

File No. 160383 Committee Item No. 2
 Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
 AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date June 16, 2016

Board of Supervisors Meeting Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Department of the Environment Memo - 04/18/2016</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral CEQA - 04/26/2016</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral FYI - 04/26/2016</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral SBC - 04/26/2016</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Response Categorically Exempt - 05/06/2016</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Response SBC - 05/27/2016</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Commission on the Environment Reso No. 009-16-COE</u> |
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Completed by: Erica Major Date June 10, 2016
 Completed by: _____ Date _____

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. 160383 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.
25

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

19 (†) "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, waive
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.~~

1
2 **SEC. 1608. OPERATIVE DATE.**

3 *This ordinance shall become operative on June 1, 2007.*

4
5 **SEC. 1608 1609. SEVERABILITY.**

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

13
14 **SEC. 1609 1610. NO CONFLICT WITH FEDERAL OR STATE LAW.**

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

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

20
21 **SEC. 1610 1611. UNDERTAKING FOR THE GENERAL WELFARE.**


22 In undertaking the implementation of this Chapter 16, the City is assuming an
23 undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its
24 officer and employees, an obligation for breach of which it is liable in money damages to any
25 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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LEGISLATIVE DIGEST

[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.

Existing Law

The Environment Code bars restaurants, retail food vendors, City departments, and the City's contractors and lessees from using food service ware made from polystyrene foam, and requires them to use compostable or recyclable products. "Food service ware" means food containers and utensils designed for one-time use.

Amendments to Current Law

The proposal is an ordinance that would amend the Environment Code to make a number of changes.

The proposal would ban the sale of food service ware that was made from polystyrene foam or that was not either recyclable or compostable. (This ban would be in addition to the existing ban on particular *uses* of such food service ware.) The ordinance would allow the sale of prepared food packaged in non-compliant food service ware if the food was packaged outside the City and sold to the consumer in the same packaging.

The proposal would ban the sale of certain other products that were made from polystyrene foam not wholly encapsulated or encased within a more durable material:

- Packing materials, including shipping boxes and packing peanuts;
- Coolers, ice chests, or similar containers;
- Pool or beach toys; and,
- Dock floats, mooring buoys, or anchor or navigation markers.

The proposal would ban the sale of egg cartons and meats trays that were made from polystyrene foam or that were not either recyclable or compostable.

The proposal would ban the sale of packing materials that were not either recyclable or compostable. It would not be a violation of the ordinance to:

- Receive shipments within the City that included polystyrene foam, or some other non-compostable and non-recyclable product, used as packing material;
- Re-use non-compliant packing materials for shipping, transport, or storage within the same distribution system, where the packing materials were not sent to a consumer or end user;
- Donate used non-compliant packing materials to another person, where the donor received nothing of value for the donated packing materials; or,
- Use donated non-compliant packing materials for shipping, transport, or storage, where the person using the packing materials received nothing of value for the donated packing materials.

The proposal would transfer enforcement of the program from the City Administrator to the Department of the Environment, and make other technical changes.

The proposal would become operative on January 1, 2017.

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1 [Support of Food Service and Packaging Waste Reduction Ordinance File Number: 160383]

2

3 **Resolution urging the Board of Supervisors and the Mayor to adopt File**
4 **Number 160383, an Ordinance amending the Environment Code to prohibit the sale of**
5 **food service ware and other specified products including packing materials that are**
6 **made from polystyrene foam or that are non-recyclable and non-compostable.**

7 WHEREAS, The City and County of San Francisco has a duty to protect the
8 environment, the economy and the health of its citizens; and,

9 WHEREAS, Polystyrene foam (blown, expanded or extruded polystyrene) is an
10 environmental pollutant that is commonly used for packaging and as food service ware in the
11 City and County of San Francisco; and,

12 WHEREAS, Due to the physical properties of polystyrene foam, the U.S.
13 Environmental Protection Agency (EPA) states “that such materials can have serious impacts
14 upon human health, wildlife, and aquatic environment, and the economy; and,

15 WHEREAS, Polystyrene foam packaging and food service ware cannot be recycled
16 through San Francisco’s recycling (blue bin) collection program and is otherwise difficult or
17 impossible to recycle, and is not compostable. Compostable or recyclable packaging and
18 food service ware are an affordable, safer, more ecologically sound alternative; and,

19 WHEREAS, Disposable food service ware and packaging foam constitute a source of
20 litter on San Francisco’s street, parks, and public places, and the costs of managing litter is
21 substantial; and,

22 WHEREAS, The Bay Area Stormwater Management Agencies Association and
23 Caltrans found that between 8 to 15% of plastics in San Francisco storm drains are
24 polystyrene foam. The San Francisco Estuary Institute found that 8% of the microplastics
25 entering San Francisco Bay from wastewater treatment facilities are polystyrene foam. And a

1 recent study concluded that 71% of the microplastics found in the Los Angeles and San
2 Gabriel Rivers were polystyrene foam pieces; and,

3 WHEREAS, A new report by the Ellen MacArthur Foundation, World Economic Forum
4 and McKinsey & Company finds an increasing rate of plastics entering the oceans, and
5 predicts that by 2050, without significant action to reduce the flow of plastics, there will be
6 more plastic by weight in the oceans of the world than fish. A majority of these plastics
7 entering the oceans are from packaging including food and beverage containers, much of it
8 made with polystyrene foam; and,

9 WHEREAS, Polystyrene foam is a notorious pollutant that breaks down into smaller,
10 non-biodegradable pieces that are often mistaken for fish eggs by seabirds and other marine
11 life. Unlike harder plastics, polystyrene contains a chemical used in the production process
12 called "styrene" that is metabolized after ingestion and threatens the entire food chain,
13 including humans who consume contaminated marine wildlife; and,

14 WHEREAS, Styrene has been linked to cancer as well as reproductive and
15 developmental disorders by the National Research Council, and styrene leaches into food and
16 drink, according to the U.S. Food and Drug Administration; and,

17 WHEREAS, The general public typically is not warned or aware of any potential hazard
18 from styrene, particularly in the immigrant and non-English speaking community; and,

19 WHEREAS, Due to these concerns, more than 100 U.S. cities have enacted
20 ordinances banning or restricting the sale and/or use of polystyrene foam service ware and/or
21 packaging materials, and many local businesses and a number of national corporations have
22 successfully replaced polystyrene foam and other non-biodegradable food service ware and
23 packaging materials with alternative, cost-competitive products; and,

24 WHEREAS, The Department of the Environment has successfully implemented and
25 achieved nearly 100% compliance from the 5000 food establishments in the city with the 2007

1 Food Service Waste Reduction Ordinance, Chapter 16 of the Environment Code, that
2 prohibits the use of polystyrene foam and requires disposable food ware be compostable or
3 recyclable for serving prepared food. The Department has assisted businesses in identifying
4 the many affordable suitable polystyrene alternatives available; and,

5 WHEREAS, Supervisor London Breed has proposed and Supervisor Aaron Peskin has
6 co-sponsored a Food Service and Packaging Waste Reduction Ordinance that would expand
7 the 2007 ordinance to extend the prohibition to the sale or distribution of polystyrene foam and
8 non-compostable or non-recyclable food ware products. This new ordinance would also
9 prohibit the selling or distribution of polystyrene foam packaging, including polystyrene foam
10 "packing peanuts", and prohibit the sale or distribution of polystyrene foam coolers, ice chests
11 or similar containers, pool or beach toys, dock floats, mooring buoys, or anchor or navigation
12 markers; and,

13 WHEREAS, Restricting the use of polystyrene foam food service ware and requiring it
14 to be replaced with less hazardous, compostable, or readily recyclable products, and barring
15 the 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; now, therefore, be it,

18 RESOLVED, That the Commission on the Environment urges the Board of Supervisors
19 and the Mayor to adopt the Food Service and Packaging Waste Reduction Ordinance (File
20 Number 160383) prohibiting the sale of food service ware and other specified products
21 including packing materials that are made from polystyrene foam or that are non-recyclable
22 and non-compostable; and, be it,

23 FUTHER RESOLVED, That the Commission on the Environment recognizes that the
24 Food Service and Packaging Waste Reduction Ordinance may help the City and County of
25 San Francisco meet its goal of Zero Waste by 2020 and fulfill Article 10 of the Environmental

1 Accords, in which the City committed with other cities around the globe to eliminate or restrict
2 the use of one chemical or environmental hazard each year.

3 I hereby certify that this Resolution was adopted at the Commission on the
4 Environment's Meeting on May 24, 2016.

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Anthony Valdez, Commission Affairs Manager

10

Vote: 5-0 Approved

11

Ayes: Commissioners Omotalade, Bermejo, Hoyos, Stephenson and Wald

12

Noes: None

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Absent: Commissioner Wan

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SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

May 27, 2016

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 160383 [Environment Code - Food Service and Packaging Waste Reduction]

Small Business Commission Recommendation to the Board of Supervisors: **Approval with Four (4) Recommendations**

Dear Ms. Calvillo,

On May 9, 2016, the Small Business Commission voted unanimously (6-0, 1 absent) to recommend that the Board of Supervisors approve BOS File No. 160383 with four (4) changes. The Small Business Commission extends its appreciation to President London Breed, Conor Johnston, and the Department of Environment for engaging the business community and the Office of Small Business during the process of drafting this legislation. A positive consequence of that engagement is that the legislation reflects a balance between meeting the City's Zero Waste goals and protecting the viability of the City's small business community. The legislation provides flexibility to the Department of Environment to consider the diversity of small businesses, through exclusions of certain categories for which no alternative presently exists or accommodations for industries with special needs.

The Small Business Commission recommends:

1. The creation of a multilingual application for a waiver that may be easily accessed and submitted online.
2. The creation of a multilingual application for a depletion permit that may be easily accessed and submitted online. The Small Business Commission noted the potential situation in which a business presently possesses more than a 7-month supply of prohibited food service wares or packaging materials. In such a situation, the business would have excess stock that could not be legally sold after January 1, 2017. A permit would resolve this issue by allowing the business to deplete the excess stock.
3. Consideration of a credit for those who would like to dispose of prohibited material that has not yet been depleted on the date the law goes into effect. The Commission did not elaborate on the details of the credit. The Office of Small Business staff is happy to work with the Department of the Environment to define this.
4. The provision of a list of potential alternative suppliers. The legislation specifies that the Director "shall create, maintain, and regularly update the product lists..." In addition to this, the Small Business Commission requests the provision of a list of suppliers of compliant food service wares and packaging materials.

In closing, the Small Business Commission commends the legislative sponsors and the Department of Environment for a well-thought-out piece of legislation. Thank you for considering the Commission's comments. Please feel free to contact me should you have any questions.

Sincerely,



Regina Dick-Endrizzi
Director, Office of Small Business

cc: London Breed, Board of Supervisors
Aaron Peskin, Board of Supervisors
Norman Yee, Board of Supervisors
Nicole Elliott, Mayor's Office
Deborah Rafael, Department of Environment
Lisa Pagan, Office of Economic and Workforce Development
Erica Major, Government Audit & Oversight Committee

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

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.

Joy
Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org,
c=US
Date: 2016.05.06 12:11:50 -07'00'



SF Environment
Our home. Our city. Our planet.
A Department of the City and County of San Francisco

Edwin M. Lee
Mayor

Deborah O. Raphael
Director

MEMORANDUM

TO: Supervisor London Breed, President of Board of Supervisors

FROM: Deborah Raphael, ^{D.R.} Director

RE: Polystyrene Foam Ban Ordinance Waiver for cold temperature medical shipping

DATE: April 18, 2016

This memorandum confirms that the Department of Environment agrees to provide a waiver for a period of 3 years, from the implementation date of your proposed Polystyrene Foam Ban Ordinance, to allow the continued use of polystyrene foam packaging to ship sensitive medical devices and medicine requiring cold temperatures.

This waiver will be provided in response to the request you received from the local medical community to meet their cold temperature medical shipping needs. We understand that demonstrated feasible packaging alternatives to polystyrene foam have yet to be identified to keep medical devices and medicine at required cold temperatures. The Department acknowledges the unique requirements and challenge to the medical industry to find and demonstrate safer alternatives that meet their stringent temperature sensitive medical shipping needs currently met with the use of polystyrene foam.

The Department will formally grant the waiver after the passage of the ordinance, once procedures have been developed for such waivers. We anticipate requiring yearly status reports, from those using polystyrene foam under this waiver, on progress to identify and test polystyrene foam alternatives for cold temperature medical shipping.

We share your goal of banning the use of polystyrene foam, but will issue this waiver given the critical public health considerations with medical shipping. Thank you for your continued leadership in helping move San Francisco toward zero waste.

Ms London Breed

San Francisco Board of Supervisors

12 May 2016

Dear Ms Breed

Re: Objection to Ordinance 160383

I am the CEO of Astrofoam Molding Company. I am writing to express my concern regarding the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (no. 295-06) which would ban the use of expanded polystyrene (EPS) transport packaging by businesses in San Francisco.

Astrofoam is a small family owned molder of expanded polystyrene packaging. We also act as a recycling center, using up to 25% recycled material in our products. We are based in Camarillo, California, employing 17 people, with a revenue tax base of approximately \$2,000,000.

I am aware that EPS has become a focus of environmental concern and that there are common misconceptions about its effect on human health and its impact on the environment. I am particularly concerned that some of the information used to support the proposed ordinance is factually incorrect.

- A ban on EPS would not improve public health. EPS has been cleared for direct contact with food by the FDA.
- A ban on EPS transport packaging would not protect the environment. A recent US EPA report on waste management showed that EPS transport packaging makes up a tiny proportion of the solid waste stream (approximately 0.0004%). There is a common misconception that EPS cannot be recycled. It can be recycled and is done so by EPS manufacturers (including Astrofoam), as well as at specialist recycling facilities. EPS can be economically densified and reused to make a variety of products such as durable plastic lumber for decking and park benches. Indeed there is a strong market for densified EPS, particularly in China.



- A ban on EPS transit packaging would not reduce litter. This presumably refers to fast food packaging being dropped in the street. EPS food packaging has already been banned in San Francisco.

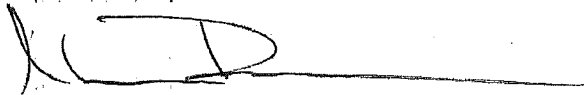
In addition the effect of a ban on EPS on the greater economy would have far reaching consequences for businesses and consumers, raising the cost of packaging materials and vastly increasing the amount of damage to goods in transit. EPS is an economical and extremely effective packaging material and therefore is widely used across the manufacturing spectrum. Whilst alternative (though more expensive) packaging might be an option for some goods, for others such as temperature sensitive pharmaceutical products, EPS is the only viable option.

At a time when the American economy has not fully recovered from the recession, this proposed ban on EPS would seem to be ill conceived and poorly informed.

Astrofoam strongly objects to the proposed amendment to the San Francisco Food Service Waste Reduction Ordinance and respectfully requests the following:

1. Ordinance 160383 be withdrawn.
2. The City of San Francisco refrain from any and all declarations that EPS poses a threat to human health.
3. The City of San Francisco redirects its efforts to improving capacity for recycling EPS and raising public awareness of recycling facilities. This would have a twofold benefit of protecting the environment and contributing to the American economy by allowing businesses to be more competitive, continue to provide employment for Americans and thus expanding the tax base for San Francisco.

Yours sincerely



Steven Bevan

CEO Astrofoam

RECEIVED VIA EMAIL

6/7/2016

FILE NO. 160383

TAK TAKASHIMA U.S.A., Inc.

12062 Valley View St. Suite #224, Garden Grove, CA. 92845

Tel: 714-892-5542 Fax: 714-892-6464

5/12/2016

The Honorable Supervisor London Breed
The Honorable Supervisor Norman Lee
The Honorable Supervisor Aaron Peskin
San Francisco Board of Supervisors
City Hall

1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Objection to Ordinance 160383 – Food Service & Packaging Waste Reduction

Dear Supervisor London Breed:

On behalf of Takashima U.S.A., Inc., I am writing to express our opposition to the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (No. 295-06) that would prohibit the use of expanded polystyrene transport packaging by San Francisco businesses. We are located in Garden Grove, CA and distribute special rubber coated EPS nationwide.

While it may be popular to malign polystyrene as an environmental menace, the supporting information outlined in this ordinance is blatantly false. Polystyrene foam cannot be recycled in SFC bluebin (otherwise difficult to recycle & not compostable), Polystyrene foam is an environmental pollutant, Styrene has been linked to cancer, reproductive & developmental disorders by National Research Council & leaching according to FDA, and so on.

The expanded polystyrene industry has invested incredible resources to support EPS recycling; our business is a valuable environmental and economic steward for California. Studies done on existing foam bans show they can negatively impact the economy as businesses and consumers take on the increased cost of alternative products. A ban on EPS transport packaging would most likely result in additional costs due to increased product damage, further jeopardizing the environmental impacts and resources allocated to the manufacture, packaging and distribution of the damaged product. Other studies indicate that in communities with polystyrene bans, litter sources are simply replaced by other materials and do not result in litter reduction.

For these reasons, Takashima U.S.A., Inc. objects to the proposed amendment to the San Francisco Food Service Waste Reduction Ordinance and further requests that:

1. Ordinance 160383 be withdrawn; and
2. The City of San Francisco refrain from any and all declarations that polystyrene is a human health concern (as referenced in the Proposed Ordinance).

Sincerely,

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized, somewhat abstract shape.

Gengo Kurokoshi
Vice President

cc: Members of the Board of Supervisors



RECEIVED VIA EMAIL
06/07/2016

(ALSO SUBMITTED TO
SUPERVISORS YEE &

PEKIN)

SEE SUBSEQUENT PAGES

May 9, 2016

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

Re: Objection to Ordinance 160383 – Food Service & Packaging Waste Reduction

Dear Supervisor Breed:

On behalf of Insulfoam, a division of Carlisle Construction Materials Incorporated, I am writing to express our opposition to the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (No. 295-06) that would prohibit the use of expanded polystyrene transport packaging by San Francisco businesses. We have facilities in:

- Dixon, CA with 55 employees and a revenue tax base of \$18 million
- Chino, California with 40 employees and a revenue tax base of \$17 million

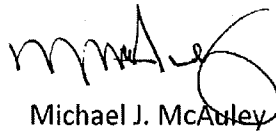
While it may be popular to malign polystyrene as an environmental menace, the supporting information outlined in this ordinance is blatantly false. Polystyrene foam is an environmental pollutant. U.S. EPA citation "such materials can have serious impacts upon human health, wildlife, aquatic environment and the economy".

The expanded polystyrene industry has invested incredible resources to support EPS recycling; our business is a valuable environmental and economic steward for California. Studies done on existing foam bans show they can negatively impact the economy as businesses and consumers take on the increased cost of alternative products. A ban on EPS transport packaging would most likely result in additional costs due to increased product damage, further jeopardizing the environmental impacts and resources allocated to the manufacture, packaging and distribution of the damaged product. Other studies indicate that in communities with polystyrene bans, litter sources are simply replaced by other materials and do not result in litter reduction.

For these reasons, Insulfoam objects to the proposed amendment to the San Francisco Food Service Waste Reduction Ordinance and further requests that:

1. Ordinance 160383 be withdrawn; and
2. The City of San Francisco refrain from any and all declarations that polystyrene is a human health concern (as referenced in the Proposed Ordinance).

Sincerely,

A handwritten signature in black ink, appearing to read "m. McAuley", with a large, stylized flourish at the end.

Michael J. McAuley
President
Insulfoam

cc: Members of the Board of Supervisors



May 9, 2016

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

Re: Objection to Ordinance 160383 – Food Service & Packaging Waste Reduction

Dear Supervisor Peskin:

On behalf of Insulfoam, a division of Carlisle Construction Materials Incorporated, I am writing to express our opposition to the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (No. 295-06) that would prohibit the use of expanded polystyrene transport packaging by San Francisco businesses. We have facilities in:

- Dixon, CA with 55 employees and a revenue tax base of \$18 million
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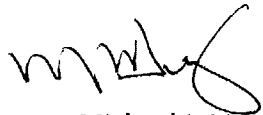
While it may be popular to malign polystyrene as an environmental menace, the supporting information outlined in this ordinance is blatantly false. Styrene has been linked to cancer, reproductive and developmental disorders by National Research Council and leaching according to the FDA. General public is not warned about any potential hazard from styrene, especially non-English speaking Americans. Restricting polystyrene foam will protect public health and safety of SFC residents, natural environment, waterways and wildlife. It will advance the City's zero-waste goal.

The expanded polystyrene industry has invested incredible resources to support EPS recycling; our business is a valuable environmental and economic steward for California. Studies done on existing foam bans show they can negatively impact the economy as businesses and consumers take on the increased cost of alternative products. A ban on EPS transport packaging would most likely result in additional costs due to increased product damage, further jeopardizing the environmental impacts and resources allocated to the manufacture, packaging and distribution of the damaged product. Other studies indicate that in communities with polystyrene bans, litter sources are simply replaced by other materials and do not result in litter reduction.

For these reasons, Insulfoam objects to the proposed amendment to the San Francisco Food Service Waste Reduction Ordinance and further requests that:

1. Ordinance 160383 be withdrawn; and
2. The City of San Francisco refrain from any and all declarations that polystyrene is a human health concern (as referenced in the Proposed Ordinance).

Sincerely,

A handwritten signature in black ink, appearing to read 'm. McAuley', written over a horizontal line.

Michael J. McAuley
President
Insulfoam

cc: Members of the Board of Supervisors



May 9, 2016

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

Re: Objection to Ordinance 160383 – Food Service & Packaging Waste Reduction

Dear Supervisor Yee:

On behalf of Insulfoam, a division of Carlisle Construction Materials Incorporated, I am writing to express our opposition to the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (No. 295-06) that would prohibit the use of expanded polystyrene transport packaging by San Francisco businesses. We have facilities in:

- Dixon, CA with 55 employees and a revenue tax base of \$18 million
- Chino, California with 40 employees and a revenue tax base of \$17 million

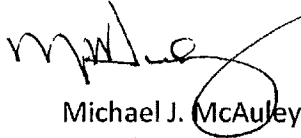
While it may be popular to malign polystyrene as an environmental menace, the supporting information outlined in this ordinance is blatantly false. Polystyrene foam cannot be recycled in SFC blue bin (otherwise difficult to recycle and not compostable). Polystyrene foam is a significant source of litter in SFC streets, parks, and public places. The cost to manage polystyrene foam litter is substantial. Bay Area Storm water Management Agencies Association & Caltrans 8-15% of plastics in storm drains are PS foam.

The expanded polystyrene industry has invested incredible resources to support EPS recycling; our business is a valuable environmental and economic steward for California. Studies done on existing foam bans show they can negatively impact the economy as businesses and consumers take on the increased cost of alternative products. A ban on EPS transport packaging would most likely result in additional costs due to increased product damage, further jeopardizing the environmental impacts and resources allocated to the manufacture, packaging and distribution of the damaged product. Other studies indicate that in communities with polystyrene bans, litter sources are simply replaced by other materials and do not result in litter reduction.

For these reasons, Insulfoam objects to the proposed amendment to the San Francisco Food Service Waste Reduction Ordinance and further requests that:

1. Ordinance 160383 be withdrawn; and
2. The City of San Francisco refrain from any and all declarations that polystyrene is a human health concern (as referenced in the Proposed Ordinance).

Sincerely,

A handwritten signature in black ink, appearing to read "m. McAuley", with a large, stylized flourish at the end.

Michael J. McAuley
President
Insulfoam

cc: Members of the Board of Supervisors

160383
RECEIVED VIA EMAIL

ARNOLD & PORTER LLP

Sarah Esmaili
Sarah.Esmaili@aporter.com
+1 415.471.3283
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10th Floor
Three Embarcadero Center
San Francisco, CA 94111-4024

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

Hon. Supervisor London Breed
May 9, 2016
Page 2

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, “[I]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

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.

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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

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.

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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.*

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.*

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May 9, 2016
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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.

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).

ARNOLD & PORTER LLP

Hon. Supervisor London Breed
May 9, 2016
Page 6

* * *

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 Esmail

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,

A handwritten signature in cursive script that reads 'David Lewis'.

David Lewis, Executive Director



File No. 160383

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 unlike 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

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

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.*



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

File 160383
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2016 APR 29 AM 10:31

BY: *JHB*

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.

Board of Supervisors
April 26, 2016
Page Two

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,

A handwritten signature in black ink, appearing to read "C. Joe Miller", with a long horizontal flourish extending to the right.

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

Enclosure

®Trademark of The Dow Chemical Company

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 ~~italics Times New Roman font~~.
11 Board amendment additions are in double-underlined Arial font.
12 Board amendment deletions are in ~~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 "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 (f) "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 (g) "Person" means an individual, trust, firm, joint stock company, corporation including
18 a government corporation, partnership, or association.

19 (h) "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

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

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

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight
Committee, Board of Supervisors

DATE: April 26, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Government Audit and Oversight Committee

The Board of Supervisors' Government Audit and Oversight Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

c:
Menaka Mahajan, Small Business Commission

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
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MEMORANDUM

TO: John Rahaim, Director, Planning Department
Phil Ginsburg, General Manager, Recreation and Parks Department
Deborah Raphael, Director, Department of the Environment
Barbara A. Garcia, Director, Department of Public Health
Mohammed Nuru, Director, Public Works
Joanne Hayes-White, Chief, Fire Department

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: April 26, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by the Supervisor Breed on April 19, 2016:

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.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

C:

Scott Sanchez, Planning Department
Sarah Jones, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Jeanie Poling, Planning Department
Sarah Madland, Recreation and Parks Department
Margaret McArthur, Recreation and Parks Department
Guillermo Rodriguez, Department of the Environment
Anthony Valdez, Department of the Environment
Mei Ling Hui, Department of the Environment
Greg Wagner, Department of Public Health
Colleen Chawla, Department of Public Health
Frank Lee, Public Works
Fuad Sweiss, Public Works
Kelly Alves, Fire Department

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

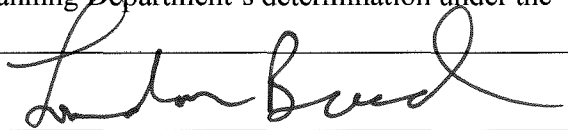
Breed, PERSAN

Subject:

Environment Code - Food Service and Packaging Waste Reduction

The text is listed below or attached:

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.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: