

## ORDINANCE 466

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, REGULATING THE USE OF EXPANDED POLYSTYRENE AND NON-RECYCLABLE PLASTIC DISPOSABLE FOOD SERVICE CONTAINERS BY FOOD PROVIDERS, AND EXPANDED POLYSTYRENE PACKAGING

**WHEREAS**, the City's has engaged in ongoing efforts to reduce or limit products that are harmful to the environment; and

**WHEREAS**, plastic products photodegrade, which means they break up into smaller pieces when exposed to sunlight, and these smaller pieces persist in the marine environment for hundreds of years. The plastic breaks up into smaller and smaller pieces that can then enter the food chain by animals believing the pieces are food. Plastics also leech chemicals wherever they end up, including into soils and into the water; and

**WHEREAS**, polystyrene is particularly harmful to the environment because it is frequently used for single-use purposes. A website by Californians Against Waste estimates that 377,579 tons of expanded polystyrene are produced in California and that 154,808 tons of that type of polystyrene are made specifically for food service packaging that ends up in the landfill. Either these products are immediately disposed of after a single use, or they are dispersed into the environment either intentionally or accidentally from being blown by the wind or falling out of trash receptacles, for example; and

**WHEREAS**, approximately 80% of all refuse that ends up in the oceans comes from the land; and

**WHEREAS**, refuse found and collected along San Diego County coasts is primarily comprised of plastics. San Diego Coastkeeper reports that in 2014, 46% of debris collected was plastic. Many of the plastics collected were pieces less than one inch in diameter, and much of it was nonrecyclable expanded polystyrene foam; and

**WHEREAS**, the U.S. Department of Health and Human Services' 13th Report on Carcinogens concludes that styrene "is reasonably anticipated to be a human carcinogen"; and

**WHEREAS**, there are few facilities in the State of California that recycle polystyrene and they are able to do so only if there is a demand and the product is wiped clean of all food debris; and

**WHEREAS**, many local environmental groups are encouraging local government to limit or ban the use of polystyrene in their jurisdictions; and

**WHEREAS**, the California Coastal Commission has developed “A Plan of Action from The Plastic Debris Project” in 2006, which was funded by the State Water Resources Control Board, and that Plan recommends that local government impose limits, bans, and prohibitions on materials that more commonly become litter and marine debris, including polystyrene; and

**WHEREAS**, the City Council finds that regulating the use of polystyrene within the City may reduce the amount of plastics that enter the environment; and

**WHEREAS**, the City Council finds that because the City of Solana Beach is a coastal community, the City has the opportunity to reduce the amount of plastics that end up in the ocean.

**NOW, THEREFORE**, the City Council of the City of Solana Beach, California, does ordain as follows:

Section 1. All of the above statements are true; and

Section 2. Chapter 5.03 of the Solana Beach Municipal Code is hereby added to read as follows:

**5.03.010 Definitions**

A. "Biodegradable" refers to the ability of a material to decompose into elements normally found in nature within a reasonably short period of time after disposal.

B. "City Facilities" refers to buildings and structures owned or leased by the City of Solana Beach.

C. "City-Sponsored Event" means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.

D. "Disposable Food Service Container" means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers. 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.

E. "Expanded Polystyrene" (EPS) means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam.

F. "Food Provider" means any Person or establishment that provides or sells Prepared Food within the City to the general public to be consumed on the premises or for take-

away consumption. Food Provider includes but is not limited to (1) a grocery store, supermarket, delicatessen, restaurant, drive-thru, café, cafeteria, coffee shop, snack shop, public food market, farmers' market, convenience store, or similar fixed place where Prepared Food is available for sale on the premises or for take-away consumption; and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food Provider also includes any organization, group or individual that regularly provides Prepared Food to its members or the general public as a part of its activities or services.

G. "Non-Recyclable Plastic" refers to any plastic which cannot be feasibly recycled by a municipal recycling program in the State of California, including polystyrene and Expanded Polystyrene.

H. "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, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes clear or solid polystyrene which is known as "oriented polystyrene".

I. "Prepared Food" means any food or beverage that is (1) ready to consume without any further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a Food Provider using any cooking, packaging or food preparation technique. Prepared Food may be eaten either on or off the Food Provider's premises. For purposes of this ordinance, Prepared Food does not include (1) any raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers' markets and other food vendors.

J. "Recyclable Plastic" means any plastic which can be feasibly recycled by a municipal recycling program in the State of California.

K. "Restaurant" means any person or establishment doing business within the City of Solana Beach that provides prepared food or beverages for consumption on or off its premises such as a restaurant, cafe, bakery, grocery or convenience store food counter or delicatessen, or catering truck vehicle.

### **5.03.020 Prohibition on the Use of Non- Recyclable Plastic Disposable Food Service Containers**

A. Except as provided in Section 5.03.030, Food Providers are prohibited from dispensing Prepared Food to customers in Disposable Food Service Containers made from Expanded Polystyrene.

B. Except as provided in Section 5.03.030, Food Providers are prohibited from dispensing Prepared Food to customers in Disposable Food Service Containers made from Non-Recyclable Plastic.

C. All City Facilities, City-managed concessions, City sponsored events, and City permitted events are prohibited from using Disposable Food Service Containers made from Expanded Polystyrene or Non-Recyclable Plastic.

### **5.03.025 Prohibition on Expanded Polystyrene Packaging Materials**

No business or vendor in the City of Solana Beach shall use Expanded Polystyrene loose-fill packaging and cushioning material, such as foam peanuts, packing peanuts, foam popcorn or packing noodles, in the packaging of products, equipment or other items.

### **5.03.030 Exemptions**

A. Automatic Exemptions. The following uses are exempt from the provisions of this chapter:

1. Prepared Foods prepared or packaged outside the City of Solana Beach. Purveyors of food prepared or packaged outside the City of Solana Beach are encouraged to follow the provisions of this section.

2. Products, equipment, or other items prepared or packaged outside the City of Solana Beach.

3. Polystyrene coolers and ice chests or other food containers intended for reuse.

B. Undue Hardship. The City Manager or his/her designee, may exempt a Food Provider from the requirements of this ordinance for a one year period, upon showing by the Food Provider that the conditions of this ordinance would cause undue hardship.

1. An "undue hardship" shall be found in:

a. Situations unique to the Food Provider where there are no reasonable alternatives to Expanded Polystyrene or Non-Recyclable Plastic Disposable Food Service Containers and compliance with this Chapter would cause significant economic hardship to that Food Provider;

b. Situations where no reasonably feasible available alternatives exist to a specific and necessary Expanded Polystyrene or Non-Recyclable Plastic Disposable Food Service Container.

2. A Food Provider granted an exemption by the City must reapply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

3. An exemption application shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The City Manager may require the applicant to provide additional information to permit the City Manager to determine facts regarding the exemption application.

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

5. Exemption decisions are effective immediately and final and are not appealable.

6. The City Council may by resolution establish a fee for exemption applications. The application fee shall be an amount sufficient to cover the costs of processing the exemption application.

#### **5.03.040 Enforcement and Remedies**

A. The City Manager, or his or her designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this chapter, including, but not limited to, inspecting any Food Provider's premises to verify compliance.

B. Any person violating this section shall be guilty of an infraction, which shall be punishable by a fine not exceeding \$250.00, or a misdemeanor, which shall be punishable by a fine not exceeding \$1,000, or by imprisonment in the county jail for a period not exceeding six months or by both such fine and imprisonment.

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

D. Administrative enforcement of this chapter shall proceed pursuant to Chapter 1.18 SBMC.

E. Each violation of this chapter shall be considered a separate offense.

F. The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this chapter shall preclude any person from pursuing any other remedies provided by law.

G. Notwithstanding any other provision of this chapter, this chapter may be enforced through any remedy as provided for in this section upon its effective date.

**5.03.050 Operative Dates**

A. Chapter 5.03 shall become operative as to all Food Providers, businesses and vendors six (6) months after adoption by the City Council.

B. Within thirty (30) days after its adoption, Chapter 5.03 shall become effective for the City such that no City facilities, City managed concessions, City sponsored events or City permitted events shall distribute or utilize disposable food service containers containing Expanded Polystyrene or Non-Recyclable Plastic.

Section 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (“CEQA”) pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken “to assure the maintenance, restoration, enhancement and protection of the environment” and pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. **EFFECTIVE DATE.** Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

**INTRODUCED** at a regular meeting of the City Council of the City of Solana Beach, California held on the 14<sup>th</sup> day of October 2015, and thereafter,

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Solana Beach, California, on the 28<sup>th</sup> day of October 2015, by the following vote:

- AYES: Councilmembers –
- NOES: Councilmembers –
- ABSTAIN: Councilmembers –
- ABSENT: Councilmembers –

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LESA HEEBNER, Mayor

APPROVED AS TO FORM:

ATTEST:

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JOHANNA N. CANLAS, City Attorney

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ANGELA IVEY, City Clerk