

ORDINANCE NO. 2007-233

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF CALABASAS ADDING CHAPTER 8.18 TO THE
MUNICIPAL CODE REGARDING ENVIRONMENTALLY
ACCEPTABLE FOOD PACKAGING.**

WHEREAS, the City of Calabasas desires to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, discarded packaging from foods, beverages and other products constitutes a significant and growing portion of Calabasas's waste stream. Regulation of such packaging, therefore, is a necessary part of any effort to encourage a recyclable waste stream and to protect the environment; and

WHEREAS, it is in the interest of the health, safety, and welfare of all who live, work and do business in the City that, to the extent feasible, the amount of litter on the public streets, parks, public places, and open spaces be reduced and that litter which does reach the natural environment be biodegradable. Existing landfill sites are rapidly approaching capacity, and additional sites are increasingly unavailable. Reduction of non-degradable wastes entering the waste stream and encouraging the use of recyclable packaging further these goals; and

WHEREAS, replacing non-biodegradable food packaging with biodegradable packaging will further protect the public health and safety of the residents, the City's natural environment, creeks and wildlife; and

WHEREAS, the minimization of non-degradable, non-returnable and non-recyclable food and beverage packaging originating at retail food establishments within the City is necessary and desirable to reduce the volume of land-filled waste; and

WHEREAS, non-biodegradable and non-recyclable materials pose a challenge to any environmentally and financially responsible solid waste management program. Discarded food packaging constitutes a significant and growing portion of the City's waste stream. Regulation of food packaging is necessary to encourage a recyclable waste stream and to reduce the disposal of solid waste and the economic and environmental costs of waste management; and

WHEREAS, biodegradable and recyclable products offer environmentally sound alternatives to products currently used. Biodegradable products decay, causing less harm to the environment and the landscape of the City than products now in use. Use and recycling of those alternative products saves the cost of disposing of waste in landfills and the energy and other resources used in production of new products; and

WHEREAS, plastic pollution has proliferated such that there are six times as many bits of plastic waste in the surface layer of the Pacific Ocean as marine life. Plastic waste originating from the United States has been found at Midway Atoll in the far reaches of the Pacific, and every cubic yard of sediment in California's coastal creeks and streams contains one-half pound of plastic waste; and

WHEREAS, bioplastics are commercially available and scientific studies show that these materials biodegrade both in compost and in the natural environment and return their base constituents to the food chain, such materials can be composted even if contaminated with food waste, and sugar cane stock (also known as bagasse) is suitable for hot foods and beverages.

NOW, THEREFORE, the City Council of the City of Calabasas does ordain as follows:

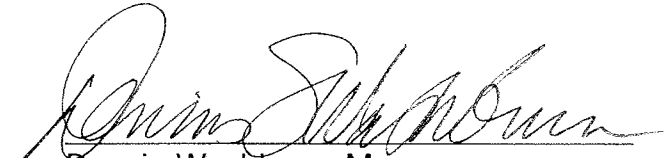
SECTION ONE: The Calabasas Municipal Code is hereby amended by adding a new Chapter 8.18 to read as set forth in the Exhibit A attached to this Ordinance.

SECTION TWO. SEVERABILITY. If any provision, section, paragraph, sentence or word of this Ordinance or of Exhibit A hereto, or the application thereof to any person or circumstance, is rendered or declared invalid by any court of competent jurisdiction, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance, and their application to other persons or circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this Ordinance are severable.

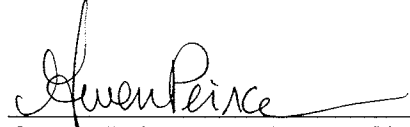
SECTION THREE. EFFECTIVE DATE. This ordinance shall take effect thirty days after its passage and adoption pursuant to California Government Code section 36937.

SECTION FOUR. CERTIFICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.


PASSED, APPROVED AND ADOPTED, this 21st day of February, 2007.


Dennis Washburn, Mayor

ATTEST:


Gwen Peirce, Assistant City Clerk

APPROVED AS TO FORM:


Michael G. Colantuono, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF CALABASAS)

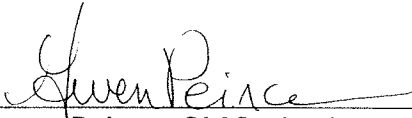
I, **GWEN PEIRCE**, Assistant City Clerk of the City of Calabasas, California, **DO HEREBY CERTIFY** that the foregoing ordinance, being **Ordinance No. 2007-233** was duly adopted by the City Council of the City of Calabasas, at a regular meeting of the City Council held February 21, 2007, and that it was adopted by the following vote, to wit:

AYES: Mayor Washburn, Mayor pro Tem Bozajian, Councilmembers Groveman, Maurer and Wolfson.

NOES: None.

ABSTAIN: None.

ABSENT: None.



Gwen Peirce, CMC, Assistant City Clerk
City of Calabasas, California

Exhibit A

Chapter 8.18 Food Packaging Materials

SECTION 8.18.010. PURPOSE.

The purposes of this chapter are to:

- A. Decrease the use of products which do not biodegrade and cannot be recycled in order to promote public health, reduce solid waste and litter, and protect wildlife and the environment.
- B. Eliminate, to the maximum extent practicable, the use of packaging at retail food establishments within the City that is non-biodegradable, non-recyclable, and which cannot be reused and thereby to protect the air, land and waters of the City and its environs.
- C. Reduce litter by encouraging the use of materials that can be reused, recycled or, if littered, can biodegrade into non-harmful component materials. Many packaging materials currently in use are highly durable, buoyant, light-weight and non-biodegradable and are therefore easily windblown and become litter even when placed in trashcans. Once in the environment, plastic wastes persist and detract from the appearance of the area longer than many other types of litter and due to their essentially indefinite presence in the environment, cause continuing environmental harm as by polluting waterways and the oceans.

SECTION 8.18.020. DEFINITIONS.

As used in this chapter the following terms shall have the meanings set forth below, unless otherwise expressly stated herein or the context clearly requires otherwise:

"Biodegradable" means capable of being broken down by micro-organisms commonly found in the environment into non-harmful substances or elements within a reasonably short time after disposal.

"City Facilities" means any building, structure or vehicles owned or operated by the City of Calabasas.

"Customer" means any person obtaining food or beverages from a restaurant or retail food establishment.

"Degradable" means material which (i) substantially reduces to its constituent substances through processes initiated by natural organisms whose end products are substantially, but not necessarily entirely, carbon dioxide and water and (ii) is designed to degrade when exposed to ultraviolet light. Degradable materials do not include synthetic or plastic-coated cellulose-based items comprising more than five percent of the total volume of an item.

"Disposable Food Service Container" means disposable products used in the restaurant and food service industry to serve or transport prepared, ready-to-consume food or beverages and includes, but is not limited to, plates, cups, bowls, trays and hinged or lidded containers. "Disposable Food Service Container" excludes straws, cup lids, utensils, and packaging for Unprepared Food.

"Environmentally Acceptable Packaging" means packaging every element of which is "Returnable", "Recyclable," "Biodegradable" or "Degradable", and does not contain expanded polystyrene (EPS).

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

"Food Provider" means any establishment which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, super market, delicatessen, caterer, catering truck or vehicle; and any organization, group or individual which regularly provides food in conjunction with services.

"Food Vendor" means any restaurant or retail food establishment.

"Nonprofit Food Provider" means an organization which provides food and which is recognized by the Internal Revenue Services as a non-profit organization.

"Packaging" means and includes all food-related wrappings, bags, boxes, coverings and containers, and shall further include cups, glasses and similar containers for drinking out of or for holding liquids, and plates and serving trays but shall specifically exclude plastic knives, forks, spoons, lids, straws and materials used to package unprepared food.

"Polystyrene" means expanded polystyrene which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene).

"Polystyrene Foam" means a thermoplastic petrochemical material utilizing a styrene monomer and processed by techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

"Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption by a retail consumer on the premises of a retail food establishment. Prepared Food does not include raw, butchered meats, fish and/or poultry.

"Recyclable" means any material including glass, cans, cardboard, paper, mixed paper, or other items which can be recycled, salvaged, composted, processed, or marketed by any means other than land-filling or burning, whether as fuel or otherwise, so that they are returned to use by society. Recyclable materials include any plastic which can be feasibly recycled by a municipal recycling program in the State of California and presently comprise those plastics with the recycling symbols #1 through #5 including polyethylene terephthalate (PET or PETE), high density polyethylene (HDPE), low density polyethylene (LDPE), and polypropylene (PP). For purposes of this chapter, recyclable materials do not include polystyrene, polystyrene foam or expanded polystyrene (which bear recycling symbol #6).

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

"Restaurant" means any establishment that sells "Prepared Food," including itinerant restaurants, pushcarts and vehicular food vendors.

"Retail Food Establishment" means any sales outlet, store, shop, vehicle or other place of business which sells or conveys foods or beverages to ultimate consumers, which foods or beverages are contained, wrapped, or held in or on food packaging. "Retail food establishment" shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, and sold or offered for sale, including, but not limited to restaurant; drive-in; coffee shop; cafeteria; short-order cafe; delicatessen; luncheonette; grill; sandwich shop; soda fountain; bed and breakfast inn; tavern; bar; cocktail lounge; nightclub; roadside stand; take-out prepared food place; industrial feeding establishment; catering kitchen; mobile food preparation unit; commissary; grocery store; public food market; produce stand; food stand; or any other place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other establishment or operation where food is processed, prepared, served or provided to or for consumers for charge;

"Returnable" means food or beverage containers or packages, such as, but not limited to, soft drink bottles and milk containers, that are capable of being returned to the distributor such as, but not limited to, dairies and soft drink bottlers, for reuse as the same food or beverage container at least once, and for which a redemption fee is charged by the retailer.

"Supplier" means anyone selling, or otherwise supplying food packaging to, a restaurant or retail food establishment.

"Unprepared Food" means any food which is not Prepared Food.

SECTION 8.18.030. PROHIBITION

A. Commencing March 31, 2008, no person owning, operating or managing a retail food establishment or a nonprofit food provider located in the city shall do or allow another to do any of the following, except as provided in section 8.18.060:

(1) sell or convey at retail, or possess with the intent to sell or convey at retail, any food or beverage that is placed, wrapped or packaged in the city in or on packaging other than environmentally acceptable packaging; nor

(2) provide to customers, or possess with the intent to provide to customers, packaging other than environmentally acceptable packaging.

B. The presence on the premises of a retail food establishment of packaging other than environmentally acceptable packaging shall constitute a rebuttable presumption of intent to sell, convey at retail, or provide that packaging to customers.

C. Commencing July 1, 2007:

(1) Food packaging other than environmentally acceptable food packaging shall not be used by officers, agents or employees of the city at city facilities for city events or otherwise in the conduct of the city's business. The city shall not acquire environmentally unacceptable food packaging.

(2) The city shall not sponsor or co-sponsor events within the City at which food packaging other than environmentally acceptable food packaging is used or distributed by event organizers, agents of event organizers, food vendors and any other party (including a nonprofit organization) which enters into an agreement with one or more of the co-sponsors of an event to sell prepared food at the event or otherwise to provide an event-related service. The city's monetary contribution to such events shall be refunded to the city, if the city manager determines that food packaging other than environmentally acceptable food packaging was utilized.

D. Commencing July 1, 2007, all rental agreements for any city facility shall require contracting parties to prevent the use or distribution of food packaging other than environmentally acceptable food packaging in the city facility. The agreement shall provide that the contractor's security deposit will be forfeited if the city manager determines that food packaging other than environmentally acceptable food packaging was utilized in violation of the rental agreement.

SECTION 8.18.040. DEGRADABLE AND RECYCLABLE FOOD PACKAGING.

Commencing on March 31, 2007, each retail food establishment in the City shall:

- A. Report on or before March 31, 2007 and the first business day of each calendar year thereafter, a written certification, signed under penalty of perjury by one authorized to bind the retail food establishment, stating that the owners and operators of the establishment are aware of the requirements of this chapter and comply with it. Such reports may be on a form provided for that purpose by the City Manager.
- B. Maintain written records evidencing its compliance with this chapter.

SECTION 8.18.050. EXEMPTIONS

A. During an emergency declared by the city manager or any other public official authorized by law to do so, food establishments, franchisees, contractors and retail food establishments doing business with the city, and those using city facilities, shall be exempt from this chapter.

B. If the city manager determines that there is no commercially available environmentally acceptable food packaging that may be substituted for a particular item of non-environmentally acceptable food packaging, then the city manager may, by a written notice published or posted in the manner required by law for ordinances of the city, authorize the use of that item in the city until such time as he or she determines that an alternative has become commercially available, at which time he or she shall issue a written notice terminating the exemption, which notice shall be published or posted in the manner required by law for ordinances of the city. In determining whether alternatives to an item are commercially available, the city manager shall consider:

- (1) The availability of environmentally acceptable packaging for affected products;
- (2) Whether environmentally acceptable packaging alternatives are available at commercially reasonable prices;
- (3) The existence of franchise or other contractual obligations which commit a retail food establishment to use corporate logo or other products which are not available as environmentally acceptable packaging.

The city manager shall annually review exemptions granted pursuant to this paragraph to determine whether current conditions continue to warrant the exemption.

C. Items required to be purchased under contract entered into prior to the adoption of this chapter are exempt from the provisions of this chapter.

D. Items packaged outside the city, whether sold at retail within the city or elsewhere, are exempt from the provisions of this ordinance.

SECTION 8.18.060. INSPECTION OF RECORDS.

All records required by this chapter shall be made available for inspection by the city manager during normal business hours. It shall be unlawful for anyone having custody of such records to fail or refuse to produce them upon request by the city manager.

SECTION 8.18.070. ENFORCEMENT

A. The city manager shall enforce this chapter. The city manager may promulgate written regulations upon notice in the manner required by law for the publication or ordinances of the city and may take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, inspecting any retail food establishment's premises to verify compliance.

B. Any person violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction punishable pursuant to section 1.16.020(B) of this code provided, however, that any person who falsely states that he or she is in compliance with the requirements of this chapter pursuant to section 8.18.040(B) or fails to timely file the reports required by that section shall be guilty of a misdemeanor punishable pursuant to section 1.16.010 of this code.

C. Each and every sale or other transfer of food packaging other than environmentally acceptable food packaging shall constitute a separate violation of this ordinance.

D. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

E. The remedies and penalties provided in this section are cumulative and not exclusive of one another.

SECTION 8.18.80. CONSTRUCTION; PREEMPTION.

This chapter and any provision thereof shall be null and void upon the adoption of any state or federal law or regulation imposing the same or essentially the same limits on the use of prohibited products as set forth in this chapter. This chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.