

BOARD of SUPERVISORS



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April 26, 2016

File No. 160383

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On April 19, 2016, Supervisor Breed introduced the following legislation:

File No. 160383

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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Committee Clerk
Government Audit and Oversight Committee

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Categorically Exempt under CEQA Guidelines Sections 15307, or Class 7, Actions by Regulatory Agencies for Protection of Natural Resources, and 15308, or Class 8, Actions by Regulatory Agencies for Protection of the Environment.

1 [Environment Code - Food Service and Packaging Waste Reduction]

2
3 **Ordinance amending the Environment Code to prohibit the sale of food service ware**
4 **and other specified products including packing materials that are made from**
5 **polystyrene foam or that are non-recyclable and non-compostable; setting an operative**
6 **date of January 1, 2017; and affirming the Planning Department's determination under**
7 **the California Environmental Quality Act.**

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

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

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

21 Section 2. Findings.

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

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

1 (c) Due to the physical properties of polystyrene foam, the U.S. Environmental
2 Protection Agency (EPA) states “that such materials can have serious impacts upon human
3 health, wildlife, and aquatic environment, and the economy.”

4 (d) Polystyrene foam packaging and food service ware cannot be recycled through
5 San Francisco’s recycling (blue bin) collection program and is otherwise difficult or impossible
6 to recycle, and is not compostable. Compostable or recyclable disposable packaging and
7 food service ware are an affordable, safe, more ecologically sound alternative.

8 (e) Disposable food service ware and packaging foam constitute a significant source of
9 litter on San Francisco’s street, parks, and public places, and the costs of managing this litter
10 is substantial.

11 (f) The Bay Area Stormwater Management Agencies Association and Caltrans found
12 that between 8 to 15% of plastics in San Francisco storm drains are polystyrene foam. The
13 San Francisco Estuary Institute found that 8% of the microplastics entering San Francisco
14 Bay from wastewater treatment facilities are polystyrene foam. And a recent study concluded
15 that 71% of the microplastics found in the Los Angeles and San Gabriel Rivers were
16 polystyrene foam pieces.

17 (g) Polystyrene foam is a notorious pollutant that breaks down into smaller, non-
18 biodegradable pieces that are often mistaken for fish eggs by seabirds. Unlike harder
19 plastics, polystyrene contains a chemical used in the production process called “styrene” that
20 is metabolized after ingestion and threatens the entire food chain, including humans who
21 consume contaminated marine wildlife.

22 (h) Styrene has been linked to cancer as well as reproductive and developmental
23 disorders by the National Research Council, and styrene leaches into food and drink,
24 according to the U.S. Food and Drug Administration.

1 (i) The general public typically is not warned or aware of any potential hazard from
2 styrene, particularly in the immigrant and non-English speaking community.

3 (j) Due to these concerns, more than 100 U.S. cities have enacted ordinances banning
4 or restricting the sale and/or use of polystyrene foam service ware and/or packaging
5 materials, and many local businesses and a number of national corporations have
6 successfully replaced polystyrene foam and other non-biodegradable food service ware and
7 packaging materials with alternative, cost-competitive products.

8 (k) San Francisco food service providers are already prohibited, under Environment
9 Code Section 1604, from using polystyrene food containers, and this ordinance extends such
10 prohibition to the sale of such products.

11 (l) The ordinance also prohibits packaging providers from selling polystyrene foam
12 packaging materials, including polystyrene foam "packing peanuts."

13 (m) Restricting the use of polystyrene foam food service ware and requiring it to be
14 replaced with less-hazardous, compostable, or readily recyclable products, and barring the
15 sale of polystyrene foam food service ware, packaging products, and other polystyrene
16 products will further protect the public health and safety of San Francisco's residents, as well
17 as its natural environment, waterways and wildlife. Taking these steps will also advance the
18 City's goal of Zero Waste by 2020 and fulfill Article 10 of the Environmental Accords, in which
19 the City committed with other cities around the globe to eliminate or restrict the use of one
20 chemical or environmental hazard each year.

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1 Section 3. The Environment Code is hereby amended by revising Chapter 16,
2 Sections 1601 through 1610, to read as follows:

3
4 **CHAPTER 16: FOOD SERVICE AND PACKAGING**
5 **WASTE REDUCTION ORDINANCE**

- 6 Sec. 1601. Title.
7 Sec. 1602. Definitions.
8 Sec. 1603. Sale or Distribution of Non-Compliant Food Service Ware Prohibited.
9 Sec. 1604 ~~1603~~. Use of Non-Compliant Prohibited Disposable Food Service Ware
10 Prohibited.
11 ~~Sec. 1604.~~ ~~Required Biodegradable/Compostable or Recyclable Disposable Food~~
12 ~~Service Ware.~~
13 Sec. 1605. Other Polystyrene Foam Products.
14 Sec. 1606 ~~1605~~. Implementation; ~~City Contracts and Leases.~~
15 Sec. 1607 ~~1606~~. Enforcement and Penalties.
16 ~~Sec. 1607.~~ ~~Report to the Board of Supervisors.~~
17 ~~Sec. 1608.~~ ~~Operative Date.~~
18 Sec. 1608 ~~1609~~. Severability.
19 Sec. 1609 ~~1610~~. No Conflict With Federal or State Law.
20 Sec. 1610 ~~1611~~. Undertaking for the General Welfare.

21
22 **SEC. 1601. TITLE.**

23 This Chapter 16 Ordinance shall be known as the Food Service and Packaging Waste
24 Reduction Ordinance.

1 **SEC. 1602. DEFINITIONS.**

2 *For purposes of this Chapter 16, the following definitions shall apply:*

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

5 ~~(b) "ASTM Standard Specification" means meeting the standards of the Standard~~
6 ~~Specification for Compostable Plastics D6400 or Standard Specification for Biodegradable Plastics~~
7 ~~D6868, as adopted or subsequently amended by the American Society for Testing and Materials~~
8 ~~(ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as~~
9 ~~those standards may be amended.~~

10 "City" means the City and County of San Francisco.

11 ~~(c) "Compostable" means all the materials in the product or package will break down into, or~~
12 ~~otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely~~
13 ~~manner in San Francisco's Composting Program. Compostable Disposable Food Service Ware must~~
14 ~~meet ASTM Standards for compostability and any bio-plastic or plastic like product must be clearly~~
15 ~~labeled, preferably with a color symbol, to allow proper identification such that San Francisco's~~
16 ~~compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from~~
17 ~~non-ASTM Standard Compostable plastic. For the purposes of this ordinance the term biodegradable~~
18 ~~shall have the same meaning as compostable. This ordinance uses the terms biodegradable and~~
19 ~~compostable interchangeably and in all cases whether the terms are used separately, in the disjunctive~~
20 ~~or in the conjunctive they shall always be interpreted and applied consistent with this definition of the~~
21 ~~term "compostable".~~

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

24 ~~(e) "City contractors and lessees" means any person or entity that has a contract with~~
25 ~~the City for public works or improvements to be performed, for a franchise, concession, or~~

1 lease of property, for grant monies or goods and services or supplies to be purchased at the
2 expense of the City ~~and County~~, or to be paid out of monies deposited in the Treasury or out of
3 trust monies under the control of or collected by the City ~~and County~~.

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

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

9 "Compostable" means material that can be broken down into, or otherwise become part of,
10 usable compost (e.g., soil-conditioning material) in a safe and timely manner and as accepted in San
11 Francisco's compostables collection program. "Compostable" also includes a plastic-like material if
12 the material meets the ASTM Standard Specification for compostability and the product is labeled in
13 accordance with California Public Resources Code Section 42357 et seq. and Department of the
14 Environment regulations for easy identification of Compostable products meeting the ASTM Standard
15 Specification for compostable plastics.

16 "Department" means the Department of the Environment.

17 "Director" means the Director of the Department of the Environment, or his or her designee.

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

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

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

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

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

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

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

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

19 ~~(k)~~ "Polystyrene Foam" means blown polystyrene and expanded and extruded foams
20 (sometimes called Styrofoam™) which are thermoplastic petrochemical materials utilizing a
21 styrene monomer and processed by any number of techniques including, but not limited to,
22 fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding,
23 and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally
24 used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.
25

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

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

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

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

17
18 **SEC. 1603. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE WARE**
19 **PROHIBITED.**

20 ~~(a)~~ No person may sell, offer for sale, or otherwise Distribute within the City (1) any Food
21 Service Ware that is not either Compostable or Recyclable using the City's then-available collection
22 programs, or (2) any Food Service Ware made, in whole or in part, from Polystyrene Foam.

23 ~~(b)~~ The Director shall, after a noticed public hearing, adopt a list of suitable alternative
24 Compostable or Recyclable Food Service Ware products. "Suitable alternative Compostable or
25 Recyclable Food Service Ware products" means Food Service Ware products that the Director

1 determines serve the same intended purpose as non-compliant products, meet the standards for what is
2 Compostable and/or Recyclable set under this Chapter 16, and are reasonably affordable. The
3 Director shall regularly update the list by regulation.

4 If a product is included on the Director's list, it will be deemed to comply with this
5 Section 1603. If a product is not included on the Director's list, the person using the product as Food
6 Service Ware will have the burden of establishing to the Director's satisfaction that the product
7 complies with this Section.

8
9 **SEC. 1604 1603. PROHIBITED USE OF NON-COMPLIANT DISPOSABLE FOOD SERVICE**
10 **WARE PROHIBITED.**

11 (a) Food Vendors may not sell, offer for sale, or otherwise Distribute Prepared Food (1) in
12 Disposable Food Service Ware made, in whole or in part, from that contains Polystyrene Foam, or
13 (2) in Food Service Ware that is not Compostable or Recyclable.

14 (b) City Facility Food Providers may not provide Prepared Food to City Facilities (1) in
15 Disposable Food Service Ware made, in whole or in part, from that contains Polystyrene Foam, or
16 (2) in Food Service Ware that is not Compostable or Recyclable.

17 (c) City Departments may not purchase, acquire, or use Disposable Food Service Ware
18 for Prepared Food (1) where the Food Service Ware is made, in whole or in part, from that contains
19 Polystyrene Foam, or (2) where the Food Service Ware is not Compostable or Recyclable.

20 (d) City contractors and lessees may not use Disposable Food Service Ware for
21 Prepared Food that contains Polystyrene Foam in City Facilities and while performing under a City
22 contract or lease (1) where the Food Service Ware is made, in whole or in part, from Polystyrene
23 Foam, or (2) where the Food Service Ware is not Compostable or Recyclable.

24 (e) The Director shall, after a noticed public hearing, adopt a list of suitable alternative
25 Compostable or Recyclable Food Service Ware products. "Suitable alternative Compostable or

1 Recyclable Food Service Ware products” means Food Service Ware products that the Director
2 determines serve the same intended purpose as non-compliant products, meet the standards for what is
3 Compostable and/or Recyclable set under this Chapter 16, and are reasonably affordable. The
4 Director shall regularly update the list by regulation.

5 If a product is included on the Director’s list, it will be deemed to comply with this
6 Section 1604. If a product is not included on the Director’s list, the person using the product as Food
7 Service Ware will have the burden of establishing to the Director’s satisfaction that the product
8 complies with this Section.

9 (f) It shall not be a violation of this Section 1604 to sell, provide, or purchase Prepared Food
10 packaged in Food Service Ware otherwise prohibited by subsections (a) through (c), or to use Food
11 Service Ware otherwise prohibited by subsection (d), if the Prepared Food is packaged outside the City
12 and is sold or otherwise provided to the consumer in the same Food Service Ware in which it originally
13 was packaged. Businesses packaging Prepared Food outside the City are encouraged to use Food
14 Service Ware that is Compostable or Recyclable and is not made, in whole or in part, from Polystyrene
15 Foam.

16
17 **~~SEC. 1604. REQUIRED BIODEGRADABLE/COMPOSTABLE OR RECYCLABLE~~**
18 **~~DISPOSABLE FOOD SERVICE WARE.~~**

19 ~~(a) All Food Vendors using any Disposable Food Service Ware shall use a suitable Affordable~~
20 ~~alternative Biodegradable/Compostable or Recyclable product, unless there is no suitable Affordable~~
21 ~~Biodegradable/Compostable or Recyclable product available as determined by the City Administrator~~
22 ~~in accordance with this subsection. Not later than 30 days before the operative date of this Chapter,~~
23 ~~and after a public hearing, the City Administrator shall adopt a list of available suitable Affordable~~
24 ~~Biodegradable/Compostable or Recyclable alternatives for each product type. The City Administrator~~
25 ~~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 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 1604(a).~~

10
11 **SEC. 1605. OTHER POLYSTYRENE FOAM PRODUCTS.**

12 (a) No person may sell, offer for sale, or otherwise Distribute for compensation within the City:

13 (1) Packing Materials, including shipping boxes and packing peanuts;

14 (2) coolers, ice chests, or similar containers;

15 (3) pool or beach toys; or

16 (4) dock floats, mooring buoys, or anchor or navigation markers;

17 made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a
18 more durable material.

19 (b) No person may sell, offer for sale, or otherwise Distribute for compensation within the City
20 Meat and Fish Trays and Egg Cartons made, in whole or in part, from Polystyrene Foam, or that are
21 not Compostable and/or Recyclable, either as separate items or as part of the sale of raw meat, fish,
22 poultry, or eggs sold to consumers from a refrigerator case or similar retail appliance.

23 (c) No person may sell, offer for sale, or otherwise Distribute within the City any Packing
24 Materials made, in whole or in part, from Polystyrene Foam, as prohibited in subsection (a), or that
25 are not Compostable or Recyclable. For purposes of this Section 1605, Distribution of Packing

1 Materials shall include using such materials to hold, cushion, or protect items to be packed in a
2 container for shipping, transport, or storage, for compensation, where the packing takes place within
3 the City.

4 (d) For purposes of this Section 1605, Distribution of Packing Material shall not include:

5 (1) Receiving shipments within the City that include Polystyrene Foam, or some other
6 non-Compostable and non-Recyclable product, used as Packing Material;

7 (2) Re-using Packing Materials for shipping, transport, or storage within the same
8 distribution system, where the Packing Materials are not sent to a consumer or end user;

9 (3) Donating used Packing Materials to another person, where the donor receives
10 nothing of value for the donated Packing Materials; or.

11 (4) Using Packing Materials donated under subsection (d)(3) for shipping, transport, or
12 storage, where the person using the Packing Materials receives nothing of value for the donated
13 Packing Materials.

14
15 **SEC. ~~1606~~ 1605. IMPLEMENTATION; ~~CITY CONTRACTS AND LEASES.~~**

16 (a) The Director shall create, maintain, and regularly update the product lists referenced in
17 Sections 1603(b) and 1604(e).

18 (b) ~~(a)~~ The Director ~~City Administrator~~ is authorized to promulgate regulations,
19 guidelines and forms and to take any and all other actions reasonable and necessary to
20 implement and enforce this Chapter.

21 (c) The Director may waive the provisions of Sections 1603(a), 1604(a), and 1605(a), (b), and
22 (c) due to a feasibility-based hardship. The person seeking the waiver must demonstrate to the
23 Director's satisfaction that no reasonably feasible alternative exists to a specific non-compliant
24 product.

1 (d) The Director may waive the provisions of Sections 1603(a), 1604(a), and 1605(a), (b), and
2 (c) due to a financial hardship. The person seeking the exemption must demonstrate to the Director's
3 satisfaction both (1) that the applicant has a gross income of less than \$500,000 on the applicant's
4 annual income tax filing for the most recent tax year, and (2) that with respect to each specific
5 non-compliant product, there is no suitable and reasonably affordable alternative product available.

6 (e) A person seeking a waiver under subsections (c) or (d) of this Section 1606 must submit a
7 written application on a form approved by the Director. The Director may require the applicant to
8 submit additional information or documentation to make a determination regarding the waiver
9 requested. The Director shall review requests for waivers on a case-by-case basis, and may grant the
10 waiver in whole or in part, with or without conditions, for a period of up to 36 months. An applicant
11 for renewal of a waiver must apply for a new waiver period no later than 60 days prior to the
12 expiration of the then-current period to preserve a continuous waiver status. The Director shall review
13 each application anew and base his or her determination on the most current information available.
14 The Director's determination shall be final and shall not be subject to appeal.

15 (f) ~~(b)~~ A City officer, employee, or department ~~Any person~~ may seek a waiver from the
16 requirements of ~~subsections (b), (c), or (d) of Section 1604 of this Chapter~~ by filing a request on a
17 form ~~approved specified by the Director City Administrator~~. The ~~Director City Administrator,~~
18 ~~consistent with this Chapter,~~ may grant a waiver in whole or in part, with or without conditions, ~~wave~~
19 ~~any specific requirement of this Chapter~~ for a period of up to ~~36 months one year~~ if the officer,
20 ~~employee, or department person~~ seeking the waiver has demonstrated to the Director's satisfaction
21 that strict application of the specific requirement would create an undue hardship or practical
22 difficulty not generally applicable to other persons in similar circumstances, ~~or the waiver is~~
23 ~~otherwise justified~~. The City Administrator's decision to grant or deny a waiver shall be in writing and
24 shall be final.

1 (g) In addition to individual waivers provided for under subsections (c), (d), and (f) of this
2 Section 1606, the Director may waive the provisions of Section 1605 with respect to particular
3 categories of uses of Packing Materials or of Egg Cartons or Meat and Fish Trays made, in whole or in
4 part, from Polystyrene Foam, or other non-Compostable or non-Recyclable material. The Director
5 may grant a waiver under this subsection (g) in whole or in part, with or without conditions, for a
6 period of up to 36 months, upon finding that no suitable and reasonably affordable alternative to use of
7 the non-compliant product is feasible. The Director's determination shall be final and shall not be
8 subject to appeal.

9 ~~(e) All City contracts and leases, including without limitation, contracts with City Facility Food~~
10 ~~Providers, shall contain the following minimum language: "Contractor agrees to comply fully with and~~
11 ~~be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San~~
12 ~~Francisco Environment Code Chapter 16, including the remedies provided, and implementing~~
13 ~~guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a~~
14 ~~part of this agreement as though fully set forth. This provision is a material term of this agreement. By~~
15 ~~entering into this agreement, contractor agrees that if it breaches this provision, City will suffer actual~~
16 ~~damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the~~
17 ~~sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars~~
18 ~~(\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars~~
19 ~~(\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the~~
20 ~~damage that City will incur based on the violation, established in light of the circumstances existing at~~
21 ~~the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed~~
22 ~~monetary damages sustained by City because of contractor's failure to comply with this provision."~~

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1 **SEC. ~~1607~~ 1606. ENFORCEMENT AND PENALTIES.**

2 (a) The ~~Director City Administrator~~ shall issue a written warning to any person he or she
3 determines is violating ~~Sections 1603(a), 1604(a), (b), or (d), or 1605(a), (b), or (c) Sections 1603(a)~~
4 ~~or 1604(a)~~ of this Chapter. If after issuing a written warning of violation from the ~~Director City~~
5 ~~Administrator~~, the ~~Director City Administrator~~ finds that person continues to violate the
6 provisions of ~~Sections 1603(a), 1604(a), (b), or (d), or 1605(a), (b), or (c) Sections 1603(a) or~~
7 ~~1604(a)~~, the ~~Director City Administrator~~ may apply for or impose the various sanctions provided
8 in this Section.

9 (b) Any person who violates the provisions of ~~Sections 1603(a), 1604(a), (b), or (d), or~~
10 ~~1605(a), (b), or (c) Sections 1603(a) or 1604(a)~~ of this Chapter shall be guilty of an infraction. If
11 charged as an infraction, upon conviction thereof, said person shall be punished for the first
12 offense by a fine of not more than \$100.00 for a first violation; not more than \$200.00 for a
13 second violation in the same year and not more than ~~\$500.00~~ \$250.00 for each subsequent
14 violation in the same ~~12-month period year~~.

15 (c) The ~~Director City Administrator~~ may issue an administrative ~~fine~~ *civil liability citation*
16 to ~~any such~~ person ~~violating Sections 1603(a), 1604(a), (b), or (d), or 1605(a), (b), or (c) in~~
17 ~~accordance with Administrative Code Chapter 100, which is hereby incorporated by reference. in an~~
18 ~~amount not exceeding \$100.00 for the first violation, an amount not exceeding \$200.00 for the second~~
19 ~~violation in the same year, and an amount not exceeding \$500.00 for each subsequent violation in the~~
20 ~~same year. In determining administrative civil penalties, the City Administrator shall consider the~~
21 ~~extent of harm caused by the violation, the nature and persistence of the violation, the length of time~~
22 ~~over which the violation occurs, the frequency of past violations, any action taken to mitigate the~~
23 ~~violation, and the financial burden to the violator.~~

24 ~~Any person to whom the City Administrator issues a written warning of violation or an~~
25 ~~administrative civil liability citation may request an administrative hearing to appeal such warning or~~

1 ~~determination of liability. Not later than 30 days before the operative date of this Chapter, and after a~~
2 ~~public hearing, the City Administrator shall promulgate rules and procedures for requesting and~~
3 ~~conducting an administrative hearing under this Chapter. In any administrative hearing under this~~
4 ~~Article, all parties involved shall have the right to offer testimonial, documentary, and tangible~~
5 ~~evidence bearing on the issues, to see and copy all documents and other information the City relies on~~
6 ~~in the proceeding, and to confront and cross-examine any witnesses against them. A decision by the~~
7 ~~hearing officer shall be final. Any person assessed a penalty under this subsection may contest such~~
8 ~~decision to the Superior Court within 20 days after service of the City's decision.~~

9 (d) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this
10 Chapter, including without limitation, civil penalties in an amount not exceeding \$100.00 for
11 the first violation, \$200.00 for the second violation, and \$500.00 ~~\$250.00~~ for each subsequent
12 violation in any given 12-month period ~~year~~.

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

17
18 **~~SEC. 1607. REPORT TO THE BOARD OF SUPERVISORS.~~**

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

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SEC. 1608. OPERATIVE DATE.

This ordinance shall become operative on June 1, 2007.

SEC. ~~1608~~ 1609. SEVERABILITY.

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

SEC. ~~1609~~ 1610. NO CONFLICT WITH FEDERAL OR STATE LAW.

This Chapter 16 is intended to be a proper exercise of the City's police power and role as a market participant, to operate only upon its own officers, agents, employees, and facilities, and other persons acting within the City's boundaries, and not to regulate inter-city or interstate commerce.

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

SEC. ~~1610~~ 1611. UNDERTAKING FOR THE GENERAL WELFARE.

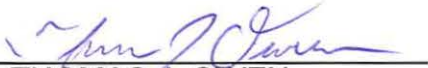
In undertaking the implementation of this Chapter 16, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

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Section 4. Effective Date; Operative Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance. This ordinance shall become operative on January 1, 2017.

Section 5. Scope of Ordinance. In enacting this Chapter 16, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
THOMAS J. OWEN
Deputy City Attorney

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