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RECEIVED VIA EMAIL

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May 9, 2016

The Honorable Supervisor London Breed
The Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Proposed Amendment to San Francisco Food Service Waste Reduction Ordinance

Dear Supervisor Breed:

I am writing on behalf of my client, the EPS Industry Alliance ("EPSIA"), concerning the proposed amendment to the Food Service Waste Reduction Ordinance ("Proposed Ordinance"). EPSIA is the leading trade association representing businesses that make and use expanded polystyrene ("EPS"). EPS is a sustainable and recyclable product that is lightweight, shock-absorbing, non-toxic, and durable. EPS is approximately 98% air, which makes it an ideal insulator. Its unique properties make it indispensable for a wide range of products and applications, including protective packaging, cold chain shipments for pharmaceuticals and food, child car seats, and bicycle helmets.

In key part, the Proposed Ordinance would ban local businesses from using EPS packaging to protect the contents of products that they distribute or ship, and would ban San Francisco businesses from selling or distributing EPS packaging. The Proposed Ordinance relies on misinformation to argue that the ban is necessary to promote safety and to reduce litter and waste in San Francisco. In reality, the ban has no rational connection to any of those objectives. Instead, the Proposed Ordinance only makes it *appear* that the city is promoting safety and reducing litter and waste in San Francisco. The only logical outcome of the Proposed Ordinance in San Francisco is to burden local businesses and residents, who will be driven away from EPS to more costly and less reliable alternatives. The Proposed Ordinance should be withdrawn.

I. EPS is safe.

The Proposed Ordinance misleadingly states that "styrene has been linked to cancer as well as reproductive and developmental disorders," and that "styrene is

metabolized after ingestion [by animals] and threatens the entire food chain." Styrene is *not* EPS or polystyrene. Polystyrene is a rigid polymer made in part from styrene in a process that fundamentally changes the chemical nature of styrene, including its physical form (from liquid to solid). Polystyrene resin can be expanded into EPS by steam and pressure to form protective packaging and many other products. Thus, EPS is a type of polystyrene. Polystyrene and EPS are both entirely different substances from styrene, which is a clear liquid. Indeed, when California's Office of Environmental Health Hazard Assessment ("OEHHA") recently listed "styrene" under Cal. Health & Safety Code §§ 25249.5 *et seq.* (commonly referred to as "Proposition 65"),[1] OEHHA stated in its April 2016 Response to Comments as follows:

> OEHHA agrees that styrene is not the same as polystyrene and points out that polystyrene is not the subject of the proposed listing [under Proposition 65].[2]

This echoes the earlier statement made by the U.S. Department of Health and Human Services' National Institute of Environmental Health Sciences ("NIEHS"), which cautioned that "styrene should not be confused with polystyrene."[3]

EPS is safe. When the U.S. Department of Health and Human Services' National Toxicology Program ("NTP") published its report on styrene in 2011 (which, in turn, prompted OEHHA to list styrene under Proposition 65), Linda Birnbaum, the Director of NTP, stated, "[l]et me put your mind at ease right away about Styrofoam [a trade name for EPS] in finished products, certainly styrene is not an issue."[4] Dr. Birnbaum indicated that such styrene levels would be "hundreds if not thousands of times lower than have

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[1] OEHHA has listed styrene (not polystyrene or EPS) as a carcinogen under Proposition 65, not as a reproductive or developmental toxicant. We are not aware of any government agency or public health organization having designated styrene, let alone EPS or polystyrene, as a reproductive or developmental toxicant. There is no basis for the claim that "styrene has been linked to reproductive and developmental disorders," putting aside the fact that styrene is not the same substance as polystyrene.

[2] *Response to Comments Pertaining to the Notice of Intent to List Styrene as Causing Cancer under Proposition 65*, OEHHA, April 2016, Response to Comment 6.

[3] *Q&A regarding 12th Report on Carcinogens*, National Institute of Environmental Health, 2011.

[4] Dr. Birnbaum's statement was reported by the Associated Press. *See, e.g., Let's Talk Cancer Risks*, San Jose Mercury News, June 16, 2011.

occurred in the occupational setting."[5] Likewise, NIESH stated that "we do not believe that people are at risk from using polystyrene products."[6] The Proposed Ordinance also argues that levels of styrene may leach into foods from polystyrene food containers specifically. Public health agencies have already studied this and determined that trace levels of styrene that may potentially migrate from food containers are not a safety concern. The federal Food and Drug Administration has long approved the use of polystyrene in food packaging as safe.[7] As OEHHA recognized in its April 2016 Response to Comments, FDA has already considered the potential for "trace amounts" of styrene to migrate from EPS food packaging in continuing to approve polystyrene food packaging as safe.[8] OEHHA notes that "a warning [under Proposition 65] for styrene would not be required for exposures where there is no significant risk of cancer."[9] Thus, several public health agencies have already established that polystyrene in products -- including food packaging -- poses no cancer risk.[10]

II. The Proposed Ordinance's ban on EPS packaging has no rational connection to reducing litter or waste in San Francisco.

There is no basis to suggest that EPS packaging, let alone EPS packaging used by San Francisco businesses for distribution or shipments or EPS packaging sold in San Francisco, "constitutes a significant source of litter on San Francisco's street [sic], parks, and public places, and [that] the costs of managing this litter is substantial." Based on the

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[5] *Id.*

[6] *Q&A regarding 12th Report on Carcinogens*, National Institute of Environmental Health, 2011.

[7] 21 C.F.R. § 177.1640.

[8] *Q&A regarding 12th Report on Carcinogens*, National Institute of Environmental Health, 2011.

[9] *Id.*

[10] The Proposed Ordinance takes out of context a quote from a U.S. Environmental Protection Agency report by suggesting that EPA believes that EPS "can have serious impacts upon human health, wildlife, and aquatic environment, and the economy." Proposed Ordinance, § 2(c) (citing *Assessing and Monitoring Floatable Debris*, U.S. EPA (2002), at p. 1-2). The provision of the EPA report cited by the Proposed Ordinance does not discuss EPS or polystyrene specifically, but rather "trash and floatable debris" more generally.

City's own street litter study, which notably the Proposed Ordinance does not cite, EPS *of all types* and *from all sources* constitutes only a small fraction of the overall litter stream in San Francisco -- less than two percent.[11] EPS transport packaging, which is a target of the Proposed Ordinance, is a subset of the larger polystyrene foam plastics family. Given that the City would target an even smaller subset of EPS packaging -- i.e., EPS packaging sold in San Francisco and EPS packaging used by San Francisco businesses to protect the contents of shipments of products -- there is no rational relationship between the Proposed Ordinance's ban and its stated goals. Furthermore, the vast majority of EPS packaging targeted by the Proposed Ordinance would likely be shipped to addresses outside of San Francisco. The ban would have no meaningful impact on litter in San Francisco, or litter that ends up carried from city streets into storm drains or to the Bay.

Furthermore, there is no meaningful connection between reducing waste in San Francisco and either EPS packaging sold in San Francisco or EPS packaging used by San Francisco businesses for their shipments and distribution. Indeed, a 2004 report by the California Integrated Waste Management Board ("CIWMB") stated that polystyrene makes up "only 0.8 percent (by weight) of the total waste landfilled in California. . . . Even considering volume rather than weight, PS [polystyrene] in the waste stream does not appear to pose significant problems related to landfill capacity."[12] This 2004 report concludes that "CIWMB does not believe that a separate [waste reduction] PS initiative is warranted."[13] This 0.8 percent figure represents EPS of *all types* and from *all sources*, of which EPS packaging is only a subset. Again, considering additionally that the City would target an even smaller subset of EPS packaging sold in San Francisco or used by local businesses for shipments, there is no logical connection between the Proposed Ordinance's packaging ban and the city's goal of reducing waste.

Thus, the Proposed Ordinance has no rational relationship to any legislative goal. In order to pass constitutional muster, legislation that regulates conduct must "bear a rational relationship to an independent and legitimate legislative end." *Romer v. Evans*, 517 U.S. 620, 632 (1996). Otherwise, governmental regulation of conduct could be drawn solely "for the purpose of disadvantaging the group burdened by the law." *Id.*

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[11] *Streets Litter Re-Audit 2009*, prepared for The City of San Francisco Environment Department (Sept. 2009).

[12] *Use and Disposal of Polystyrene in California: A Report to the California Legislature*, California Integrated Waste Management Board, at p. 18 (Dec. 2004).

[13] *Id.*

The Proposed Ordinance's ban has no rational relationship to its goals. At most, the Proposed Ordinance achieves only the *appearance* that the City is advancing its stated objectives, which is not a legitimate legislative goal. In reality, the Proposed Ordinance will disadvantage local businesses and residents, who will need to seek out more expensive and less reliable alternatives for packing materials.

III. EPS is recyclable.

In addition, EPS is widely recyclable, contrary to what the Proposed Ordinance suggests. EPS is marked with a "No. 6" recycling identification code. There is a strong market for recycled EPS. Over the past twenty-five years, EPS recycling has continued to grow, and there is a steady demand for recycled EPS for use in a wide variety of rigid plastic applications including circuit boards and building materials and for use in other products such as adhesives and recycled content EPS packaging.

The recyclability of EPS was a key reason why a New York trial court overturned a determination by the Commissioner of the Sanitation Department that it is not environmentally effective or economically feasible to recycle EPS.[14] The Court found that the Commissioner had acted arbitrarily and capriciously in ignoring the facts showing the technical and financial viability of recycling EPS in New York. The fact that San Francisco's blue bin program does not currently accept EPS does not mean that EPS could not ever be recycled curbside. Over 50 California municipalities have curbside EPS recycling programs.

Finally, although the Proposed Ordinance claims that there are feasible alternatives to EPS, the City provides no support for this. Indeed, the City has already indicated that it would provide an initial three-year waiver of the Proposed Ordinance for EPS packaging for cold chain medical shipments, based on the lack of viable alternatives to EPS. In addition to cold chain medical shipments, EPS is essential as a reliable and cost-effective packaging solution to prevent damage to shipments of a wide range of other products, such as electronics, light fixtures, glass items, and flat-pack furniture, to name a few. There is no valid reason to ban local businesses from using EPS packaging to protect the contents of products that they distribute or ship, or to ban San Francisco businesses from selling or distributing EPS packaging.

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[14] *Restaurant Action Alliance NYC v. The City of New York*, Supreme Court of the State of New York, No. 100734/15 (decision and order dated Sept. 21, 2015).

* * *

For all of these reasons, the Proposed Ordinance is legally suspect and should be withdrawn. We appreciate your consideration of these comments and are open to meeting with you and continuing the discussion.

Sincerely,

Sarah Esmaili.

Sarah Esmaili

cc: Thomas J. Owen, Esq., Deputy City Attorney

May 27, 2016

San Francisco Board of Supervisors
San Francisco City Hall
1 Dr. Carlton B Goodlet Place
San Francisco, CA 94102 -4689

Dear President Breed and Supervisors,

On behalf of Save The Bay's thousands of supporters in San Francisco I urge you to expand the city's ban on expanded polystyrene foam (EPS). EPS is one of the most pernicious types of litter found in the Bay and a huge environmental problem – it threatens wildlife, pollutes wetlands, and blights our recreation areas.

Because EPS is so lightweight it blows easily into our waterways where it readily breaks apart into small pieces that are easy for fish, birds, and other wildlife to ingest. This material is a nightmare for the city's waste management service, as well as waterfront cleanup crews, and volunteers, who spend countless hours picking up the tiny pieces. San Francisco's existing ordinance banning EPS food service ware was a major step to reduce that source of litter and a model for other cities in the region, but many other EPS products remain. Unfortunately, the unique lightness and brittleness of EPS mean that this product has a disproportionate impact on the environment compared with other materials.

We thank Supervisor Breed for bringing this issue before the Board and applaud San Francisco's legacy of forward-thinking environmental policies. We urge the city to once again lead the way in preventing Bay pollution by adopting the proposed ordinance. We are happy to assist with ordinance implementation and outreach and look forward to holding up this policy as a model to other cities.

Sincerely,

David Lewis

David Lewis, Executive Director

1330 Broadway, Suite 1800 Oakland CA 94612 510.463.6850 www.saveSFbay.org

American Chemistry Council

File No. 160363

April 28, 2016

The Honorable London Breed
Board of Supervisors, City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

RE: Proposed Ordinance – Food Service and Packaging Waste Reduction – OPPOSE

Dear Supervisor Breed:

The American Chemistry Council (ACC) and its Plastics Foodservice Packaging Group (PFPG) – a national trade association whose membership includes the leading monomer producers, resin suppliers and manufacturers of plastic (take-out) foodservice packaging – appreciate the opportunity to comment on your proposed ordinance regarding polystyrene packaging. While we share the mutual goals of increasing the amount of material diverted from landfill disposal and reducing materials that may be inadvertently littered in the environment, we respectfully oppose the ordinance as drafted. In summary, we are opposed because:

- The draft ordinance contains several "findings" that are taken out of context and not supported by scientific fact;
- The proposal falsely assumes that banning polystyrene packaging material will result in substitute materials being either recycled or composted at a higher rate; and
- The ordinance overlooks the many environmental, safety and health benefits associated with polystyrene packaging.

FINDINGS

The proposed ordinance contains many "findings" that allege significant health impacts may be associated with "styrene" and the use of polystyrene packaging. ACC requests that this language be deleted. It is critical to note that polystyrene is not the same material as styrene, and suggesting that consumers may incur negative health impacts from using polystyrene products is not supported by scientific fact.

Styrene is a liquid, and polystyrene is an inert solid plastic. They are fundamentally unalike and display distinctly different properties. Styrene is a raw material used to create high-performance plastics, car tires, carpet backing, and reinforced fiberglass composites, such as those used in bathtubs, automobile body panels and wind turbines. Once these products are manufactured, they are inert.

Polystyrene is approved by the US Food and Drug Administration (FDA) for food contact applications, and the food safety benefits of plastic foodservice packaging, including polystyrene, are undisputed. Its inherent insulation properties maintain food temperatures and help keep food fresh, hot or cold and ready-to-eat. Polystyrene is also used in a variety of other everyday consumer products, such as cushioning for shipping delicate electronics, energy saving insulation, kitchen appliances, smoke detectors and toys.

California's Office of Environmental Health Hazard Assessment (OEHHA) recently stated:

> *"OEHHA agrees that styrene is not the same as polystyrene....In its regulations of food packaging and food contact materials – including styrene and polystyrene – FDA considers that these materials may contain*

substances or unreacted monomers that can migrate in trace amounts to foods and beverages. FDA reviews safety data and sets regulatory specifications for these materials, including styrene and polystyrene, and requires sufficient scientific information to demonstrate that the intended uses of these materials are safe. Food contact materials meeting FDA's standards are considered safe for use."[1]

Other scientific experts and bodies have also commented on the safety of polystyrene products, including:

U.S. National Toxicology Program (NTP)[2]
Dr. Linda Birnbaum, Ph.D., Director, U.S. National Toxicology Program was quoted widely in Associated Press reports in June 2011: "Let me put your mind at ease right away about polystyrene foam*" ... [the levels of styrene from polystyrene containers] "are hundreds if not thousands of times lower than have occurred in the occupational setting...In finished products, certainly styrene is not an issue." *Source: news reports of Associated Press story, June 2011*

John Bucher, associate director of the National Toxicology Program, was quoted in Associated Press reports in August 2011: "The risks, in my estimation, from polystyrene are not very great," he said. "It's not worth being concerned about."
Source: news reports of Associated Press story, August 2011

U.S. National Institutes of Environmental Health Sciences (NIEHS)
NIEHS in June 2011 noted: "Styrene should not be confused with polystyrene (foam)*. Although styrene, a liquid, is used to make polystyrene, which is a solid plastic, we do not believe that people are at risk from using polystyrene products."
Source: NIEHS web site

Otis Brawley, Chief Medical Officer, American Cancer Society
Bloomberg News in June 2011 reported that Brawley said, "Consumers don't need to worry about polystyrene cups and food containers..." Quote: "I see no problems with polystyrene foam* cups."
Source: Bloomberg News, June 2011

In addition, styrene is naturally present in many foods, such as cinnamon, beef, coffee beans, peanuts, wheat, oats, strawberries and peaches. Its chemical structure is similar to cinnamic aldehyde, the chemical component that creates cinnamon's flavor. In light of this information, any language in the draft ordinance alleging potential health impacts associated with polystyrene packaging should be deleted.

GENERAL COMMENTS
All packaging leaves an environmental footprint regardless of the material type. It takes energy and raw materials to produce, transport, and recover or dispose of any material. So it is important to measure all of these impacts throughout the entire lifecycle of a product. Consider the following:

- Polystyrene cups weigh anywhere from two to five times less than comparable paper packaging products, which means fewer air emissions when transporting products.[3]

- A polystyrene hot beverage cup requires about 50% LESS energy to produce than a similar plastic-coated paperboard cup with a corrugated cup sleeve, and creates significantly fewer greenhouse gas emissions than a similar coated paper-based cup with its corrugated sleeve.[4]

While we certainly share your concerns over potential litter impacts, focusing on a single material type does not reduce litter. Nor do we believe that restricting all polystyrene packaging will have a measureable impact on achieving the city's zero waste goals. The City of San Francisco banned polystyrene containers, but according to a 2008 litter audit

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[1] *See* http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/pdf_zip/042216styreneNOILresponsecoms.pdf.
[2] *See* https://plasticfoodservicefacts.com/main/Safety/National-Toxicology-Program.
[3] Life Cycle Inventory of Foam Polystyrene, Paper-Based, and PLA Foodservice Products, prepared by Franklin Associates, a Division of ERG, February, 2011.
[4] Ibid

conducted for the city, paper cup litter increased after the ban was enacted.[5] Bans result in litter substitution, not elimination. The amount of polystyrene foam foodservice that makes up litter is very small – measured at 1.5 percent of the overall litter stream in detailed litter surveys conducted in the U.S. and Canada.[6]

Additionally, the U.S. Environmental Protection Agency states that ALL polystyrene packaging is less than 1.0% by weight and volume.[7]

As plastics recycling in general continues to grow, access to foam foodservice packaging recycling also has grown.

- A 2012 study found that 31 percent of the U.S. population has access to foam foodservice packaging recycling.[8]
- A 2013 study found that a total of one half the populations of the *50 largest California cities* have access to foam foodservice packaging recycling. In contrast, only two percent of this population has access to paper foodservice packaging recycling.[9]
- The same study found that 16 percent of the population of the *50 largest U.S. cities* has access to foam foodservice packaging recycling, while six percent has access to paper foodservice packaging recycling.[10]

Finally, the effectiveness of expanded polystyrene (EPS) transport packaging has been proven in numerous packaging applications used by a wide variety of industries, consumer product manufacturers and catalogue and shipping companies. Lightweight EPS is ideal for these packaging applications due to its physical properties, in particular its cushioning characteristics, dimensional stability and its thermal and moisture resistance. Custom-molded EPS interior packaging has been highly effective in protecting sensitive electronic components, consumer goods and office equipment; its moldability allows interior packaging components to hold products snugly in place. Because EPS can be molded into virtually any shape or size, it is well suited to automated production lines.

Prior to finalizing this proposal, ACC urges you to take into account these unique attributes of EPS and assess whether potential alternative packaging is readily available, provides comparable performance results, is cost-effective, and can compete from an environmental life-cycle perspective. Forcing companies into alternative packaging that may not meet these criteria does not make public policy sense.

ACC appreciates the opportunity to submit these comments. While we oppose the ordinance as drafted, we would encourage you to consider working with the polystyrene industry, retailers, recyclers and others on recycling policies that can help increase the amount of this material that is diverted from disposal.

Should you or your staff have any questions or comments, please feel free to contact me at 916-448-2581; tim_shestek@americanchemistry.com.

Sincerely,

Tim Shestek
Senior Director, State Affairs

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[5] The City of San Francisco Streets Litter Re-Audit 2008, Prepared for the City of San Francisco Environment Department, July 4, 2008.

[6] The Contribution of Polystyrene Foam Food Service Products to Litter, Environmental Resources Planning, Gaithersburg, MD, May 2012.

[7] Advancing Sustainable Materials Management: Facts and Figures 2013, Assessing Trends in Material Generation, Recycling and Disposal in the United States, June 2015, US EPA, Office of Resource Conservation and Recovery (5306P), EPA530-R-15-002.

[8] *See* http://www.moorerecycling.com/UpdatedREACHReportMay2013.pdf.

[9] *See* https://plasticfoodservicefacts.com/Pages/Access-to-Recycling-Expanded-Polystyrene-Food-Service-Items.pdf.

[10] *Id.*

File 160363
BOS-11, COB, GAC
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The Dow Chemical Company
Trademark Department
9330 Zionsville Road
Indianapolis, Indiana 46268
United States of America

April 26, 2016

Board of Supervisors
City of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, California 94102-4689

Attention: Angela Calvillo, Clerk of the Board

RE: Correct Use of the Trademark Brand STYROFOAM®

Dear Sir/Madam:

We have recently become aware of the proposed Ordinance Amending the Environment Code – Food Service and Packaging Waste Reduction, File No. 160383. We note that The Dow Chemical Company's **STYROFOAM®** trademark has been used incorrectly in the proposed Ordinance in reference to expanded polystyrene packaging and food service containers.

Our **STYROFOAM®** trademark is used incorrectly on page 1, "Section 2. Findings. . . . (b)Polystyrene foam, aka 'Styrofoam', is an environmental pollutant that is commonly used for packaging and as food service ware in the City and County of San Francisco." **STYROFOAM®** is not used for packaging products or food service ware. Our **STYROFOAM®** trademark is also used incorrectly on page 7, in the definition for " 'Polystyrene Foam' means blown polystyrene and expanded and extruded foams (sometimes called Styrofoam™) . . ." **STYROFOAM®** is extruded polystyrene, not expanded polystyrene. (See Enclosure.)

You may or may not be aware that The Dow Chemical Company has developed and sold the **STYROFOAM®** brand of insulation for more than 50 years. Dow is the owner of numerous registrations for the trademark **STYROFOAM®** throughout the world. The trademark **STYROFOAM®** is used on Dow's plastic foam insulation and construction products for use in residential, commercial and industrial buildings, and on floral and craft products. It may not be used to describe other products, such as polystyrene packaging, food service ware or as a generic description for foam products. It also may not be used to describe other types of foam that are used for insulation and construction materials.

STYROFOAM® brand extruded polystyrene is **not used** to produce packing materials, foam cups, trays or other food containers. These expanded polystyrene foam products should be referred to with the generic terms "polystyrene foam" or "foam," rather than referring to our branded trademark name. Dow has worked over the years to produce an exceptional product and developed substantial good will and brand equity in the brand **STYROFOAM®**. This fame, good will, and brand recognition is important to Dow and it is equally important that we do not permit use of our trademarks by others in a manner that would cause harm to our brands.

The mention of **STYROFOAM®** in conjunction with expanded polystyrene packaging and food service containers is incorrect and misleading. It should reference "polystyrene foam" to be accurate. We trust that both accuracy and intellectual property are appreciated by the members of the Board of Supervisors of the City of San Francisco.

We respectfully request that all references to our trademark **STYROFOAM®** be removed from the proposed Ordinance and those references be replaced with a generic "polystyrene" term.

I thank you in advance for your cooperation.

Very truly yours,

C. Joe Miller
General Trademark Counsel
The Dow Chemical Company
9330 Zionsville Road
Indianapolis, IN 46268 USA

Enclosure

®Trademark of The Dow Chemical Company

FILE NO. 160383 ORDINANCE NO.

[Environment Code - Food Service and Packaging Waste Reduction]

Ordinance amending the Environment Code to prohibit the sale of food service ware and other specified products including packing materials that are made from polystyrene foam or that are non-recyclable and non-compostable; setting an operative date of January 1, 2017; and affirming the Planning Department's determination under the California Environmental Quality Act.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. ___ and is incorporated herein by reference. The Board affirms this determination.

Section 2. Findings.

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

(b) Polystyrene foam, aka "Styrofoam", is an environmental pollutant that is commonly used for packaging and as food service ware in the City and County of San Francisco.

"Distribute" means the sale, offer for sale, or other transfer of possession of an item for compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of possession of another item for compensation.

"Egg Carton" means a carton for raw eggs sold to consumers from a refrigerator case or similar retail appliance.

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

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

"Meat and Fish Tray" means a tray for raw meat, fish, or poultry sold to consumers from a refrigerator case or similar retail appliance.

"Packing Material" means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage.

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

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