

## ORDINANCE NO. 12-03

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADDING A NEW CHAPTER 6.46 "EXPANDED POLYSTYRENE FOOD SERVICE WARE" TO TITLE 6 OF THE DANA POINT MUNICIPAL CODE PROHIBITING THE DISTRIBUTION OF EXPANDED POLYSTYRENE (STYROFOAM) FOOD SERVICE WARE AT LOCAL FOOD VENDORS, CITY FACILITIES, AND CITY-SPONSORED EVENTS

WHEREAS, the City of Dana Point has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, there are currently approximately 108 individual restaurants and food service businesses in the City; and

WHEREAS, expandable polystyrene (EPS), a petroleum based product that is frequently used for food services purposes, enters various water bodies from both direct and indirect sources (such as storm drains), and negatively impacts the overall quality of ocean waters and adjacent beach areas; and

WHEREAS, the litter problem resulting from expandable polystyrene (EPS) products is becoming increasingly difficult to manage and has costly negative implications for tourism, wildlife, aesthetics, and most recently, public storm drain systems; and

WHEREAS, numerous studies have documented the prevalence of EPS debris in the environment, including storm drains, ocean waters and on beaches; and

WHEREAS, a deterioration in the quality of the City's ocean waters and beaches threatens the public health, safety and welfare and negatively affects tourism and the local economy which depends on tourist trade; and

WHEREAS, EPS debris poses a risk to the fragile ecological balance because wildlife often confuse EPS debris for a source of food, and the ingestion of EPS can result in reduced appetite and nutrient absorption and death by starvation; and

WHEREAS, EPS products contribute to urban blight as litter, because, even when they have been disposed of properly, EPS products easily break down into smaller pieces, which are so light that they float in water and get carried by the wind; and

WHEREAS, EPS food service products, by their nature, have a useful life that can be measured in minutes or hours, yet these products take several decades to hundreds of years to biodegrade; and

WHEREAS, the 1999-2000 Orange County Grand Jury report titled "The Rainy Season's First Flush Hits the Harbors of Orange County" strongly recommended that the County of Orange and the cities within it institute a procedure to substantially reduce the use of EPS within its jurisdiction; and

WHEREAS, there is no meaningful way to recycle EPS products used for food service ware; and

WHEREAS, there are alternatives to EPS products used for food service ware; and

WHEREAS, the City of Dana Point desires to reduce the amount of beach litter and marine pollution and to protect wildlife by reducing the amount of EPS debris that enters the City's storm drains, watershed, ocean waters and beaches; and

WHEREAS, the City Council has proposed a ban on the use of EPS food service products in the City to reduce the prevalence of EPS debris in the City's storm drains, watershed, ocean waters and beaches; and

WHEREAS, the City Council of the City of Dana Point conducted a duly noticed public meeting regarding the proposed ban at their regular scheduled meeting of December 12, 2011 where testimony was invited and received; and

WHEREAS, because the proposed ban is not an activity that will result in an adverse physical change in the environment, the proposed ban does not qualify as a "project" under section 21065 of the Public Resources Code, and accordingly, is not subject to the California Environmental Quality Act (Pub. Res. Code §§ 21000-21177) ("CEQA"); and

WHEREAS, even if the proposed ban qualified as a "project" under section 21065 of the Public Resources Code, the project is exempt from the CEQA because (1) it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment" (14 C.C.R. § 15308), and/or (2) "it can be seen with certainty that there is no possibility that the activity in question may have a significant [adverse] effect on the environment" (14 C.C.R. § 15061(b)(3)); and

WHEREAS, even though CEQA does not require it, the City is willing to and has prepared an Initial Environmental Study on the proposed ban, and based upon this study, the City determined that the proposed ban is not an activity that will have a significant adverse effect on the environment; and

WHEREAS, because the proposed ban is not an activity that will have a significant adverse effect on the environment, the City prepared a Negative Declaration pursuant to section 21080(c) of the Public Resources Code and hereby adopts this Negative Declaration; and

WHEREAS, the proposed ban will have no negative impact on Fish and Game resources pursuant to Section 21089(b) of the Public Resources Code.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** The above recitations are true and correct and incorporated herein by reference.

**SECTION 2.** A new Chapter 6.46 "Expanded Polystyrene Food Service Ware" is hereby added to Title 6 of the Dana Point Municipal Code to read as follows:

#### **CHAPTER 6.46 EXPANDED POLYSTYRENE FOOD SERVICE WARE**

##### **Section 6.46.010 Definitions.**

For the purposes of this Chapter, the following terms shall have the following meanings:

"City Facilities" means any building, structure, or vehicle owned or operated by the City of Dana Point, its agents, agencies, departments, and franchisees.

"Customer" means any person obtaining Prepared Food from a Restaurant or Retail Food Vendor

"Disposable Food Service Ware" means all containers, trays, cartons, cups, and other items that are designed for one-time use and on, or in, which any Restaurant or Retail Food Vendors directly places or packages Prepared Foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at Restaurants or Retail Food Vendors such as plates, cups, bowls, lids, trays, and hinged or lidded containers. This does not include single-use disposable straws or utensils.

"Expanded Polystyrene" (EPS) means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam. EPS is sometimes called "Styrofoam," a Dow Chemical Co. trademarked form of polystyrene foam insulation.

"Food Vendor" means any establishment located or operating within the City of Dana Point which provides prepared and ready-to-consume food or beverages for public consumption, including, but not limited to any store, supermarket, delicatessen, Restaurant, Retail Food Vendor, sales outlet, shop, cafeteria, catering truck or vehicle, sidewalk or other outdoor vendor, or caterer.

"Polystyrene" means and includes expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, 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 on the Food Vendor's premises and within the City of Dana Point with the intent of consumption on or off the premises as the balance of an unfinished meal or as "takeout food." For the purposes of this Chapter, "Prepared Food" does not include raw, butchered, ground, chopped, or sliced meats, fish, and/or poultry sold from a butcher case or similar retail appliance for subsequent preparation.

"Restaurant" means any establishment located within the City of Dana Point that sells prepared food for consumption on, near, or off its premises by Customers. "Restaurant," for the purposes of this Chapter, includes mobile food preparation units as defined in Section 6.30.010 of the Dana Point Municipal Code.

"Retail Food Vendor" means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a Restaurant, located within the City of Dana Point that provides Prepared Food.

#### **Section 6.46.020 Polystyrene (EPS) Food Service Ware Prohibited.**

- (a) Except as provided by Section 6.46.030 of this Chapter, Food Vendors are prohibited from providing Prepared Food in Disposable Food Service Ware made of EPS.
- (b) Except as provided by Section 6.46.030 of this Chapter, all City Facilities, City-managed concessions, City-sponsored events, City permitted events and all franchisees, contractors, and vendors doing business with the City are prohibited from using Disposable Food Service Ware made of EPS within the City of Dana Point.

#### **Section 6.46.030 Exemptions.**

- (a) Foods prepared or packaged outside the City of Dana Point are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Dana Point are encouraged to follow the provisions of this Chapter.
- (b) EPS coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

(c) Upon receipt of a written application, the City Manager, or his or her designee, may exempt a Retail Food Vendor or Restaurant from the requirements of this Chapter for a period of up to one additional year after the operative date of this Ordinance, upon sufficient showing by the applicant that the provisions of this Chapter would cause undue hardship.

(1) The phrase undue hardship includes:

(A) Situations where there are no reasonably feasible available alternatives to EPS food service ware for reasons which are unique to the Retail Food Vendor or Restaurant; or

(B) Situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

(2) The written application shall include all information necessary for the making of a decision on the application, including but not limited to documentation showing the factual support for the claimed exemption. The applicant may be required to provide additional information to permit the determination of facts regarding the exemption application.

(3) An exemption application may be approved in whole or in part, with or without conditions.

(4) A Retail Food Vendor or Restaurant granted an exemption must reapply in writing prior to the end of the one-year exemption period and demonstrate continued undue hardship if it wishes to have the exemption extended.

(d) The City Manager and/or his designee may also determine to exempt from the requirements of this Chapter the procurement of supplies or services in the event of a proclaimed emergency or when otherwise deemed necessary by the City Manager for the immediate preservation of the public health, safety, or general welfare.

#### **Section 6.46.030 Enforcement.**

(a) Whenever the City Manager or his or her designee finds that any provision of this Chapter has been violated, the City Manager shall give notice of such violation by means of a written warning. In any such warning, the City Manager shall:

(1) Set forth the specific violation or violations found; and

(2) Establish a specific and reasonable period of time for the correction of the violation or violations; and

- (3) State that failure to comply with any notice issued in accordance with the provisions of this subsection shall be punishable by a fine in an amount consistent with subsection (b) of this Section.
- (b) Following the issuance of a written warning, an offense under this Chapter shall be punishable by a fine of not more than one hundred dollars (\$100.00) for the first conviction, and a fine of not more than two hundred fifty dollars (\$250.00) for the second and any subsequent conviction.
- (c) Each and every day that a violation occurs shall constitute a separate violation of this Chapter.
- (d) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

**SECTION 3. Severability.**

If any Section, Subsection, Subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional. To this end, the provisions of this Ordinance are declared severable.

**SECTION 4: Effective Date.**

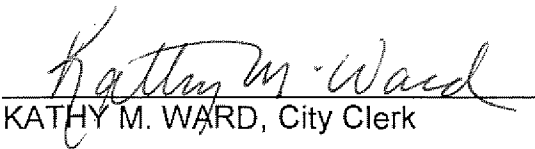
This Ordinance shall become effective six (6) months after its passage and adoption. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

PASSED, APPROVED and ADOPTED this 21<sup>st</sup> day of FEBRUARY, 2012.



LARA ANDERSON, Mayor

ATTEST:



KATHY M. WARD, City Clerk

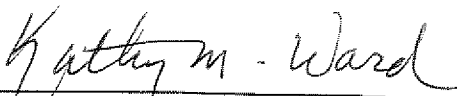
STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF DANA POINT     )

I, Kathy M. Ward, Acting City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. 12-03 was duly introduced and placed upon its first reading at an adjourned regular meeting of the City Council on the 7<sup>th</sup> day of February, 2012, and that thereafter, said Ordinance was duly adopted and passed at an adjourned regular meeting of the City Council on the 21<sup>st</sup> day of February, 2012, by the following roll-call vote, to wit:

AYES:           Council Members Bartlett, Schoeffel, Mayor Pro Tem Weinberg, and Mayor Anderson

NOES:           Council Member Brough

ABSTAIN:       None

  
\_\_\_\_\_  
KATHY M. WARD  
CITY CLERK

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE    ) ss.       AFFIDAVIT OF POSTING  
CITY OF DANA POINT    )

Kathy M. Ward, City Clerk, being first duly sworn, deposes, and says:


That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 12-03 being:

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was published in summary in the Dana Point News newspaper on the 16<sup>th</sup> day of February, 2012, and the 1<sup>st</sup> day of March, 2012, and, in further compliance with City Resolution No. 91-10-08-1, on the 9<sup>th</sup> day of February, 2012, and the 23<sup>rd</sup> day of February, 2012, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

Dana Point City Hall  
Capistrano Beach Post Office  
Dana Point Post Office  
Dana Point Library

  
\_\_\_\_\_  
KATHY M. WARD, CITY CLERK  
Dana Point, California