

ORDINANCE NO. 10-12

ORDINANCE AMENDING CHAPTER 5, BY ADDING
ARTICLE 11 OF THE HAYWARD MUNICIPAL CODE
RELATING TO SANITATION AND HEALTH TO PROHIBIT
THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD
SERVICE WARE AND TO REQUIRE RECYCLABLE OR
COMPOSTABLE FOOD SERVICE WARE WITHIN CITY
LIMITS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD
DOES ORDAIN AS FOLLOWS:

Section 1. LEGISLATIVE FINDINGS AND DECLARATIONS. The City Council hereby adopts the following findings and declarations in support of this Ordinance.

The City of Hayward has a duty to protect the natural environment, the economy, and the health of its citizens.

Food service polystyrene foam causes unique litter management issues because it is light weight, floats in water, and is easily blown by the wind from place to place, even when disposed of properly. Polystyrene foam can enter creeks or storm drains, whether directly or indirectly, and is observed during street sweeping activities and local creek clean up events.

Polystyrene litter, especially expanded polystyrene foam, is a threat to natural ecosystems due to its tendency to break into smaller pieces that are similar in size and appearance to the food of some wildlife species. These small pieces can be ingested by marine wildlife, leading to reduced appetite and nutrient absorption and possible death by starvation.

Banning polystyrene foam disposable food service ware in the City of Hayward will help address pollution by requiring reusable containers, where possible, or the use of compostable or recyclable alternatives, while helping inform business owners and citizens about the positive impact their packaging choices can make.

CalRecycle has estimated that Californians use 165,000 tons of polystyrene foam each year for packaging and food service purposes alone, and currently there is no economically feasible means of recycling this product locally.

For these reasons, a number of municipalities in California have banned polystyrene foam food service ware, and some local businesses and several national corporations have successfully replaced polystyrene foam with recyclable or compostable food service ware.

The City's goal is to replace polystyrene foam disposable food service ware with alternative products that are reusable, where possible, or are recyclable or compostable.

Section 2. Upon the adoption of this Ordinance, Sections 5-11.00 through 5-11.06, adding Article 11 to Chapter 5 of the Hayward Municipal Code, relating to a ban on polystyrene foam food service ware, are hereby enacted to read as follows:

“ARTICLE 11
POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE PROHIBITED;
RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE REQUIRED

Section	Subject Matter
5-11.00	DEFINITIONS
5-11.01	PROHIBITED USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE
5-11.02	REQUIRED USE OF RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE
5-11.03	EXCEPTIONS
5-11.04	ADMINISTRATIVE RULES AND REGULATIONS
5-11.05	ENFORCEMENT AND PENALTIES
5-11.06	CONSTRUCTION AND PREEMPTION

SEC. 5-11.00. DEFINITIONS. For the purposes of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended.

- a. ASTM-Standard. ASTM Standard means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.
- b. Biodegrade/Biodegradable. Biodegrade or Biodegradable means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.
- c. City Facility. City Facility means any building, structure, land or park owned or operated by the City of Hayward, its agents and departments and includes City buildings, structures, parks, recreation facilities or property.

- d. **City Facility Users.** City Facility Users means all persons, societies, associations, organizations or special events promoters who require a permit to reserve or rent a City Facility or a permit or contract to use a plaza, sidewalk, or roadway, as further described in Hayward Municipal Code Chapter 3, Public Safety, Article 5, Section 3-5.10 Temporary Use of Sidewalk or Roadway. City Facility Users also includes concession contracts with the City, City-managed concessions, City-sponsored events and food services provided at City expense.
- e. **Compostable.** Compostable means that all materials in the product or package will Biodegrade or otherwise become part of usable compost (e.g., soil conditioning material, mulch) in an appropriate composting program or facility. Compostable Disposable Food Service Ware includes ASTM-Standard bio-plastics (plastic-like) products that are clearly labeled so that any compost collector and processor can easily distinguish the ASTM-Standard Compostable plastic from non-ASTM-Standard Compostable plastic.
- f. **Disposable Food Service Ware.** Disposable Food Service Ware means a product used by a Food Vendor for serving or transporting prepared and ready-to-consume food or beverages which is commonly disposed of after a single use. Disposable Food Service Ware includes, but is not limited to, plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single-use disposable straws, utensils or hot cup lids.
- g. **Food Vendor.** Food Vendor means any establishment located within the City of Hayward, or any establishment which provides Prepared Food or beverages for public consumption within the City of Hayward, 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.
- h. **Polystyrene Foam.** Polystyrene Foam means a thermoplastic petrochemical material utilizing the styrene monomer, which may be marked with resin symbol #6, 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), sometimes referred to as Styrofoam™, a Dow Chemical Company trademarked form of polystyrene foam insulation. In food service, Polystyrene Foam is generally used to make cups, bowls, plates, trays, and clamshell containers intended for a single use.
- i. **Prepared Food.** Prepared Food means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique by Food Vendor. Prepared Food does not include uncooked meat, fish, poultry, or eggs unless provided for consumption without further food preparation, such as sushi. Prepared Food may be eaten either on or off the premises, also known as “take-out food.”

- j. **Recyclable.** Recyclable means any material that is accepted by the City recycling program, including, but not limited to, paper, glass, metal, cardboard, and plastic that can be recycled, salvaged, processed, or marketed by any means other than landfilling or burning, whether as fuel or otherwise, so that they are returned to use by society. Recyclable plastics include any plastic which is identified as recyclable by the City in the City's municipal recycling program. For purposes of this Article, recyclable plastic does not include Polystyrene Foam labeled with resin symbol #6.
- k. **Special Events Promoter.** Special Events Promoter means an applicant for any special events permit issued by the City or by any City employee(s) responsible for any organized special event within the City of Hayward.

SEC. 5-11.01 PROHIBITED USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE.

- a. Except as provided by Section 5-11.03, all Food Vendors are prohibited from providing Prepared Food in Disposable Food Service Ware made from Polystyrene Foam.
- b. Except as provided by Section 5-11.03, all City Facility Users are prohibited from using Disposable Food Service Ware made from Polystyrene Foam.

SEC. 5-11.02 REQUIRED USE OF RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE.

- a. All Food Vendors using any Disposable Food Service Ware shall use a suitable Recyclable or Compostable product.
- b. All City Facility Users shall use a suitable Recyclable or Compostable product for Disposable Food Service Ware.

SEC. 5-11.03 EXCEPTIONS.

- a. Foods prepackaged outside the limits of the City of Hayward are excluded from the provisions of this Article, but the purveyors of foods prepackaged outside of the limits of the City of Hayward are encouraged to follow these provisions as it is the City's policy goal to eliminate the use of Polystyrene Foam Disposable Food Service Ware.
- b. Coolers and ice chests that are intended for reuse are excluded from the provisions of this Article.

- c. The City Manager may except a Food Vendor or City Facility User from the requirements set forth in Section 5-11.02 for a period of time to be determined by the City Manager on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the Food Vendor or City Facility User not generally applicable to other persons in similar circumstances.
- d. Food Vendors and City Facility Users seeking an exception from the requirements of this Article shall include all information on the application for exception to allow the City to make its decision, including but not limited to, documentation showing factual support for the claimed exception. The City Manager shall confirm the decision to grant or deny each exception in writing and may approve an exception request in whole or in part. The decision of the City Manager shall be final.
- e. Emergency supplies or services procurement. City Facility Users and Food Vendors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

SEC. 5-11.04 ADMINISTRATIVE RULES AND REGULATIONS. The City Manager may make such rules and regulations, consistent with the provisions of this Article, as may be necessary or desirable to supplement or clarify such provisions or aid in their enforcement.

SEC. 5-11.05 ENFORCEMENT AND PENALTIES.

- a. The City Manager or his/her designee shall have primary responsibility for enforcement of this Article. If the City Manager or his/her designee determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the Food Vendor that a violation has occurred. Subsequent violations of this Article by a Food Vendor shall be subject to the enforcement and penalties set forth below.
- b. Each and every sale or other transfer of Disposable Food Service Ware made from Polystyrene Foam shall constitute a separate violation of this Article.
- c. Any violation of this Article that occurs after the issuance of a written warning to a Food Vendor is subject to civil and administrative enforcement, punishable by a civil fine established by resolution of the City Council. Any citation issued for a violation of this Article shall give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 1, Article 7 of the Hayward Municipal Code.

- d. The City Attorney may seek legal, injunctive or other equitable relief to enforce this Article.
- e. The remedies provided herein are cumulative and not exclusive.

SEC. 5-11.06 CONSTRUCTION AND PREEMPTION. This Article and any of its provisions 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 Article. This Article 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 with that intent."

Section 3. Severability. Should any part of this Ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this Ordinance, which shall continue in full force and effect, provided that the remainder of the Ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this Ordinance shall become effective July 1, 2011.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 12th day of October, 2010, by Council Member Quirk.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 19th day of October, 2010, by the following votes of the said City Council.

AYES: COUNCIL MEMBERS: Zermeño, Halliday, Peixoto, Salinas, Henson
MAYOR: Sweeney

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Quirk

APPROVED: _____

Mayor of the City of Hayward

DATE: _____

October 22, 2010

ATTEST: _____

William Pous

City Clerk of the City of Hayward

) APPROVED AS TO FORM:

Garth S. Lam

City Attorney of the City of Hayward

Daily Review

c/o Bay Area News Group-East Bay
22533 Foothill Blvd.
Hayward, CA 94541
Legal Advertising
(800) 595-9595 opt. 4

Hayward, City of/City Clerk
Miriam Lens, 777 B St.
Hayward CA 94541

PROOF OF PUBLICATION

FILE NO. Polystyrene Ban

In the matter of

Daily Review

The Daily Review

I am a citizen of the United States; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the Legal Advertising Clerk of the printer and publisher of The Daily Review, a newspaper published in the English language in the City of Hayward, County of Alameda, State of California.

I declare that the Daily Review is a newspaper of general circulation as defined by the laws of the State of California as determined by this court's decree, dated March 2, 1950, in the action entitled In the Matter of the Ascertainment and Establishment of the Standing of The Daily Review as a Newspaper of General Circulation, case number 221938. Said decree states that: "The Daily Review" has been established, printed, and published daily in the City of Hayward, County of Alameda, State of California, for one year or more next preceding the date of the filing of said petition; that it is a newspaper published for the dissemination of local and telegraphic news and intelligence of a general character and has a bona fide subscription list of paying subscribers; ... [] [and] THEREFORE, ... 'The Daily Review' is hereby determined and declared to be a newspaper of general circulation [within the meaning of Government Code §§ 6000 et seq.]. Said decree has not been revoked, vacated or set aside.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

10/16/2010

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.


Public Notice Advertising Clerk

Legal No.

0003715874

PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF HAYWARD

ORDINANCE AMENDING CHAPTER 5, BY ADDING ARTICLE 11 OF THE HAYWARD MUNICIPAL CODE RELATING TO SANITATION AND HEALTH TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE AND TO REQUIRE RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE WITHIN CITY LIMITS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. LEGISLATIVE FINDINGS AND DECLARATIONS

Section 2. Upon the adoption of this Ordinance, Sections 5-11.00 through 5-11.06, adding Article 11 to Chapter 5 of the Hayward Municipal Code, relating to a ban on polystyrene foam food service ware, are hereby enacted to read as follows:

ARTICLE 11 POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE PROHIBITED; RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE REQUIRED

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FOAM DISPOSABLE FOOD SERVICE WARE
5-11.03 REQUIRED USE OF RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE
5-11.04 EXCEPTIONS
5-11.05 ADMINISTRATIVE RULES AND REGULATIONS
5-11.06 ENFORCEMENT AND PENALTIES
5-11.07 CONSTRUCTION AND PREEMPTION

Section 3. Severability. Should any part of this Ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this Ordinance, which shall continue in full force and effect, provided that the remainder of the Ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this Ordinance shall become effective July 1, 2011.

Introduced at a meeting of the Hayward City Council held October 12, 2010, the above-entitled ordinance was introduced by Council Member Quirk.

This ordinance will be considered for adoption at the next meeting of the Hayward City Council, to be held on October 19, 2010, at 7:00 p.m., in the Council Chamber, 777 B Street, Hayward, California. The full text of this ordinance is available for examination by the public in the Office of the City Clerk.

Dated: October 16, 2010
Miriam Lens, City Clerk
City of Hayward

DR #3715874
Oct. 16, 2010

10/22/10 11:05 CLX