ORDINANCE NO. 1617 (2015 Series)

AN ORDINANCE OF THE CITY OF SAN LUIS OBISPO ADDING
CHAPTER 8.06 TO THE SAN LUIS OBISPO MUNICIPAL CODE
REGULATING EXPANDED POLYSTYRENE FOOD CONTAINERS AND
PRODUCTS

WHEREAS, The City of San Luis Obispo (“City”) has the police power to protect the
health, safety and welfare of the community, including the ability to protect and enhance the
natural environment; and

WHEREAS, according to the California Department of Transportation, EPS comprises
approximately 15% of storm drain litter. A study published in 2011 found that 71% of all the
plastic flowing through the Los Angeles and San Gabriel Rivers is foam. It is the second most
common form of beach debris in California, according to a study conducted in Orange County.
Also, several studies approximate that plastic products, including expanded polystyrene, make up
80-90% of floating marine debris; and

WHEREAS, the City is situated entirely within the 84 square mile San Luis Obispo
Creek Watershed. The City’s watershed and creek system are important natural resources as
exemplified in various policies of the City’s General Plan. As part of the City’s natural resource
program, the City performs regular creek clean-ups. During these clean-ups, the City finds and
discards a significant amount of expanded polystyrene products such as clamshell containers,
cups and plates. These products break apart into small pieces and ultimately flow to the Pacific
Ocean contributing to concerns related to water quality and habitat protection both within the
creek system as well as the marine environment; and

WHEREAS, items made from expanded polystyrene are not biodegradable,
compostable, or recyclable locally. Expanded polystyrene breaks into small pieces and because it
is lightweight, may be picked up by the wind even when it has been disposed of properly; and

WHEREAS, expanded polystyrene as litter is highly durable. Expanded polystyrene
litter is present in City parks and public places, streets and roads, waterways and storm drains
which may ultimately float, or be blown, into the Pacific Ocean; and

WHEREAS, marine animals and birds often confuse expanded polystyrene with pieces
of food, and when ingested, it can impact their digestive tracts, often leading to death; and

WHEREAS, expanded polystyrene is manufactured from petroleum, a non-renewable
resource; and

WHEREAS, expanded polystyrene is not recycled at the Cold Canyon Landfill and there
are no current plans to recycle it;

WHEREAS, take-out food packaging that is biodegradable, compostable, and recyclable
is the most responsible and sustainable choice for the City’s tourist economy, its citizenry and its
environment. When products are recycled, natural resources are spared, less energy is used for the production of new products, and landfill space is preserved; and

**WHEREAS**, regulating the use of expanded polystyrene products will maximize the operating life of landfills; and

**WHEREAS**, regulating the use of expanded polystyrene products within the City will help protect the City’s natural environment from contamination and degradation; and

**WHEREAS**, the City Council of the City of San Luis Obispo conducted a study session in the Council Chamber of City Hall, 990 Palm Street, San Luis Obispo, California, on September 2, 2014, and directed staff to develop an ordinance to prohibit the use of expanded polystyrene food or drink containers and the retail sale of non-encased expanded polystyrene products; and

**WHEREAS**, the City Council of the City of San Luis Obispo conducted a public hearing in the Council Chamber of City Hall, 990 Palm Street, San Luis Obispo, California, on June 2, 2015, for the purpose of considering the addition of Chapter 8.06 to the Municipal Code to prohibit the use of expanded polystyrene food or drink containers and the retail sale of non-encased expanded polystyrene products; and

**BE IT ORDAINED** by the Council of the City of San Luis Obispo as follows:

**SECTION 1.** **Recitals.** The above recitals are true and correct and incorporated herein by this reference as the findings of the City Council.

**SECTION 2.** **Environmental Determination.** The proposed ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for the protection of the environment because, among other things, it will regulate the use and sale of expanded polystyrene products and reduce the amount of expanded polystyrene products that enter local landfill and waterways. Thus, this Ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

**SECTION 3.** **Action.** Chapter 8.06, establishing regulations to prohibit the use of expanded polystyrene food or drink containers and the retail sale of non-encased expanded polystyrene products, is hereby added to the San Luis Obispo Municipal Code as follows:
Chapter 8.06 – EXPANDED POLYSTYRENE

8.06.010 - Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. “Affordable" means that a biodegradable, compostable or recyclable product may cost up to 15 percent more than the purchase cost of comparable EPS alternatives.

B. “ASTM Standard” means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.

C. “Biodegradable” means Compostable (separately defined) or the ability of organic matter to break down from a complex to a more simple form through the action of bacteria or to undergo this process.

D. “City Facility” means any building, structure or vehicle owned and operated by the City of San Luis Obispo, its agents, agencies, and departments.

E. “City Contractor" means any person or entity that enters into an agreement with the City to furnish products or services to or for the City.

F. “Compostable” means all the materials in the product or package will break down, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch). Compostable disposable food containers must meet ASTM Standards for compostable materials.

G. “Disposable Food Container" is interchangeable with “to go” packaging and “food packaging material” and means all containers that are used to hold Prepared Food or drinks. Disposable Food Containers include clamshells, bowls, plates, trays, cartons, and cups that are intended for single use, including without limitation, food containers for takeout foods and/or leftovers from partially consumed meals prepared by Food Providers. This does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

H. “Events Promoter” means an applicant for any event permit issued by the City or any City employee(s) responsible for any City-organized event.

I. “Expanded Polystyrene” or EPS means blown expanded and extruded polystyrene or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Expanded polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, ice chests, shipping boxes and packing peanuts.
J. “Expanded Polystyrene Products” means any item such as coolers, ice chests, cups, bowls, plates, clamshells containers, shipping boxes, or any other merchandise made from expanded polystyrene that is not wholly encapsulated or encased by a more durable material.

K. “Food Provider” Means any establishment located within the City, that is a retailer of Prepared Food or beverages for public consumption including, but not limited to any store, supermarket, delicatessen, restaurant, shop, caterer or mobile food vendor.

L. “Person” means an individual, business, Event Promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.

M. “Prepared Food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the City. Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.

N. “Recyclable” means any material that is specified in the franchise agreement with the City’s solid waste removal provider including, but not limited to aluminum, tin and bi-metal cans, clear and colored glass containers, High Density Polyethylene (HDPE), Polyethylene Terephthalate (PET), clear or rigid polystyrene, corrugated cardboard and mixed paper.

O. “Vendor” means any store or business which sells or offers goods or merchandise, located or operating within the City of San Luis Obispo, including those referenced in and “Food Provider.”

8.06.020 – Expanded Polystyrene Disposable Food Containers Prohibited.

A. Food Providers within the City of San Luis Obispo may not provide Prepared Food in or provide separately any Disposable Food Container made from Expanded Polystyrene, except as exempted in Section 8.06.050.

B. Disposable Food Containers made from Expanded Polystyrene are prohibited from use in all City Facilities.

C. City Contractors in the performance of City contracts and Events Promoters may not provide Prepared Food in Disposable Food Containers made from Expanded Polystyrene.

8.06.030 - Required Biodegradable, Compostable, or Recyclable Disposable Food Containers.

A. All Food Providers within the City utilizing Disposable Food Containers shall use Biodegradable, Compostable or Recyclable products.

B. All City Facilities utilizing Disposable Food Containers shall use Biodegradable, Compostable or Recyclable products.

C. City Contractors and Events Promoters utilizing Disposable Food Containers shall use Biodegradable, Compostable, or Recyclable products while performing under a City contract or permit.
8.06.040 - Prohibited Sales.

No Vendor or Events Promoter in the City may sell or otherwise provide any Expanded Polystyrene Product which is not wholly encapsulated or encased within a more durable material, except as exempted in Section 8.06.050. This specifically includes, but is not limited to, cups, plates, bowls, trays, clamshells and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, packing peanuts, or other packaging materials.

8.06.050 – Exemptions.

A. The City Manager or designee, may exempt a Food Provider from the requirements set forth in section 8.06.020(A) of this ordinance for a single, one-year period upon the Food Provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty as evidenced by no alternatives being available or such alternatives are not Affordable. The City Manager or designee shall put the decision to grant or deny a one-year exemption in writing, and the decision shall be final.

B. Exemptions to allow for the sale or provision of Expanded Polystyrene Products may be granted by the City Manager or designee, if the vendor can demonstrate in writing a public health and safety requirement or medical necessity to use the product. The City Manager or designee shall put the decision to grant or deny the exemption in writing and the decision shall be final.

C. An exemption application shall include all information necessary for the City Manager or designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The City Manager or designee may require the applicant to provide additional information.

D. The City Manager or designee may approve the exemption application in whole or in part, with or without conditions.

E. Foods prepared or packaged outside the City and sold inside the City are exempt from the provisions of this chapter.

F. Raw meat, fish and other raw food trays are exempt from the provisions of this chapter.

G. Products made from Expanded Polystyrene which are wholly encapsulated or encased by a more durable material are exempt from the provisions of this chapter. Examples include surfboards, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and coolers encased in hard plastic.

H. Construction products made from Expanded Polystyrene are exempted from this ordinance if the products are used in compliance with San Luis Obispo Municipal Code Title 15 Buildings and Construction and Chapter 12.08 Urban Storm Water Quality Management and
Discharge Control and used in a manner preventing the Expanded Polystyrene from being released into the environment.

I. In a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Providers, City Contractors and Vendors doing business with the City shall be exempt from the provisions of this chapter.

J. Expanded Polystyrene packaging products which have been received from sources outside the City may be reused to be kept out of the waste stream.

8.06.060 Violations.

A. Any violation of the provisions of this chapter by any person is subject to administrative fines as provided in Chapter 1.24 of this code, which may be appealed pursuant to the procedures in that Chapter 1.24.

B. For the first violation, the City Manager or designee may allow the violating Food Provider, in lieu of payment of the administrative fine, to submit receipts demonstrating the purchase after the citation date, of Biodegradable, Compostable, or Recyclable products in an amount equal to the amount of the citation.

C. Food Providers or Vendors who violate this chapter in connection with City permitted special events shall be assessed fines as follows:
   1. A fine not to exceed $200 for an event of 1 to 200 Persons
   2. A fine not to exceed $400 for an event of 201 to 400 Persons
   3. A fine not to exceed $600 for an event of 401 to 600 Persons
   4. A fine not to exceed $1,000 for an event of 600 or more Persons

B. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

SECTION 4. Severability. If any subdivision, paragraph, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this ordinance, or any other provisions of the city’s rules and regulations. It is the city’s express intent that each remaining portion would have been adopted irrespective of the fact that any one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

SECTION 5. Effective Dates. A summary of this ordinance, together with the names of Council members voting for and against, shall be published at least five (5) days prior to its final passage, in The Tribune, a newspaper published and circulated in this City. This ordinance shall go into effect at the expiration of six (6) months after its final passage. A copy of the full text of this
ordinance shall be on file in the Office of the City Clerk on and after the date following introduction and passage to print and shall be available to any member of the public.

**INTRODUCED** on the 2nd day of June 2015, **AND FINALLY ADOPTED** by the Council of the City of San Luis Obispo on the 16th day of June 2015, on the following roll call vote:
- **AYES:**
- **NOES:**
- **ABSENT:**

______________________________
Mayor Jan Marx

ATTEST:

______________________________
Anthony J. Mejia
City Clerk

APPROVED AS TO FORM:

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J. Christine Dietrick
City Attorney