.07.0456 Effective Date

This Chapter will become effective January 1, 2007.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 27 2006, 2006

PASSED BY THE FOLLOWING VOTE:

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

NOES - 1, Brooks

ABSENT - 0

ABSTENTION - 0

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the
Council of the City of Oakland

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