

1. Agenda

Documents: [AGENDA 04.08.13.PDF](#)

2. Draft Foam Code

Documents: [DRAFTFOAMCODE.PDF](#)

3. San Francisco Fact Sheet

Documents: [SANFRANCISCOFACTSHEET.PDF](#)

4. Ordinances

Documents: [FREEPORT ORDINANCE.PDF](#), [SAN FRANCISCO ORDINANCE.PDF](#), [SAN LEANDRO ORDINANCE.PDF](#), [SAN MATEO COUNTY ORDINANCE.PDF](#), [SANTA CRUZ ORDINANCE.PDF](#)

5. Survey Results

Documents: [SURVEYRESULTS.PDF](#)

6. Transportation, Sustainability, And Energy Committee Minutes

Documents: [071812TSEMINUTES.PDF](#)

7. Minutes

Documents: [GPWGMINUTES031113.PDF](#)

8. Order 223-1112

Documents: [223.PDF](#)

CITY OF PORTLAND, MAINE
Agenda

Green Packaging Working Group Task Force

DATE: 4/8/2013
TIME: 5:00 PM
LOCATION: Portland City Hall
Room 24

AGENDA

1. Approval of minutes of 3/11/13 meeting
2. Review goals and objectives of working group
 - a. Transportation, Sustainability and Energy Committee minutes
 - b. Council Order
3. Work plan for working group
 - a. Polystyrene foam
 - b. Plastic bags
4. Discuss draft ordinance prohibiting the sale of polystyrene foam containers
 - a. Survey of local establishments regarding retail packaging materials
 - b. Review of draft ordinance language
 - b1 Survey results
 - b2 Draft City of Portland ordinance
 - b3 Freeport ordinance
 - b4 San Mateo County Ordinance
 - b5 Santa Cruz County Ordinance
 - b6 San Leandro Ordinance
 - b7 San Francisco Ordinance
 - b8 San Francisco fact sheet
5. Discuss next steps for draft polystyrene ordinance
6. Review meeting schedule
7. Adjourn

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CITY OF PORTLAND

AN ORDINANCE OF THE CITY OF PORTLAND TO PROHIBIT THE USE OF EXPANDED POLYSTYRENE FOAM FOOD SERVICE WARE BY ALL FOOD VENDORS, CITY DEPARTMENTS, AND CITY CONTRACTORS, AND AT CITY-SPONSORED EVENTS

WHEREAS, the Council finds that:

Expanded Polystyrene is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of Portland; and

The City of Portland desires to protect the natural environment; and

There is no economically feasible means of recycling expanded polystyrene locally; and

Disposable food service ware made from polystyrene foam constitutes a portion of the litter in Portland's streets, parks and public places that increases City maintenance costs; and

Expanded polystyrene is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them; and

The City's goal is to replace expanded polystyrene food service ware with reusable, recyclable or compostable alternatives; and

Such alternatives are readily available;

NOW, THEREFORE, BE IT ORDERED:

1. On and after January 1, 2014, no retail food vendor shall serve or sell prepared food in expanded polystyrene disposable food service ware.

2. On and after January 1, 2014, no food packager who offers for retail sale meat, eggs, bakery products or other food shall package that meat, eggs, bakery products or other food in packaging material made of expanded Polystyrene.

3. On and after January 1, 2014, no vendor in the City of Portland who sells tangible personal property at retail shall sell disposable food service ware made from expanded polystyrene.

4. All city facilities, city-sponsored events, and city permitted events are prohibited from using disposable food service ware made from expanded polystyrene. All city departments and agencies shall not purchase or acquire disposable food service ware made from expanded polystyrene for use at city facilities.

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5. City franchises, contractors and vendors doing business with the city shall be prohibited from using food service ware made from expanded polystyrene in city facilities or on city projects within the city.

6. Organizations using city offices or property shall comply with this chapter (e.g., street closure permits, events at city facilities, etc.) and while on city premises, shall not willfully possess, give, receive, lend, offer or expose for sale, use, deliver, furnish, transfer or dispose of any disposable food service ware made from expanded polystyrene.

7. Exemptions.

Prepackaged food is exempt from the provisions of this chapter.

8. Violations and Enforcement. The Director of Public Services and the Director of Health and Human Services or designees shall have the primary responsibility for enforcement of this ordinance. If the Public Services Director or the Director of Health and Human Services or designees determine that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred. Subsequent violations of the Ordinance shall be subject to the penalties set forth below.

Violations of this Ordinance shall be punishable by fines as follows:

- i. A fine not exceeding \$250 for the first violation in a one-year period;
- ii. A fine not exceeding \$500 for the second and each subsequent violation in a one-year period;

9. Definitions. As used in this Ordinance the following terms have the following meanings:

- (a) "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers, also known as clamshells. This does not include straws, utensils, or cup lids nor does it include disposable packaging for prepackaged foods.
- (b) "Expanded polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called 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). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term "polystyrene" shall not include clear polystyrene known as "oriented

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polystyrene.”

- (c) "Food Packager" means any person located within the City of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.
- (d) "Prepackaged food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source outside the City of Portland.
- (e) "Prepared food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption on the food vendor's premises or within the city. Prepared food may be eaten either on or off the premises, also known as "takeout food." Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.
- (f) "Restaurant" means any establishment located within the City of Portland selling prepared food to be eaten by customers. Restaurant includes a sidewalk or other outdoor food vendor.
- (g) "Retail Food Vendor, Vendor" means any person, restaurant, store, shop, sales outlet or other establishment, including, without limitation, a grocery store, convenience or variety store or a delicatessen located within the City of Portland which sells prepared food.

10. Severability. If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.

The City of South San Francisco has joined the Cities of Millbrae, Oakland, Albany, Berkeley, Calabasas, Carmel, Fairfax, San Francisco and Alameda County in banning the use of solid and foamed polystyrene and other non-recyclable, non-bio-degradable food ware.

On October 1, 2008, the City of South San Francisco's Green Food Packaging Ordinance will go into effect. It requires all sales outlets and vendors that sell food directly for consumption by the consumer to use only green food service ware items.



FREQUENTLY ASKED QUESTIONS

What Materials are Banned?

The ban applies to single-use disposable containers intended for serving or transporting prepared, ready-to-eat food or beverages. Examples include clear clamshell containers, and clear or colored straws, lids, bowls, plates, trays, cartons, cups, lids, straws, utensils, and other items employed by food vendors for non-durable uses.

What is Polystyrene and Why is it Banned?



Foamed polystyrene (also known as Styrofoam®) and clear or solid polystyrene food packaging can be distinguished by the symbol #6 imprinted on each item. Both solid and foamed polystyrene are not accepted for recycling by the South San Francisco Scavenger Company or any other transfer station in San Mateo County.

Sometimes called Styrofoam (a Dow Chemical Company trademark), polystyrene foam is commonly used for disposable food service containers such as cups, plates and "clam-shell" boxes. Polystyrene can be harmful to the environment and to human health.

- The "life" of these containers is very short. Mostly, they are used once then thrown away. It floats and is easily blown from disposal sites even when disposed of properly.
- Polystyrene exists in the environment for years, breaking down into small, non-biodegradable pieces that are ingested by marine life and other wildlife, harming or killing them.
- Evidence suggests that a component of polystyrene foam, styrene, is a carcinogen and neurotoxin. It may leach from containers into food and drink, posing a potential health risk. Styrene has been detected in the fat tissue of every man, woman and child tested in a 1986 EPA study.
- Polystyrene manufacturing is the fifth largest creator of hazardous waste in the United States (*Environmental Protection Agency*) and compromises 15% of the litter collected in storm drains (*State of California*). Its environmental impacts were second highest, behind aluminum, in the cycle of product manufacturing, use and disposal of the products, the energy consumption, greenhouse gas effect, and total environmental effect (*California Integrated Waste Management Board*).

What is Green Food Packaging?

Green food packaging includes recyclable items such as paper, aluminum, and plastic with resin identification numbers 1, 2, 4, and 5. They also include biodegradable or compostable products made from renewable, agriculturally based crops such as corn starch, potatoes, and sugar cane waste.



What are Biodegradable or Compostable Products?

“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.

To Whom Does this Ordinance Apply?

This Ordinance applies to all sales outlets and vendors that sell food directly for consumption by the consumer, including restaurants, supermarkets, food trucks, caterers, cafes, and other entities as defined in the Ordinance. This definition excludes warehouse owners, factories, wholesalers or companies that package food for other retailers and not directly for the consumer.

Are there Exemptions?

The Ordinance does provide for the possibility of an exemption. It also authorizes businesses to charge consumers a “take out fee” to recover the added expense of using alternative packaging. Business owners may apply for an exemption from the Ordinance upon showing, by supporting documentation, that compliance would cause them undue hardship and/or that a suitable compostable or recyclable alternative does not exist for a particular use. You may obtain an exemption application from the Code Enforcement Division at 480 North Canal Street, South San Francisco, CA 94080.

How will this Ordinance be enforced?

Enforcement will initially be on a complaint-basis with warnings being issued for the first offense. Subsequent complaints/violations will result in a \$100 fine for the first citation and \$200 for every subsequent violation.

Staff has compiled a list of companies and distributors that sell green food service ware items to affected businesses. For additional information, please contact the Fire Prevention/Code Enforcement Division at 650-829-6645.

TOWN OF FREEPORT
CHAPTER 33 STYROFOAM ORDINANCE

Whereas, the Council finds that:

1. Located in Maine on the shore of the North Atlantic Ocean, an area known world-wide for its natural beauty, fish and other wildlife, the Town of Freeport believes that it has an obligation to maintain and preserve its special natural environment;

2. Maintenance of Freeport as litter-free as possible is important to protect and preserve its natural environment and enhance its quality of life for residents and visitors;

3. The United Nations Environmental Programme Diplomatic Conference in Montreal (Montreal Protocol on Substances that Deplete the Ozone Layer) acknowledged the threat of chlorofluorocarbons to the earth's atmosphere and established international goals for the phased reduction of the manufacture and use of specific chlorofluorocarbon compounds ("CFC's"). The Town of Freeport supports international and federal efforts to reduce the non-essential use of chlorofluorocarbons.;

4. The Federal Environmental Protection Agency reports that foam products account for 28% of ozone-depleting potential of CFC's. Blowing agents used in the production of non-CFC PSF's create hazardous earth-level smog;

5. The Federal Environmental Protection Agency has issued a national municipal waste strategy calling for a 25 percent reduction in solid waste by 1992. The strategy, titled "The Solid Waste Dilemma: An Agenda for Action", includes the promotion of recycling. The State of Maine is considering how to implement this strategy;

6. The State of Maine has banned the service of food and beverages in polystyrene foam containers at facilities or functions of the State or its political subdivisions effective January 1, 1990 (38 MRS Section 1651 et seq.);

7. Readily disposable consumer plastic containers and wrappers (including those made from polystyrene foam) are essentially not biodegradable and as litter do not decompose over time into the natural environment;

8. The use of readily disposable consumer plastic containers and wrappers has increased annually and projections indicate a significant growth in their use;

9. Plastic litter, particularly polystyrene foam, poses a threat to the natural environment, including fish and other wildlife;

10. This Ordinance will serve the public interest by reducing the amount of non-biodegradable waste littering Freeport as a portion of any substitute packaging is expected to be composed of biodegradable material in whole or in part. Polystyrene foam litter is highly

durable, buoyant, and non-biodegradable and, therefore, persists and detracts from the appearance of the area longer than many other types of litter;

11. At the present time there is no Recycling Program in Freeport for polystyrene foam food or beverage containers;

12. Some other commonly used food packaging materials are also non-biodegradable and contribute to litter problems; nevertheless, the Council finds that it is appropriate to regulate polystyrene foam food packaging while not regulating other types of food packaging at this time for the following reasons:

A. To minimize disruption in the food services and sales industry, the Council should avoid banning a wide range of packaging materials at one time. It might be appropriate to ban other packaging materials in the future, but an incremental approach to eliminating undesirable packaging materials will cause less disruption and allow the Town to handle enforcement in more manageable stages;

B. Polystyrene foam is the most commonly used non-reuseable food packaging material for prepared foods in restaurants and food service establishments in Freeport and, therefore, prohibiting its use for such purpose and its sale at retail will be the most effective way of reducing non-biodegradable litter in Freeport;

C. Ingestion of polystyrene foam particles has been identified as a hazard to wildlife, while this problem has not been associated with other food packaging materials.

NOW, THEREFORE, BE IT ORDERED:

1. On and after January 1, 1990, no retail food vendor shall serve or sell prepared food and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam (PSF) containers;

2. On and after January 1, 1990, no vendor in the Town of Freeport who sells tangible personal property at retail shall sell polystyrene foam food or beverage containers;

3. Violations of this Ordinance shall be punishable by fines as follows:

A. A fine not exceeding \$250 for the first violation in a one-year period;

B. A fine not exceeding \$500 for the second and each subsequent violation in a one-year period;

4. Provided nevertheless that the effective date of this Ordinance shall be postponed if and as long as there is developed and maintained an effective Town-wide Recycling Program for polystyrene foam food and beverage containers, as determined by the Town Council;

5. Definitions. As used in this Ordinance the following terms have the following meanings:

A. "Biodegradable" means material capable of being broken down by micro-organisms into simple substances or basic elements;

B. "Chlorofluorocarbons" are the family of substances containing carbon, fluorine and chlorine;

C. "Food Packager" means any person located within the Town of Freeport who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products;

D. "Prepared food" means food or beverages which are served at the food vendor's location having been previously prepared elsewhere or are prepared at the vendor's location by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. "Prepared food" does not include any raw uncooked meat or eggs. Prepared food may be eaten either on or off premises;

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

F. "PSF" means polystyrene foam;

G. "Recycling Program" - a process whereby used materials are separated from the solid waste stream and utilized as a raw material in the manufacture of a new product or for new economic use;

H. "Restaurant" means any establishment located within the Town of Freeport selling prepared food to be eaten by customers. Restaurant includes a sidewalk or other outdoor food vendor;

I. "Retail Food Vendor, Vendor" means any person, restaurant, store, shop, sales outlet or other establishment, including, without limitation, a grocery store, convenience or variety store or a delicatessen located within the Town of Freeport which sells prepared food;

If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.

295-06

NO. 060944

ORDINANCE NO.

1 [Food Service Waste Reduction Ordinance.]

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

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

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

15 Section 1. **Findings.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 Section 2. The San Francisco Environmental Code is hereby amended by adding
10 Chapter 16, Sections 1601 through 1611, to read as follows:

11 **SEC. 1601. TITLE.**

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

13
14 **SEC. 1602. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (c) The City Administrator may issue an administrative civil liability citation to such person in
24 an amount not exceeding \$100.00 for the first violation, an amount not exceeding \$200.00 for the
25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~(b) Any individual, firm, partnership, corporation, company, association, society, group, or~~
23 ~~other person or legal entity that violates any provision of Sections 469.2 and 469.3 shall be liable for a~~
24 ~~civil penalty, not to exceed \$500 for each day such violation is committed or permitted to continue. Any~~
25

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

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

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

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

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

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

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

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

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

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

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

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

18
19 By:



20 BURK E. DELVENTHAL
21 Deputy City Attorney
22
23
24
25



City and County of San Francisco

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

Tails Ordinance

File Number: 060944

Date Passed:

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

October 31, 2006 Board of Supervisors — SUBSTITUTED

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

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

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

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

November 21, 2006 Board of Supervisors — FINALLY PASSED

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

Excused: 1 - Daly

File No. 060944

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


for Gloria L. Young
Clerk of the Board

NOV 29 2006

Date Approved


Mayor Gavin Newsom

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2011-_____

AN ORDINANCE OF THE CITY OF SAN LEANDRO, AMENDING CHAPTER 3-8 OF THE SAN LEANDRO MUNICIPAL CODE TO PROHIBIT THE USE OF POLYSTYRENE FOAM FOOD SERVICE WARE BY ALL FOOD VENDORS, CITY DEPARTMENTS, AND CITY CONTRACTORS, AND AT CITY-SPONSORED EVENTS

WHEREAS, the City of San Leandro desires to protect the natural environment, its economy, and the health of its residents and visitors; and

WHEREAS, CalRecycle estimates that Californians use 165,000 tons of polystyrene foam each year for packaging and food service purposes alone, and currently there is no economically feasible means of recycling this product locally; and

WHEREAS, disposable food service ware constitutes a portion of the litter in San Leandro's streets, parks and public places that increases City maintenance costs; and

WHEREAS, polystyrene foam is a common pollutant that fragments 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, the City's goal is to replace polystyrene foam food service ware with reusable, recyclable or compostable alternatives; and

WHEREAS, the City encourages the use of unbleached, non-coated, recycled-content paper food ware and other fiber-based food ware as the most environmentally preferable alternatives when the use of reusable food ware is not feasible; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of San Leandro and is exempt from the requirements of the California Environmental Quality Act ("CEQA"), as amended, pursuant to Guideline 15061(b)(3) and Guideline 15308, of the CEQA Guidelines; and

WHEREAS, the City supports pending legislation to ban expanded polystyrene food packaging as well as statewide efforts to reduce the prevalence of expanded polystyrene and other plastic litter; and

WHEREAS, to date at least 45 cities and counties in California that share this goal have passed ordinances or enacted resolutions banning polystyrene foam food service ware.

NOW THEREFORE, the City Council of the City of San Leandro does **ORDAIN** as follows:

SECTION 1. AMENDMENT OF CODE. Chapter 3-8 of the San Leandro Municipal Code is amended to read as follows:

Article 2. BAN ON POLYSTYRENE FOAM FOOD SERVICE WARE

3-8-200 TITLE. This Article shall be known as the “City of San Leandro Ban on Polystyrene Foam Food Service Ware” and may be so cited.

3-8-205 PURPOSE AND INTENT. The purpose and intent of this Article is to protect the City’s natural environment, its economy, and the health of its residents and visitors by substituting polystyrene foam food service ware with compostable or recyclable food service ware at all food vendors, city departments, and city facilities served by contractors, and at city-sponsored events.

3-8-210 DEFINITIONS. For the purpose of this Article the following definitions shall govern unless the context clearly requires otherwise:

- (a) “City” means the City of San Leandro.
- (b) “City Department” means any governmental subdivision of the City.
- (c) “City Facility” means any premises or lands owned or operated by the City.
- (d) “City-Sponsored Event” means any activity that is organized by the City and any private activity whose organizers voluntarily request any endorsement or recognition from the City that is unrelated to any requirements for such an event under applicable law.
- (e) “Compostable” means all materials in the product or package will break down into, or otherwise become a part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner consistent with the composting facility used by the City’s franchisee or by the Oro Loma Sanitary District’s franchisee for integrated waste management.
- (f) “Contractor” means any individual, group, or organization that has a contract with the City for work or improvement to be performed, for a franchisee, concession, for grant monies, goods and services, or supplies to be donated or to be purchased at City expense.
- (g) “Food Vendor” means any establishment located within the City of San Leandro, or any establishment which provides prepared food or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food; and any individual, group, or organization which regularly provides food as part of its services.
- (h) “Food Service Ware” means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared food and includes, but is not limited to, plates, cups, bowls, trays, and hinged or lidded containers. This definition does not include single-use straws, drink lids or utensils.

(i) "In Association With" means any combination of food service ware with any form of prepared food for the purposes of containment, consumption, or display to promote consumption.

(j) "Prepared Food" means any food or beverage prepared for consumption on or off a premises or lands using any cooking or food preparation technique, or any raw foods provided for consumption without requiring further food preparation. Prepared food does not include uncooked meat, fish, poultry, or eggs unless provided for consumption without further food preparation.

(k) "Person" means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, governmental entity, partnership, or association.

(l) "Polystyrene Foam" means the thermoplastic petrochemical material utilizing the styrene monomer, which may be marked with resin symbol #6, 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.

(m) "Recyclable" means any material that is accepted by the City recycling program, including, but not limited to, paper, glass, metal, cardboard, and plastic that can be recycled, salvaged, processed, or marketed by any means other than landfilling or burning whether as fuel or otherwise, so that they are returned to use by society. For the purposes of this article, recyclable plastic does not include polystyrene foam labeled with resin symbol #6.

3-8-215 POLYSTYRENE FOAM FOOD SERVICE WARE PROHIBITED.

(a) The following are prohibited from using polystyrene foam food service ware in association with prepared food:

- (1) Food vendors;
- (2) City departments; and
- (3) Contractors that serve any City facility.

(b) Food vendors, City departments, and contractors that serve any City facility are prohibited from using polystyrene foam food service ware in association with prepared food at any City-sponsored event.

3-8-220 REQUIRED USE OF COMPOSTABLE OR RECYCLABLE FOOD SERVICE WARE.

(a) Notwithstanding the provisions of section 3-8-225, the following are required to use compostable or recyclable food service ware in association with prepared food:

- (1) Food vendors;
- (2) City departments; and
- (3) Contractors that serve any city facility.

(b) Notwithstanding the provisions of section 3-8-225, food vendors, City departments, and contractors that serve any city facility are required to use compostable or recyclable food service ware in association with prepared food at any City-sponsored events

3-8-225 EXEMPTIONS.

(a) Food vendors that are currently existing or are established in the City by the effective date of the ordinance will be exempted from the provisions of this Article prohibiting the use of polystyrene foam food service ware for a period of time to be determined by the City Manager

on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

(b) Prepared foods prepared and packaged outside of the City of San Leandro and prepared foods prepared and packaged in the City of San Leandro for use outside of the City of San Leandro are excluded from the provisions of this Article. Purveyors of food prepared and packaged outside the City of San Leandro are encouraged to follow these provisions in accordance with the City's stated policy goal to eliminate the use of polystyrene foam food service ware in all possible applications.

(c) Retailers, wholesalers and suppliers of polystyrene foam food service ware within the City of San Leandro are excluded from the provisions of this Article, but are encouraged to promote the sale, purchase, and use of compostable and recyclable food service ware options in San Leandro in accordance with the City's stated policy goal to eliminate the use of polystyrene foam food service ware in all possible applications.

(d) Emergency supplies or services procurement: Food vendors, City departments, City facilities, and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

3-8-230 ENFORCEMENT AND PENALTIES.

(a) The Public Works Services Director, or the Director's designee, shall have the primary responsibility for enforcement of this Article. If the Director or his/her designee determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred. Subsequent violations of the Article by a food vendor shall be subject to the enforcement and penalties set forth below.

(b) Any violation of this Article that occurs after the issuance of a written warning to a food vendor is subject to an administrative citation pursuant to Article 1-12-400 *et seq.* of the San Leandro Municipal Code.

(c) The San Leandro City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Article.

3-8-240 EFFECTIVE DATE. This ordinance shall take effect on November 1, 2012.

SECTION II. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION III. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect on November 1, 2012. The title thereof shall be published once and a complete copy

thereof shall be posted on the City Council Chamber bulletin board for five (5) days prior to its second reading by the City Council.

Introduced by Councilmember _____ on this __ day of _____, 2011, passed to print by the following called vote:

Members of the Council:

AYES:

NOES:

ABSENT:

ATTEST: _____
Marian Handa, City Clerk

Passed and adopted this __ day of _____, 2011, after publication on _____, 2011, by the following called vote:

Members of the Council:

AYES:

NOES:

ABSENT:

ATTEST: _____
Marian Handa, City Clerk

ORDINANCE NO. 04542
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

* * * * *

AN ORDINANCE ADDING CHAPTER 4.107, COMPRISING OF SECTIONS 4.107.010 THROUGH 4.107.080 TO TITLE 4 OF THE SAN MATEO COUNTY ORDINANCE CODE PROHIBITING FOOD VENDORS FROM USING POLYSTYRENE BASED DISPOSABLE FOOD SERVICE WARE

The Board of Supervisors of the County of San Mateo, State of California,
ORDAINS as follows

SECTION 1. Chapter 4.107, comprising of sections 4.107.010 through 4.107.080, is hereby added to Title 4 of the San Mateo County Ordinance Code and shall read as follows:

Chapter 4.107 PROHIBITION ON THE USE OF POLYSTYRENE BASED DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS

4.107.010 Findings and purpose.

The Board of Supervisors finds and determines that:

- (a) Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors operating in the County of San Mateo. Polystyrene, often referred to by the trademark Styrofoam, has also become a problematic environmental pollutant given its non-biodegradable, and nearly non-reusable nature.
- (b) Polystyrene-based, single-use food service ware constitutes a substantial portion of the litter within the County of San Mateo.
- (c) Effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using

compostable materials made from renewable resources such as paper, cardboard, corn starch, potato starch, and/or sugarcane.

- (d) This Board does, accordingly, find and declare that it should restrict the use by food vendors of polystyrene-based disposable food service ware.

4.107.020 Definitions.

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

- (a) "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers, also known as clamshells. This does not include straws, utensils, or cup lids nor does it include disposable packaging for unprepared foods.
- (b) "Food vendor" means any vendor, business, organization, entity, group or individual, including a licensed retail food establishment that provides prepared food at a retail level.
- (c) "Polystyrene-based" means and includes expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including , but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene (EPS)), and clear or solid polystyrene known as oriented polystyrene.
- (d) "Prepackaged food" means any properly labeled processed food, prepackaged to

prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source.

- (e) "Prepared food" means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared. Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.

4.107.030 Prohibited use polystyrene-based disposable food service ware.

No food vendor shall use polystyrene-based disposable food service ware when providing prepared food.

4.107.040 Exemptions.

- (a) Prepackaged food is exempt from the provisions of this chapter.
- (b) Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this chapter.
- (c) Food vendors at the San Francisco International Airport are exempt from the provisions of this chapter.

4.107.050 Request For An Exemption.

Any food vendor may seek an exemption from the requirements of this chapter upon demonstrating that strict application of the requirements would cause undue hardship.

- (a) An "undue hardship" shall be found in:
- (1) Situations unique to the food vendor where a suitable alternative does not exist for a specific application; and/or
 - (2) Situations where no reasonably feasible available alternative exists to a

specific and necessary container prohibited by this chapter.

- (b) The application process for exemption shall be as follows:
 - (1) The food vendor seeking an exemption shall submit a written exemption request to the Environmental Health Division.
 - (2) A written exemption request shall include all information and documentation necessary for the Director of the Environmental Health Division to make a finding that imposition of this chapter would cause an undue hardship as defined in Section 4.107.050(a).
 - (3) The Director of the Environmental Health Division may require the applicant to provide additional information in order to make a determination regarding the exemption application.
 - (4) Exemption decisions are effective immediately and are final and not subject to appeal.
 - (5) The Director of the Environmental Health Division or his/her designee may grant an exemption for a period of up to one year upon a finding that the food vendor seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship as defined in 4.107.050 (a).
- (c) If a food vendor granted an exemption wishes to have the exemption extended, it must re-apply for the exemption prior to the expiration of the one year exemption period and demonstrate continued undue hardship. Extensions may be granted for intervals not to exceed one year.

4.107.060 Administrative fine.

- (a) Grounds for Fine. A fine may be imposed upon findings made by the Director of the Environmental Health Division, or his or her designee, that any food vendor

has used polystyrene-based disposable food service ware in violation of this Chapter.

- (b) Amount of Fine. Upon findings made under subsection (a), the food vendor shall be subject to an administrative fine as follows:
 - (1) A fine not exceeding one hundred dollars (\$100) for a first violation;
 - (2) A fine not exceeding two hundred dollars (\$200) for a second violation;
 - (3) A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations;
 - (4) Each day that a food vendor uses polystyrene-based disposable food service ware when providing prepared food shall constitute a separate violation.
- (c) Fine Procedures. Notice of the fine shall be served on the food vendor. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be either that (1) the food vendor did not use polystyrene-based disposable food service ware when providing prepared food or (2) the food vendor would have been granted an exemption under 4.107.050 if the food vendor had applied for such exemption. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that one of the above listed grounds for a contest have been met and shall be a final administrative order, with no administrative right of appeal.
- (d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the Environmental Health Division or his or her designee after the hearing, the fine

shall be referred to a collection agency.

4.107.070 Severability.

If any provision of this chapter or the application of such provision to any person or in any circumstances shall be held invalid, the remainder of this chapter, or the application of such provision to person or in circumstances other than those as to which it is held invalid, shall not be affected thereby.

4.107.080 Enforcement of this chapter when adopted.

The Environmental Health Division is hereby directed to enforce Chapter 4.107 of Title 4 within an incorporated area of the County of San Mateo if the governing body of that incorporated area does each of the following:

- (a) Adopts, and makes part of its municipal code:
 - (1) Chapter 4.107 of Title 4 in its entirety by reference; or
 - (2) An ordinance that contains each of the provisions of Chapter 4.107 of Title 4;
- (b) Authorizes, by ordinance or resolution, the Environmental Health Division to enforce the municipal code adopted pursuant to subsection (a) of this section, such authorization to include, without limitation, the authority to hold hearings and issue administrative fines within the incorporated area of the public entity.

SECTION 2. This Ordinance shall be effective as of July 1, 2011.

* * * * *

ORDINANCE NO. _____
AN ORDINANCE OF THE COUNTY OF SANTA CRUZ
AMENDING CHAPTER 5.46 OF THE COUNTY CODE PERTAINING TO
THE USE AND SALE OF POLYSTYRENE FOAM

Chapter 5.46
ENVIRONMENTALLY ACCEPTABLE MATERIALS

Sections:

- 5.46.010 Findings and intent.**
- 5.46.020 Definitions.**
- 5.46.030 Prohibited Food Service Ware and Products.**
- 5.46.035 Non-food Packaging Material.**
- 5.46.040 Required Biodegradable/Compostable or Recyclable Disposable Food Service Ware**
- 5.46.050 Implementation; county contracts and leases.**
- 5.46.060 Exemptions.**
- 5.46.070 Enforcement.**
- 5.46.080 Violations.**
- 5.46.090 Severability.**
- 5.46.100 No conflict with federal or state law.**
- 5.46.110 Preemption.**

5.46.010 Findings and intent.

The Board of Supervisors finds and declares:

- A. The County of Santa Cruz has a duty to protect the natural environment, our economy, and the health of its citizens.
- B. Products made from expanded polystyrene foam (commonly called Styrofoam) are not biodegradable, returnable or recyclable. Polystyrene foam easily breaks up into smaller pieces and because it is lightweight, is carried by the wind even when it has been disposed of properly.
- C. As litter, polystyrene foam is highly durable, persisting and detracting from the appearance of an area longer than any other type of litter. There is a prevalence of polystyrene foam debris littering our parks and public places, streets and roads, waterways, storm drains and beaches. This litter ultimately floats, or is blown, into the Monterey Bay. This litter exists at a financial cost to residents and an environmental cost to our natural resources.
- D. The County of Santa Cruz is situated at the edge of the Monterey Bay National Marine Sanctuary. Marine animals and birds often confuse

polystyrene foam pieces as a food source which, when ingested, can impact the digestive track which often leads to death.

- E. The U.S. EPA has stated that the physical properties of polystyrene foam are such that “the material can have serious impacts on human health, wildlife, the aquatic environment and the economy.” According to the U.S. Food and Drug Administration, there is medical evidence to suggest that styrene, a primary component of polystyrene foam, leaches from polystyrene foam containers into food and drink. The general public, especially the non-English speaking community, is not typically warned of any potential hazard from styrene. A 1986 EPA study detected Styrene in the fat tissue of every man, woman and child tested.
- F. Discarded polystyrene constitutes a significant portion of the County of Santa Cruz waste stream. Laws, policies and regulations pertaining to material which is difficult to recycle have become a vital component in the efforts to reduce the amount of disposed waste.
- G. It is not economically feasible to recycle polystyrene in Santa Cruz County. Eliminating the use of polystyrene foam and other non-compostable, and nonrecyclable items will maximize the operating life of our landfills and will lessen the economic and environmental costs of waste management for businesses and citizens of Santa Cruz County.
- H. Food waste, including food related packaging, makes up more than thirty percent of the county of Santa Cruz waste stream and the county of Santa Cruz has adopted a policy and program goal of establishing municipal level composting to manage this portion of the waste stream. Countywide composting will help the county to achieve its zero waste goal, including seventy-five percent landfill diversion by the year 2010. If polystyrene foam is found within compost feedstock, the compost is rendered unmarketable and unusable because the application of such compost degrades the soil.
- I. At the present time, over fifty businesses in the county of Santa Cruz 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. Compost produced from biodegradable products can be used as a soil amendment for farms, landscaping and gardens thereby moving towards a healthier zero waste system.
- J. Biodegradable/compostable and recyclable take-out food packaging such as cups, plates, hinge containers, cutlery and straws are made from organic materials such as paper, sugarcane stalk, corn waste and potato starch.

These products are available locally and are competitively priced. (Ord. 4920 § 2 (part), 4/8/08)

- K. According to local environmental organizations, despite the passage of the County's Environmentally Acceptable Packaging Materials Ordinance in 2008, polystyrene foam is still one of the most abundant types of litter found during beach cleanups.
- L. According to the California Department of Resources Recycling and Recovery (CalRecycle) polystyrene's overall environmental impacts were the second highest of any product, behind only aluminum,
- M. Styrene is a suspected carcinogen and neurotoxin which potentially threatens human health.
- N. Alternative products exist for almost all uses of polystyrene foam.
- O. 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.
- P. Restricting the use of polystyrene foam products will further protect the public health and safety of the residents of the County of Santa Cruz, the County's natural environment, waterways and wildlife, would advance the County's goal of limiting greenhouse gas impacts, and contribute toward the County's goal of Zero Waste.

5.46.020 Definitions.

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

“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. For the purposes of this chapter the term biodegradable shall have the same meaning as compostable. This chapter 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 the definition of the term “compostable.”

“County” or “County of Santa Cruz” means all that territory within the unincorporated area of the county of Santa Cruz, state of California.

“County contractors and lessees” means any person or entity that has a contract with the county 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 county, or to be paid out of monies deposited in the treasury or out of trust monies under the control or collected by the county.

“County facilities” means any building, structure or vehicles owned or operated by the county of Santa Cruz, its agent, agencies, departments and franchisees.

“County facility food provider” means any entity that provides prepared food in county facilities.

“Disposable food service ware” is interchangeable with “to go” packaging and includes all containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, napkins and other items 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 providers. 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.

“Food provider” means any business, organization, entity, group or individual, and including retail food establishments, located in the county that offers food or beverage to the public.

“Person” means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.

“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. The term “polystyrene” also include clear or solid polystyrene which is know as “oriented polystyrene.”

“Prepared food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food provider’s premises or within the county of Santa Cruz. For the purposes of this chapter, prepared food does not include packaging for 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.”

“Recyclable” means material that can be sorted, cleansed, and reconstituted using recycling collection programs available in Santa Cruz County 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.

“Retail food establishment” means all sales outlets, stores, shops, vehicles or other places of business located within the county of Santa Cruz which operate primarily to sell or convey foods or beverages directly to the ultimate consumer, which foods or beverages are predominantly contained, wrapped or held in or on packaging. Retail food establishment shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, short-order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out prepared food place, industrial feeding establishment, catering kitchen, mobile food preparation unit, commissary, grocery store, public food market, produce stand, food stand, or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served or provided for the public; and any organization group or individual which provides food or beverage as part of its service or in conjunction with a special event it sponsors. (Ord. 4920 § 2 (part), 4/8/08)

“Special Event” means an applicant for any special events permit issued by the County or any County employee(s) responsible for any organized special event.

“Retail vendor” means any store or other business that sells goods or merchandise located or operating within the unincorporated area of the County of Santa Cruz.

5.46.030 Prohibited disposable food service.

A. Retail food establishments shall not sell, hand out, give away, distribute or otherwise make available for public or customer use prepared food in disposable food service ware that contains polystyrene foam.

B. County facility food providers may not provide prepared food in disposable food service ware that contains polystyrene foam.

C. County departments may not purchase, acquire or use disposable food service ware that contains polystyrene foam.

D. County contractors and lessees may not use disposable food service ware that contains polystyrene foam. (Ord. 4920 § 2 (part), 4/8/08)

5.46.031 Prohibited retail sales

No retail vendor or special event in the unincorporated area of the County of Santa Cruz may sell, rent or otherwise provide any product which is composed entirely or primarily of polystyrene foam, except as exempted in section 5.46.060 below. This specifically includes but is not limited to cups, plates, bowls, clamshells and other products intended primarily for food service use, as well as coolers, pool or beach toys, packing peanuts or other packaging materials.

5.46.035 Non-food packaging material.

It shall also be a policy goal of the county that business establishments located outside the county of Santa Cruz shall not package any non-food product in any package which utilizes polystyrene foam both block polystyrene or packing peanuts; or purchase, obtain, keep, distribute or sell for home or personal use, or give, or otherwise provide to customers any packaging which utilizes polystyrene foam. The county shall promote and encourage, on a voluntary basis, the elimination of all polystyrene foam packaging. (Ord. 4920 § 2 (part), 4/8/08)

5.46.040 Required biodegradable/compostable or recyclable disposable food service.

A. All retail food establishments utilizing any disposable food service ware shall use a biodegradable/compostable or recyclable product, unless there is no affordable product available as determined by the director of public works in accordance with this subsection and Section 5.46.060(B). Not later than thirty days before the operative date of this chapter, and after a public hearing, the director of public works shall adopt a list of available suitable affordable biodegradable/compostable or recyclable alternatives for each product type. The director of public works shall regularly update the list.

B. All county facilities and 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 director of public works in accordance with subsection A of this section.

C. County contractors and lessees using any disposable food service ware shall use biodegradable/compostable or recyclable disposable food service ware in city/county facilities while performing under a county contract or lease unless there is no affordable biodegradable or compostable product available as determined by the director of public works in accordance with subsection A of this section. (Ord. 4920 § 2 (part), 4/8/08)

5.46.050 Implementation; county contracts and leases.

A. The public works director is authorized to promulgate regulations, guidelines and forms and to take any and all other actions reasonable and necessary to enforce this chapter.

B. All county contracts and leases, shall contain the following minimum language: “Contractor agrees to comply fully with and be bound by all of the provisions of the food packaging ordinance as set forth in the Santa Cruz County Code Chapter 5.46 including the remedies provided, and implementing guidelines and rules. The provisions of this chapter 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, the contractor agrees that if it breaches this provision, the county will suffer actual damages that will be impractical or extremely difficult to determine; further, contractor agrees that the sum of one hundred dollars liquidated damages for the first breach, two hundred dollars liquidated damages for the second breach in the same year, and five hundred dollars liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that the county 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 the county because of contractor’s failure to comply with these provisions.” (Ord. 4920 § 2 (part), 4/8/08)

5.46.060 Exemptions.

A. There are no exemptions that allow for the use of polystyrene foam disposable food service ware.

B. The Board of Supervisors may exempt a retail vendor or special event from the requirements of this chapter for a one year period upon showing that this chapter would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The director of public works shall put the decision to grant or deny a waiver in writing and it shall be final.

C. A retail vendor or special event granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

D. An exemption application shall include all information necessary for the county to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The director may require the applicant to provide additional information to determine facts regarding the exemption application.

E. The director may approve the exemption application, in whole or in part, with or without conditions.

F. Foods prepared or packaged outside the county and sold inside the county are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the county are encouraged to follow the provisions of this chapter.

G. Products which pose a small risk of becoming litter or in which polystyrene foam is included for insulating or flotation purposes and is completely encased in more durable material are exempt from the provisions of this ordinance. Examples include surfboards, boats, life preservers, construction materials, craft supplies and durable coolers not principally composed of polystyrene.

H. Packaging for meat is exempt from the provisions of this chapter.

I. Packaging for medical devices and for harvesting and storage of grapes is exempt from the provisions of this chapter.

5.46.070 Enforcement.

Enforcement of this chapter shall be as follows:

A. The Director of Public Works, or designee, shall have primary responsibility for enforcement of this chapter and shall have authority to issue citations for violation of this chapter. The director, or designee, is authorized to establish regulations or administrative procedures to obtain compliance with this chapter, including, but not limited to, inspecting any vendor's premises to verify compliance in accordance with applicable law.

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

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

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

E. The county may inspect any retail vendor's or special event's premises to verify compliance with this chapter. (Ord. 4920 § 2 (part), 4/8/08)

5.46.080 Violations.

Violations of this chapter shall be enforced as follows:

A. For the first violation, the Director of Public Works, or the Director's designee, upon determination that a violation of this chapter has occurred, shall issue a written warning notice to the retail vendor or special event promoter specifying that a violation of this chapter has occurred, along with the appropriate penalties in the event of future violations. The vendor will have thirty days to comply.

B. The following penalties will apply for subsequent violations of this chapter:

1. A fine not exceeding one hundred dollars for the first violation thirty days after the first warning.
2. A fine not exceeding two hundred dollars for the second violation sixty days after the first warning.
3. A fine not exceeding five hundred dollars for the third violation ninety days after the first warning, and for every thirty days not in compliance.

C. Vendors or special events who violate this chapter in connection with commercial or noncommercial special events shall be assessed fines as follows:

1. A fine not exceeding two hundred dollars for an event of one to two hundred persons.
2. A fine not exceeding four hundred dollars for an event of two hundred one to four hundred persons.
3. A fine not exceeding six hundred dollars for an event of four hundred one to six hundred persons.
4. A fine not exceeding one thousand dollars for an event of six hundred one or more persons. (Ord. 4920 § 2 (part), 4/8/08)

5.46.090 Severability.

The provisions of this chapter are declared to be severable and if any provision, sentence, clause, section or part of this chapter is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this chapter or their application to persons and circumstances. (Ord. 4920 § 2 (part), 4/8/08)

5.46.100 No conflict with federal or state law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law. (Ord. 4920 § 2 (part), 4/8/08)

5.46.110 Preemption.

The provisions of this chapter shall be null and void on the day that California statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent California state or federal administrative agency issues and promulgates regulations, preempting such action by the county of Santa Cruz. The board of supervisors shall determine by ordinance whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section. (Ord. 4920 § 2 (part), 4/8/08)

CITY OF PORTLAND
MEMORANDUM

TO: Chairperson Suslovic and members of the Green Packaging Working Group

FROM: Troy Moon, Environmental Services Manager

DATE: April 5, 2013

RE: **Restaurant polystyrene survey results**

The City of Portland has many establishments that provide food to customers. From mid-March to early April staff telephoned over 40 randomly chosen restaurants and stores and spoke with 24 managers regarding the containers they used for take out and “doggie bags.”

Of the containers used, 54% use cardboard and paper products, 41% use polystyrene, 37% use compostable products, 29% use non-polystyrene plastic and 25% use aluminum containers and foil. These results reflect the use of multiple types of containers by establishments. Among the reasons cited for use, 36% cited cost issues, 28% cited environmental concerns, 24% said they liked the effectiveness of their products and 12% cited customer demand and restaurant presentation.

If an establishment was using polystyrene containers, the manager was then asked if switching to a non-polystyrene container would have an economic impact. 50% said yes, 10% said no, 40% answered that they weren’t sure. Of those who said that the switch would impact them, they were given the option of little to no impact, moderate (passing costs on to customer), large (reduction of staff and/or staff hours) or extreme (reduction of opening hours and/or closing doors for good). No establishment reported the likelihood of either reducing staff or hours, or closing their doors because of a switch to non-polystyrene products. 20% said they would experience little impact, 60% percent said they would experience a moderate impact, and 20% said they would have to look into the possibility further

The final question requested suggestions of what the City could do to assist businesses in the transition to non-polystyrene packaging. Some suggested tax subsidies or breaks to assist restaurants which are making the transition to non-polystyrene containers, or allowing tax breaks for those who are no longer using polystyrene. Several also suggested the City could sponsor recycling education efforts for citizens and businesses.

Name of Establishment _____

Name of interviewee (optional) _____

What type of containers do you use if a customer wants to take away food or bring home leftovers? _____

Why did you choose that type of container? _____

(If polystyrene used) Would switching to non-styrofoam containers have an economic impact on your business? _____

(If yes) What is the degree of impact it would have?

- none to slight _____
- moderate (pass costs on to customer) _____
- large (reduction of staff and/or staff hours) _____
- extreme (reduction of opening hours and/or closing doors for good) _____
- other (explain) _____

Are there actions the City could take to help businesses transition to using non-styrofoam packaging? _____

Thank you for your participation!

CITY OF PORTLAND, MAINE

Standing Committee on Transportation, Sustainability and Energy

Councilor David Marshall (D2), Chair

Councilor Kevin Donoghue (D1), Vice Chair

Councilor John Anton (A/L)

Councilor Cheryl Leeman (D4)

July 18, 2012

Meeting Minutes

Attendees: Chair David Marshall, Councilor Kevin Donoghue, Councilor Cheryl Leeman, Councilor John Anton (absent), John Peverada, Mike Bobinsky, Paul Bradbury, Mike Collins, Tom Errico, Marion Oliver, Jeremiah Bartlett, Ann Freeman, Melissa Graffam

Chair David Marshall called the meeting at 5:40 pm

1. Approval of Minutes from the June 20, 2012 Meeting

Motion made by Councilor Leeman to approve of said meeting minutes. Seconded by Councilor Marshall. Passed 3-0.

2. Staff Communications – Discussion Items

Mike Bobinsky introduced Public Services new Transportation Systems Engineer, Jeremiah Bartlett.

Mike Bobinsky proceeded to ask the Committee for their endorsement with the Oak Street parking change. This change came at the request of Jan Beitzer from the Portland Downtown District. The requested change is to replace a mid-block vehicle loading space on Oak Street (at approx. 38-40 Oak Street) to be changed to a standard metered space. A motion was made by Councilor Leeman to endorse the change. Seconded by Councilor Donoghue. Passed 3-0.

3. Portland Jetport Non-reserved Taxi

Paul Bradbury, Airport Director, stated that along with the Jetport growing, so has the number of taxi cabs. In August of 2010, through a rulemaking process the total number of non-reserved taxi permits was limited to 40. It was anticipated that this number would be achieved over time through attrition from the total of 51 taxi cab drivers permitted at that time. At this time that has not happened and there are still 49 permitted non-reserved taxi cabs at the Jetport. Some of the options are to keep the things the way that it currently is; use a lottery; use a medallion system; or even through the RFP process. Mr. Bradbury came to this Committee for guidance on what Jetport staff should do.

The Committee heard from a lot of taxi cab drivers and/or owners. Some expressed their concern for the process to not change as they do not want to lose their jobs. While many others expressed their desire to be able to have a chance to work at the Jetport.

Councilor Donoghue asked how can we get the numbers down without displacing people? Mr. Bradbury said that we do have a cap for the numbers, but the problem is that some taxi cab owners have given power of attorney to others when they are not able to drive or be in Portland. Thus, the numbers have been not able to go down. Ann Freeman from the City's Corporation Counsel said that we (the City) can't by law not allow them to use Power of Attorney's. No decisions were made at this meeting and this topic will be brought up again at another meeting.

4. Update Discussion on High and State Street Two-way Conversion

Tom Errico, the City's Traffic Engineering Consultant, discussed the traffic volumes, crash history and the general process for the possibility of the two-way traffic conversion on State and High Street. Mr. Errico presented a memo to the Committee with his findings. (This memo is attached with the meeting minutes.)

The Committee asked for public comment. Brian Peterson, a resident of Westbrook, pointed out the loss of parking that would happen if the conversion was to happen. He also mentioned the concern about pollution and the possibility of more traffic accidents. He gave the Committee a packet of information to read.

Kevin Beal, a resident on Cumberland Avenue, mentioned the current high volume of cars that currently use these streets and the rate of speed that they travel. Mr. Beal discussed how when these streets were converted to one-way it affected his family and those families on these roads. They can no longer cross the street freely as in the past.

Doug Sneed, a resident on Grant Street commented that he felt that it was not working well (the one-way) as he has seen many accidents at the intersection of Grant/Park at High. He also said that he feels that the street divides the City.

Other residents also commented that they would support a two-way conversion.

Mike Bobinsky mentioned that the City is still working with Tom Errico along with Maine Department of Transportation during this evaluation stage.

5. UNE Residential Parking Program Recommendation

As a result of parking issues within the neighborhood of the University of New England, the city is proposing to create a new Residential Parking Zone. This area would include Walton Street, Stevens Avenue, Poland Street, College Street and Mayfield Street. This sticker program will be based on the other programs that are currently within the City. This will be on a trial basis and will be reviewed within nine months to a year.

The resident of 12 Poland Street asked why this program did not include in front of his property. It was discussed by staff and the Committee that in front of his property would be included.

Councilor Leeman made a motion to have staff make the traffic ordinance changes for this to go to the August 8th council meeting. Motion was seconded by Councilor Donoghue. Passed 3-0.

6. Recommendation to Create a Task Force to Discuss Plastic Bags and Styrofoam

Councilor Ed Suslovic will be chairing this task force. The purpose is to evaluate the best methods of decreasing the use of these products in retail, local restaurants and within the City of Portland.

The task force will consist of the following: Maine Grocer's Association; Dunkin Donuts Franchisee; Maine Restaurant Association; Hylex Polly; American Chemical Council; Portland Schools; University of Southern Maine; Hutamaki; EcoMaine; Surfinder; Environment Maine; Friends of Casco Bay; Maine Merchants Association; City Staff and three (3) residents.

The task force will separate the two issues and work on Styrofoam and report back to the Committee in November 2012. Then continue to work regarding plastic bags, reporting back in February 2013.

7. Recommendation to Create a Task Force to Discuss the Feasibility of a Streetcar

Councilor Marshall was asked to put this item on the agenda by MEREDA and the Chamber of Commerce to look into the feasibility of a streetcar. It was also mentioned that the task force would be contingent on receiving a grant. Councilor Donoghue asked when the PACTS study applications due are. Mike Bobinsky responded that they are due in 2013.

Councilors Leeman and Donoghue both had concerns on expending staff resources for this if there is currently no funding. Councilor Leeman also asked how do you define a "streetcar"? Councilor Marshall said it would be a fixed guide rail system or a modern streetcar. Burlington, Vermont, Manchester, New Hampshire and Providence, Rhode Island have all done studies about this.

All councilors would like to see more information regarding this and guiding principles in regards to the streetcar. This item will be brought up at a later committee meeting.

8. Adjourn

Meeting adjourned at 8:50 pm

Green Packaging Working Group
Monday, March 11th, 2013
Portland City Hall
389 Congress Street
5 p.m.

The initial meeting of the Green Packaging Working Group Task Force opened at 5 p.m. Monday, March 11th in Room 24 of Portland City Hall.

1. Welcome.

Chair Ed Suslovic opened the meeting with a welcome to all the interested parties and members of the public in attendance and said he was pleased at the level of interest exhibited. Each member of the task force introduced themselves and their affiliation.

2. Goals and Objectives.

Chair Suslovic outlined the goals of the group. Its first task is to look at ways of recycling, reducing or banning polystyrene through an ordinance recommendation. Its second task is to take up the issue of non-recyclable plastic grocery bags. Because the town of Freeport has had an ordinance banning polystyrene for 20 years and because a representative from the town was present, the main focus of the group this evening would be discussion on Portland's prospective ordinance. Chair Suslovic noted that public comment would be taken at the end of the night. He also outlined the process the ordinance recommended by the task force would take, in that it would be reviewed by the Transportation, Sustainability and Energy Committee in a public hearing, and then, if it was recommended, it would go to the City Council for another public hearing and eventual passage.

3. Presentation of Freeport Foam Packaging Ordinance.

Freeport Town Engineer Albert Presgraves spoke about the town's ordinance, which went into effect in early 1990, spurred by a group of school students working on a project. The Freeport ordinance prohibits the packaging of food or beverages in polystyrene containers and the sale of polystyrene cups and containers by retailers. The town's preference is to educate and resolve issues, rather than impose fines for offenders. Mr. Presgraves noted that he had worked in Freeport for 10 years and could not recall any fine levied against a business regarding this ordinance. He began work as Shaw's was preparing to open a new store in town, and he stated the retailer had no public problem or difficulty with the ordinance. He also said that there is Dunkin' Donuts in town, and they serve their

coffee in paper cups without apparent negative economic issues. Freeport's ordinance addresses polystyrene packaging use only in Freeport, it has no impact on items packaged outside the town.

Mr. Presgraves took some questions from the task force regarding Freeport's experience with the ordinance. Regarding a question about a phase-in process for stores that may have had polystyrene inventory, he said he imagined there was a phase in provision, but he could not say for certain because he was not with the town at that point. In response to what shipping companies, both retail and industrial, have done about using polystyrene packing peanuts, Mr. Presgraves said if someone was to mail something packaged with polystyrene from Freeport it is technically illegal but the question has never come up. A question was asked about the level of litter in Freeport before and after the ban. Mr. Presgraves said he was not aware of any studies. A followup question was asked if any comparison studies between paper and polystyrene cups had been done for manufacture and transport, Mr. Presgraves was not aware of any carbon footprint studies either.

4. Discussion.

Questions were asked of John Morin, of ecomaine, about the different substances that ecomaine recycles. Mr. Morin said that ecomaine does not recycle polystyrene, but it does take wax lined paper cups and the corresponding plastic covers. Mr. Morin noted that polystyrene is 100% recyclable, but ecomaine doesn't recycle it for three reasons. The facility does not have the equipment to recycle it, shipping costs to facilities in Massachusetts or further south are restrictive because waste is priced by the ton and polystyrene is lightweight and not very dense, and there is no market for recycled polystyrene, either in the building industry or elsewhere.

Danny Bouzianis of Dunkin Donuts asked about the carbon footprint of polystyrene as compared to paper. Tyler Kidder of USM suggested that a more important measure of environmental protection is the rate of breakdown of a substance. She added that she thought recycled paper cups have a small carbon footprint as opposed to virgin paper cups.

Ron Adams of Portland Public Schools gave a summary of the school department's experience with polystyrene, saying that the single biggest complaint from parents used to be "why are you giving my kids lunch on Styrofoam®?" Many parents would choose to give their children lunch from home rather than allow them to be served on polystyrene. Mr. Adams noted that for the school lunch program, nutrition is more important than the vessel it's served in, so they changed to a paperboard product to please their client base. He said there was a significant price difference between a three cent polystyrene tray and a 12 cent paperboard tray. Chair Suslovic noted the paperboard products used in schools are both recycled and compostable, and they are also made in Waterville, reducing both the life cycle issue and the transportation-related carbon footprint. Martin Fisher of

Serlin Haley asked the task force to look at the economic impact for businesses and stores based on the Portland schools experience.

Mr. Morin asked Mr. Bouzianis about the difference in cost between paper cups and polystyrene cups. Mr. Bouzianis stressed that you could ask for a paper cup at Dunkin Donuts for no extra charge, and in fact you would receive a couple additional ounces of coffee for free because of the size difference between the cups. When asked why Dunkin Donuts doesn't serve all of their drinks in paper cups. Mr. Bouzianis answered that part of it had to do with marketing, and part of it had to do with the temperature of the coffee. He explained that steamed milk drinks generally are served at a temperature of 140° F, whereas Dunkin Donuts serves their brewed coffee at a temperature of 190° F. Mr. Bouzianis noted that most people who ask for a paper cup generally ask for a second cup to put over the first because the cup is uncomfortably hot, which makes the paper cup less environmentally sound and increases the expense for the company. Michele Brooks of Portland said she understood the cost difference between polystyrene and paper, but noted that there was a difference in the quality of paper cups, if temperature was an issue. Cathy Ramsdell of Friends of Casco Bay said that her bottom line has more to do with the long term future of the planet than the expense to a company.

Mr. Presgraves said he had heard that there had been some economic concerns when Freeport's ordinance went into effect, but all of the town's establishments had worked with the ordinance successfully. He noted that to his knowledge the town had never fined anyone, and at most the town had sent a letter to a nonconforming establishment advising them of the ordinance. Mr. Fisher said that there was a difference in scale between Freeport and Portland in population, demographics, number of establishments and manufacturing businesses. Chair Suslovic stated that the Freeport ordinance was being used as an example simply because it was local and had been effective for so long. He added that the ordinance the task force was crafting was specifically aimed at single use disposable food packaging. Mr. Fisher asked why economic impact is a consideration for the fishing, shipping and manufacturing industries and not for the small mom and pop stores. Shelley Doak of the Maine Grocers Association said she had been making a list of food manufacturers and shipping companies in Portland that would be impacted by a polystyrene ban, and asked if the purpose of the ordinance was to change public behavior or if there was another purpose. Richard Grotton of the Maine Restaurant Association asked if the task force was there to consider an ordinance banning polystyrene or if it was there to write one. Chair Suslovic answered that the City Council had asked the Transportation, Sustainability and Energy Committee to consider an ordinance, the TSE Committee created the Green Packaging Working Group to create one to consider.

Curtis Picard of the Retail Association of Maine asked what happened to waste that was not recycled in Portland. Troy Moon of Portland Public Services answered that unrecycled waste went to ecomaine and was burned in the incinerator. Mr. Grotton asked that if polystyrene was light and compactable and

being taken to the incinerator, what was the issue. Mr. Moon answered that it could be collected at the curbside as recycling, but the issue was the difficulty in marketing it from ecomaine. Ms. Ramsdell noted that as a certified public accountant, she understood the issues of the businesses that were being raised, but accounting is not good at considering the full costs to the environment such as the impact on the ocean and the atmosphere when waste is burned. Even though she understood the cost impacts of restaurants and stores, she said that it would be difficult to get the "cost estimate" on the environment. Mr. Fisher asked what percentage of the waste stream is polystyrene, and if it was possible to get that number to the task force. Chair Suslovic noted that the overall percentage was decreasing due to consumer pressures, and if it was an economic difficulty we would have heard about it from Freeport's experience. He reiterated that he envisioned Portland's ordinance only for food and beverage packaging, and he said he couldn't see it impacting shipping and seafood shipping.

Mr. Grotton noted that customers liked the thermal properties of polystyrene and to-go businesses liked the convenience and the cost of it. Any other higher priced container they used would result in an increased cost to the consumer. Mr. Bouzianis added that 36 times the amount of energy was needed to make paper cups as opposed to polystyrene cups, and 12 times the amount of water. Mr. Adams said the school department looked at ways to pay for non-polystyrene products, which cost 12% more, but because the trays they used were compostable, they made the difference up in the reduction in the waste removal costs. He noted that the school department's experience didn't address a to-go restaurant's issues, but he said that the kids' work reflected that there could be cost savings, and the City should try to follow their lead.

Michele Brooks of Portland asked Mr. Bouzianis if he had talked to the Dunkin Donuts in Freeport and what their experience was in 1990. He said he had. Ms. Brooks said that lots of places in Portland use non-polystyrene containers, there must be a way to encourage use of them more in Portland. Mr. Presgraves said many establishments were concerned that Shaws was going to get a competitive advantage when they came in because of the polystyrene issue, but that all establishments were on a level playing field in Freeport. Ted Koffman of the Maine Audubon Society asked if the committee could see other ordinances from other cities because many cities have moved away from polystyrene and plastic more for reducing waste removal costs than environmental consciousness. Mr. Picard said that by banning a low cost option like polystyrene there must be some sort of economic impact to companies and the jobs they could offer. Mr. Bouzianis also noted that a ban could drive people who would otherwise run a business in Portland to surrounding municipalities. Mr. Fisher asked how the task force can pick on one section of the economy over another.

Chair Suslovic asked staff to locate the order from the Transportation, Sustainability and Energy Committee which created the Green Packaging Working Group and ordinance examples from other cities that have instituted a polystyrene

ban, specifically whether a phase in date or significant lead time was written in to allow restaurants and retailers to deplete their stock of polystyrene containers. Mr. Bouzianis suggested looking for ordinance language from cities where a ban did not pass and data regarding economic and job impacts and environmental impacts regarding the life cycle and carbon footprint of various container types.

Mr. Fisher asked for clarification of the task force's motivation, whether for limiting litter or for public health or other reasons. Chair Suslovic said that a majority of Portland citizens are in favor of a polystyrene ban for environmental reasons very similar to those outlined in the Freeport ordinance.

5. Meeting Schedule.

Chair Suslovic excused himself as he had another meeting he was already late for. He announced that the next meeting will be on April 8th at 5 p.m. in Room 24. He said he hopes to have an ordinance written and ready for a vote at that meeting. Mr. Koffman took over as moderator and opened the floor for public comment.

Public Comment

Chris O'Neil of the Greater Portland Chamber of Commerce stated he was here to observe on behalf of the Chamber. He noted that Portland's business friendliness has had a history of ups and downs, and the state of the City is pretty good right now. The Chamber is in favor of a clean and safe city and he agreed that polystyrene is a blight on the streets. He said that the Chamber is not taking a position for or against a polystyrene ban at the present time. He was concerned that the City is stepping beyond jurisdictional bounds. He urged all sides of the debate to back up facts with evidence as opposed to spinning out opinion. He noted that the Chamber has an issue with the open container system of the recycling and solid waste collection program. He urged the task force to open their minds and entertain new ideas.

Allen Zimmerman of Harriseeket Lunch and Lobster said he had concerns with the statements Chair Suslovic made. He asserted that there are no carcinogens in polystyrene any longer, the costs for paper cups and trays are 6-12 times more than polystyrene. Companies that are under the ban will pass costs onto customers.

Barbara Anania of Anania's stores said she was conscious of what her consumers want. Her store offers travel mugs and paper cups as well as polystyrene cups, which the customer prefers 5 to 1. In Jan 2012, they invested in polystyrene cups with their names on them, of which they still have 1 ½ years left. She is concerned that if a ban is enacted they won't be able to use the cups they have in stock. She has observed that people who use paper cups use two cups. The costs of running a business are going up, as a small business they can't keep up.

Deborah Napier, citizen, said she finds the topic very interesting. She was surprised to find there are no carcinogens remaining in polystyrene. One of her concerns is that polystyrene does not break down. Portland is an example-setter, she said, and noted she does not purchase polystyrene but has learned a lot about Dunkin Donuts' paper cups. She noted that she would like to learn more about the topic and believes there's a reason other cities are doing this.

Avery Day, attorney at Pierce Atwood representing the American Chemistry Council asked for minutes from the July 18th TSE committee. He said he believes the ACC can offer good information regarding this topic.

Abigail King, of the National Resources Council of Maine said she has information on life cycle analysis of polystyrene and how to shift costs so it won't be a double taxation on small businesses.

Jessie Pereira, 8th grader at King Middle School, commented on how much she likes the paper trays at her school because they are more durable and less likely to break under load. She noted that the school recycles and as a member of the green team they compost food in bins and use the resulting loam for the school gardens. Because of this it improves the gardens immensely. She suggested to the adults that they stop being closed minded on both sides, and keep their opinions open for both sides of the argument.

Because all speakers had not used their three minutes, Mr. Koffman asked if anyone had any further comments.

Mr. Zimmerman added that because of federal regulations, the only way to ship fresh fish is through polystyrene containers packed in ice.

Mr. O'Neil advised the task force to come to an agreement whether there will be an minority report and state outright the other processes common to task forces that they would use.

Ms. Anania noted that Pack Edge, an industrial shipping company, packs in polystyrene.

Mr. Fisher noted that the eighth grader who spoke was the most eloquent of anyone who had spoken that night.

The meeting was adjourned at 6:42.

Order 223-11/12

Passage: 9-0 6/18/12

MICHAEL F. BRENNAN (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

EDWARD J. SUSLOVIC (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JOHN R. COYNE (5)

JOHN M. ANTON (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

ORDER INSTRUCTING THE TRANSPORTATION, ENERGY AND SUSTAINABILITY COMMITTEE TO CONSIDER AN ORDINANCE OR RECOMMENDATION BANNING THE SALE OF NON-RECYCLABLE POLYSTYRENE FOAM (PSF) CONTAINERS

ORDERED, that the Transportation, Energy and Sustainability Committee shall consider an ordinance or recommendation to ban the sale of non-recyclable polystyrene foam (PSF) containers within the City of Portland and take subsequent action as the Committee deems appropriate.