

Ordinance No. 5039

Ordinance of the Council of the City of Palo Alto Repealing Chapter 5.30 (“Chlorofluorocarbon - Processed Food Packaging”) and Adding a New Chapter 5.30 (“Expanded Polystyrene and Non-Recyclable Food Service Containers”) to Title 5 (“Health and Sanitation”) of the Palo Alto Municipal Code

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and purpose. The Council finds and declares as follows:

- (a) The prevalent use of polystyrene as a food service container product is increasing, largely bolstered by its affordability; however, production costs continue to rise due to increasing crude oil prices. While the California Integrated Waste Management Board (CIWMB) estimates that Californians use 165,000 tons of polystyrene each year for packaging and food service purposes alone, there is currently no economically feasible means of recycling the product in the City of Palo Alto. According to a 2000 CIWMB study only 0.2% of polystyrene food service packaging is recycled statewide.
- (b) There are two types of polystyrene commonly used as food service containers: oriented polystyrene (clear and rigid) and expanded polystyrene (opaque foam). The Palo Alto community throws away approximately 305 tons of expanded polystyrene containers each year, according to a Palo Alto Waste Composition Study conducted in May 2006. The Palo Alto Recycling Center has never been able to accept expanded polystyrene food service containers, and expanded polystyrene food service containers are not compatible with the new commercial composting service that commences on July 1, 2009.
- (c) On January 12, 2009, the Palo Alto Recycling Center stopped accepting expanded polystyrene peanuts and expanded polystyrene blocks commonly used for consumer goods packaging. Expanded polystyrene peanuts and expanded polystyrene blocks are considered to be more amenable to recycling than expanded polystyrene food service containers. Ongoing logistical and quality control challenges related to the minimal recycling market for expanded polystyrene make even the recycling program for peanuts and blocks infeasible. All expanded polystyrene materials must now be disposed of in a landfill.
- (d) Although expanded polystyrene is considered an inexpensive and effective product, it has many drawbacks and hidden costs which are deferred to the public and the environment. Food service polystyrene is a one-time use product that degrades extremely slowly in nature. Expanded polystyrene litter is not easily contained and is

often conveyed through storm drains to local creeks, the San Francisco Bay and the Pacific Ocean. Polystyrene waste constitutes 15% of the litter collected in storm drains, and is the second most abundant type of marine debris according to a 2004 CIWMB study.

- (e) Expanded polystyrene foam presents unique management issues because it is lightweight, floats, resists biodegradation, and easily breaks into smaller pieces. These small pieces, similar in size to plankton, are ingested by marine wildlife, leading to reduced appetite and nutrient absorption and possible death by starvation. According to a United Nations Environment Global Program of Action study, at least 162 marine species including most seabirds are reported to have eaten plastics and other litter.
- (f) On February 11, 2009, the San Francisco Bay Regional Water Quality Control Board listed two Palo Alto creeks, San Francisquito Creek and Matadero Creek, as having water quality that is impaired by trash, as defined by the Clean Water Act. The staff report recommending that the creeks be listed identifies expanded polystyrene as being one of the types of trash responsible for the impairment.
- (g) Both of the major chemicals used to produce expanded polystyrene, Benzene (a known human carcinogen) and Styrene (a possible carcinogen and neurotoxin), are suspected by the EPA and FDA to leach from polystyrene food containers, posing a threat to the environment and human health.
- (h) The City of Palo Alto desires to protect the natural environment, the health of its citizens, and the economy. This includes exercising environmental stewardship by reducing the amount of expanded polystyrene and non-recyclable plastic released into the City's ecosystem and beyond.
- (i) Non-recyclable materials pose a challenge to any environmentally and fiscally responsible solid waste management program. Regulation of food packaging is necessary to encourage a recyclable waste stream and to reduce the disposal of solid waste and the economic and environmental costs of waste management.
- (j) It is the intent of the Council to reduce the negative impacts of expanded polystyrene food service containers and encourage the use of recyclable alternatives through the implementation of this Ordinance.

SECTION 2. Chapter 5.30 (Chlorofluorocarbon – Processed Food Packaging) of the Palo Alto Municipal Code is hereby repealed in its entirety and a new Chapter 5.30 is added to read as follows:

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Chapter 5.30

EXPANDED POLYSTYRENE AND NON-RECYCLABLE FOOD SERVICE CONTAINERS

Sections:

5.30.010	Definitions
5.30.020	Prohibitions on the Use of Expanded Polystyrene and Non-Recyclable Plastic
5.30.030	Exemptions
5.30.040	Operative Dates
5.30.050	Severability
5.30.060	Penalties
5.30.070	Construction and Preemption

5.30.010 Definitions.

- (a) "City facilities" refers to any building, structure or vehicle owned or operated by the City of Palo Alto, its agents, departments and franchises.
- (b) "Disposable food service container" means single-use disposable product used by food vendors for serving or transporting prepared and ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, lids, trays and hinged or lidded containers. This does not include single-use disposable straws, utensils, or hot cup lids.
- (c) "Expanded Polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer, marked with recycling 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 incorrectly called Styrofoam[®], a Dow Chemical Company trademarked form of polystyrene foam insulation. In food service, expanded polystyrene is generally used to make cups, bowls, plates, and trays.
- (d) "Food vendor" means any establishment, located or providing food within the City of Palo Alto, 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.
- (e) "Non-Recyclable Plastic" means all plastics that do not meet the definition of "Recyclable Plastic".

- (f) “Prepared food” means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique, including but not limited to cooking, chopping, slicing, mixing, freezing, squeezing, or brewing, and which requires no further preparation to be consumed. Prepared food includes uncooked fruits or vegetables and any “take-out” food, or food consumed off the food vendor’s premises. Prepared food does not include any uncooked meat, fish, poultry, or eggs.
- (g) “Recyclable Plastic” means all plastics that can be recycled, salvaged, composted, processed, or marketed by any means other than land-filling or burning, whether as fuel or otherwise, so that they are returned to use by society. Recyclable plastics include any plastic which can be feasibly recycled by the City’s municipal recycling program and presently is limited to those plastics with the following recycling symbols: #1 - polyethylene terephthalate (PET or PETE), #2 - high density polyethylene (HDPE), #3 - polyvinyl chloride (PVC), #4 - low density polyethylene (LDPE), #5 - polypropylene (PP), #6 – polystyrene, except for the expanded version of polystyrene, and #7 - other plastics, including compostable plastics such as polylactic acid (PLA) For purposes of this Chapter, Recyclable Plastic does not include expanded polystyrene labeled with recycling symbol #6.

5.30.020 Prohibition on the Use of Polystyrene and Non-Recyclable Plastic.

- (a) Except as provided by section 5.30.030 food vendors are prohibited from providing prepared food in disposable food service containers made from expanded polystyrene or non-recyclable plastic.
- (b) Except as provided by section 5.30.030 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.
- (c) Nothing in this Ordinance shall be interpreted to restrict the use of any form of fiber or paper disposable food service container, or the use of any form of biodegradable or compostable plastic food service container that meets the definition of Recyclable Plastic, in Section 5.30.010(g).

5.30.030 Exemptions

- (a) Foods prepared or packaged outside the City of Palo Alto are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Palo Alto are encouraged to follow the provisions of this Chapter.
- (b) Coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.
- (c) The director of Public Works, or his/her designee, may exempt a food vendor from the requirements of this Ordinance for a period of one year, upon showing by the food vendor that the conditions of this Ordinance would cause an undue hardship. An “undue hardship” includes, but is not limited to situations unique to the food vendor

where there are no reasonable alternatives to expanded polystyrene or non-recyclable plastic disposable food service containers and compliance with this Ordinance would cause significant economic hardship to that food vendor, or cause the food vendor to be deprived of a legally protected right.

- (d) A food vendor seeking 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 Director may require the applicant to provide additional information to permit the Director to determine facts regarding the exemption application.
- (e) Emergency Supplies and Service Procurement. City facilities, food vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this chapter, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

5.30.040 Operative Dates.

All food vendors and City facilities must comply with the requirements of this Ordinance by April 22, 2010.

5.35.050 Severability.

If any provision or clause of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this chapter, and clauses of this chapter are declared to be severable.

5.35.060 Penalties

- (a) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction as set forth in Chapter 1.08 of the Palo Alto Municipal Code.
- (b) Each and every sale or other transfer of disposable food service containers made from expanded polystyrene or non-recyclable plastic shall constitute a separate violation of this Ordinance.
- (c) The remedies and penalties provided in this Section are cumulative and not exclusive.

5.35.070 Construction and Preemption

This Chapter 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 Chapter. This Chapter 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 in accordance with that intent.

SECTION 3. The City Council finds that the adoption of this Ordinance is subject to environmental review under provisions of the California Environmental Quality Act (CEQA) under Section 15070 of the CEQA Guidelines, ("Decision to Prepare a Negative or Mitigated Negative Declaration"). The Department of Planning and Community Environment prepared an Initial Study for this Ordinance, which confirmed that the Ordinance does not have the potential to result in a significant impact on the environment. Consequently, a Negative Declaration was prepared, made available for public review beginning August 29, 2008 through September 17, 2008 and is hereby adopted.

SECTION 4. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED: APRIL 27, 2009

PASSED: MAY 11, 2009

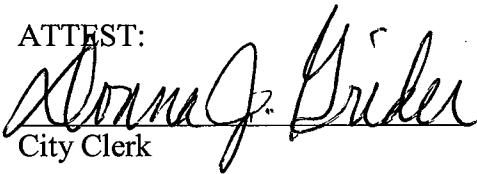
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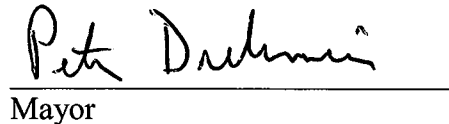
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ABSTENTIONS:

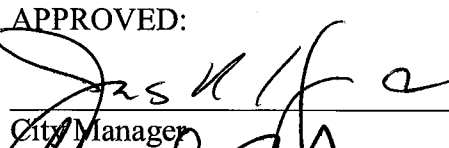
ATTEST:


City Clerk

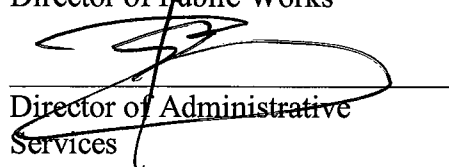

Mayor

APPROVED AS TO FORM:


Deputy City Attorney

APPROVED:

City Manager


Director of Public Works


Director of Administrative Services