

ORDINANCE NO. 717

SUSTAINABLE FOOD SERVICE WARE ORDINANCE

AN ORDINANCE TO ADD CHAPTER 6.40 TO THE MILLBRAE MUNICIPAL CODE PROHIBITING THE USE OF POLYSTYRENE FOAM AND SOLID DISPOSABLE FOOD SERVICE WARE AND REQUIRING THE USE OF BIODEGRADABLE, COMPOSTABLE, REUSABLE OR RECYCLABLE FOOD SERVICE WARE BY FOOD VENDORS IN THE CITY

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

WHEREAS, effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using biodegradable or compostable take-out materials made from renewable resources such as paper, corn starch, potato starch, and sugarcane; and

WHEREAS, polystyrene is a common environmental pollutant as well as a non-biodegradable, non-compostable, non-recyclable or non-reusable substance used as food service ware by food vendors operating in the City; and

WHEREAS, there continues to be no substantial recycling of polystyrene food service ware; and

WHEREAS, affordable compostable food service ware products are increasingly becoming available for most food service applications such as cups, plates, and hinged containers and these products are more ecologically sound than polystyrene materials and can be turned into a compost product; and

WHEREAS, residents can get discounted composting bins from the County of San Mateo RecycleWorks Program, which can be used to compost food scraps and biodegradable, compostable, or food soiled paper take out food service ware; and

WHEREAS, natural compost products are used as a very effective soil amendment for farms and gardens that conserves water, prevents erosion and adds to soil "tilth" to reduce the need for applications of fertilizers, herbicides and pesticides, thereby moving towards a healthier zero waste system; and

WHEREAS, disposable food service ware constitutes a portion of the litter in Millbrae's streets, parks and public places which increases City costs; and

WHEREAS, polystyrene foam is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them; and

WHEREAS, due to the physical properties of polystyrene, the EPA states “that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy”; and

WHEREAS, in the manufacturing process as well as the use and disposal of products, the energy consumption, greenhouse gas effect, and other environmental effects, polystyrene’s environmental impacts are rated second highest, according to the California Integrated Waste Management Board; and

WHEREAS, styrene, a component of polystyrene, is a known hazardous substance that medical evidence and the Food and Drug Administration suggests leaches from polystyrene containers into food and drink and is a suspected carcinogen and neurotoxin which potentially threatens human health and the general public is not typically warned of such potential hazards; and

WHEREAS, due to these concerns, cities began banning polystyrene foam food service ware including several California cities such as Berkeley (1990), Oakland (2007), and San Francisco (2007) where local businesses and several national corporations have successfully replaced it and other non-biodegradable food service ware with affordable, safe, biodegradable products; and

WHEREAS, restricting the use of polystyrene foam and solid disposable food service ware products and replacing non-biodegradable, non-compostable, non-reusable, or non-recyclable food service ware with biodegradable, compostable, reusable, or recyclable food service ware products in Millbrae will further protect the public health and safety of the residents of Millbrae, the natural environment, waterways and wildlife and would advance the City’s goal of developing a sustainable City, and

WHEREAS, in light of the foregoing, the City Council desires to institute two specific practices by all food vendors in Millbrae and to regulate said practices in City facilities. The first is that the use of Foam Polystyrene or Solid Polystyrene disposable food service ware will be prohibited. The second is that all disposable food service ware will be required to be biodegradable, compostable, reusable, or recyclable unless there is no available biodegradable, compostable, reusable, or recyclable alternative for a specific application.

**THE CITY COUNCIL OF THE CITY OF MILLBRAE HEREBY DOES ORDAIN
AS FOLLOWS:**

SECTION 1. ADDITION OF CHAPTER 6.40.

Chapter 6.40 hereby is added to the Millbrae Municipal Code to read as follows:

Chapter 6.40

SUSTAINABLE FOOD SERVICE WARE ORDINANCE

Sections:

6.40.010	Definitions
6.40.020	Prohibited Use of Disposable Food Service Ware
6.40.030	Required Use of Biodegradable, Compostable, Reusable or Recyclable Food Service Ware
6.40.040	Exemptions
6.40.050	Regulations; Enforcement
6.40.060	Violations and Penalties

6.40.010 Definitions

“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. D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate.

“Biodegradable” means the entire product or package will completely degrade and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

“City Facilities” means any building, structure or vehicles owned or operated by the City of Millbrae, its agent, agencies and departments.

“Compostable” means all materials in the product or package will degrade into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, such that any customer or processor can easily distinguish the ASTM Standard compostable plastic from non-ASTM Specification compostable plastic.

“Customer” means any person obtaining prepared food from a food vendor.

“Disposable Food Service Ware” means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives, and other items designed for one-time or non-durable uses on or in which any food vendor 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 food vendors.

“Food Vendor” means any and all sales outlets, stores, shops, vehicles or other places of business located within the City of Millbrae which operate primarily to sell or convey foods or beverages directly to the ultimate consumer, which foods or beverages are predominantly contained, wrapped or held in or on packaging, including both restaurants and retail food vendors. “Restaurant” means any establishment located within the City of Millbrae that sells prepared food for consumption on, near, or off its premises by customers. For the purposes of this chapter the term includes a restaurant operating from a temporary facility, cart, vehicle or mobile unit. “Retail Food Vendor” means any place, other than a restaurant, located within the City of Millbrae 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, 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, venue, special event, or similar 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, stored, served or provided for the public for charge.

“Polystyrene” means and includes blown polystyrene and expanded and extruded foams (sometimes called “Styrofoam[®],” a Dow Chemical Co. trademarked form of EPS insulation) also referred to as expanded polystyrene (EPS) 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, form molding, and extrusion-blow molding (extruded foam polystyrene), and in this chapter is referenced as “Foam Polystyrene.” Foam Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. The term “polystyrene” also means and includes clear or solid polystyrene which is also known as “oriented,” and referenced in this chapter as “Solid Polystyrene.” “Solid Polystyrene” is generally used to make clear clamshell containers, and clear or colored straws, lids and utensils.

“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 within the City of Millbrae. Prepared food may be eaten either on or off the premises, also known as “takeout food.”

“Recyclable” means material that can be sorted, cleansed, and reconstituted using Millbrae’s available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

“Reusable” means all materials in the product or package will be used more than once in its same form by the customer, food vendor or other reuse programs. Reusable food service ware includes: food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor and customer that is provided take-out containers. Reusable also includes durable containers, packages or trays used on-premises or returnable containers brought back to the food vendor.

6.40.020 Prohibited Use of Disposable Food Service Ware

A. Food vendors are prohibited from providing prepared food to customers in Foam Polystyrene or Solid Polystyrene disposable food service ware.

B. No Foam Polystyrene or Solid Polystyrene disposable food service ware shall be used in any City Facilities. No city department or agency will purchase or acquire Foam Polystyrene or Solid Polystyrene disposable food service ware for use at City Facilities.

C. All individuals, entities or organizations using City Facilities for public or private events shall comply with the requirements in this chapter.

6.40.030 Required Use of Biodegradable, Compostable, Reusable or Recyclable Food Service Ware

A. All food vendors using any disposable food service ware will use biodegradable, compostable, reusable or recyclable food service ware. All food vendors are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on-premises. A food vendor may price its products or services to customers in a manner to cover any cost differential.

B. All individuals, entities or organizations that rent or use City Facilities will use biodegradable, compostable, reusable or recyclable food service ware.

6.40.040 Exemptions

A. Foods prepared or packaged outside the City of Millbrae are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the City of Millbrae are encouraged to follow the provisions of this chapter.

B. Food vendors will be exempted from the provisions of this chapter for specific items or types of disposable food service ware if the City Manager or his/her designee finds that a suitable biodegradable, compostable, reusable or recyclable alternative does not exist for a specific application and/or that imposing the requirements of this chapter on that item or type of disposable food service ware would cause undue hardship. Any person may seek an exemption from the requirements of this chapter by filing a request in writing with the City Manager. The City Manager may waive any specific requirement of this chapter for a period of not more than one year if the person seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. A person granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship if the person wishes to have the exemption extended. The City Manager's decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.

C. Coolers and ice chests that are intended for reuse are exempt from the provisions of this chapter.

6.40.050 Regulations; Enforcement

A. The City Manager or his/her designee will have primary responsibility for enforcement of this chapter. The City Manager or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, entering the premises of any food vendor to verify compliance in accordance with applicable law.

B. Anyone violating or failing to comply with any of the requirements of this chapter will be guilty of an infraction pursuant to Chapter 1.05 of the Municipal Code.

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

6.40.060 Violations and Penalties

A. If the City Manager or his/her designee determines that a violation of this chapter occurred, he/she will issue a written warning notice to the food vendor that a violation has occurred.

B. If the food vendor engages in subsequent violations of this chapter, the penalties set forth in Section 1.05.010 of this Municipal Code will apply.

C. Food vendors may request an administrative hearing to adjudicate any penalties issued under this chapter by filing a written request with the City Manager or his/her designee. The hearing procedures set forth in Section 1.05.030 shall be followed. Any determination from the administrative hearing on penalties issued under this chapter will be final and conclusive.

SECTION 2. AMENDMENT OF SECTION 1.05.020

Section 1.05.020 of the Millbrae Municipal Code hereby is amended as follows:

Under Item 1, "Community Development," add Chapter 6.40 as an authorized chapter for the Code Enforcement Officer/Community Preservation Specialist.

Under Item 5, "Public Works," add Chapter 6.40 as an authorized chapter for the following positions: Director of Public Works and Industrial Waste Inspector.

SECTION 3. CEQA DETERMINATION

Pursuant to Title 14 of the California Administrative Code, the City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons: (1) under Section 15061(b)(3), it is not a project which has the potential for causing a significant effect on the environment; (2) under Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration, enhancement, or protection of the environment; (3) under Section 15378(a), it is not a project which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment; and (4) under Section 15378(b)(3), it is an action that consists of continuing administrative or maintenance activities in the form of general policy and procedure making.

SECTION 4. EFFECTIVE DATE

This chapter will become effective on January 1st, 2008.

SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. PUBLICATION

Within five (5) days of the enactment of this Ordinance and fifteen (15) days following its enactment, the City Clerk shall publish a summary of this Ordinance prepared by the City Attorney.

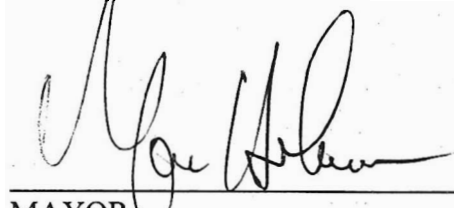
INTRODUCED at a regular meeting of the City Council of the City of Millbrae held on September 25, 2007.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Millbrae held on October 9, 2007 by the following roll call vote:

AYES: Hershman, Holober, Larson, Papan, and Gottschalk

NOES: None

ABSENT: None


MAYOR

ATTEST:


CITY CLERK