

**ORDINANCE NO. 1117****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH LAKE TAHOE  
ADDING CHAPTER 4.175 [POLYSTYRENE AND PLASTIC FOOD PACKAGING  
REGULATIONS] TO THE SOUTH LAKE TAHOE CITY CODE**

The City Council of the City of South Lake Tahoe finds and declares as follows:

WHEREAS, the City of South Lake Tahoe (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, expanded polystyrene comprises approximately 15% of storm drain litter. Also, several studies approximate that plastic products, including expanded polystyrene, make up 80 -90% of floating marine debris; and

WHEREAS, Lake Tahoe is a large freshwater lake in the Sierra Nevada of the United States. Laying at 6,225 ft. it straddles the state line between California and Nevada. Lake Tahoe is the largest alpine lake in North America and its depth is 1,645 ft., making it the second deepest in the United States. Lake Tahoe was formed about 2 million years ago and is known for the clarity of its water; 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, regulating the use of expanded polystyrene products will maximize the operating life of landfills; 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 rivers and Lake Tahoe; and

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

WHEREAS, expanded polystyrene is not recycled at South Tahoe Refuse; and

WHEREAS, take-out 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, 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, according to “Recommendations for Reducing or Banning Foam Food Service Containers” prepared by S. Heverly, J. Lu, A. Middleton, and S. Ghai of the Equinox Project Center for Sustainable Energy in March of 2017, many restaurants may find that the cost impacts of an EPS ban are negligible; and

WHEREAS, according to “Recommendations for Reducing or Banning Foam Food Service Containers”, expanded polystyrene bans have successfully reduced expanded polystyrene litter, which reduces cleanup costs and is beneficial for wildlife and the environment. The economic impacts of EPS reduction policies are most clearly visible in the costs that restaurants incur in order to switch to alternatives. However, the costs are minimal and many customers prefer to support businesses that do not use expanded polystyrene. In addition, expanded polystyrene bans may help cities save money on costs to clean up litter; and

WHEREAS, the City’s unique location near mountains and lakes mean that there is a variety of wildlife in all parts of the City; and

WHEREAS, 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, 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 conducted interviews with local agencies, local restaurant businesses and surveys between October 19, 2017 and January 5, 2018. The majority of those who participated supported the regulation of expanded polystyrene; and

NOW, THEREFORE, the City Council of the City of South Lake Tahoe does ordain as follows:

Section 1. Recitals. The City Council of the City of South Lake Tahoe does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Environmental Review. Pursuant to the California Environmental Quality Act (CEQA) Guidelines, approval and implementation of this ordinance does not create any potentially significant adverse impacts on the environment, and adoption of this ordinance has been determined by the City Council to be Categorically Exempt pursuant to Section 15308, Class 8 – Actions by Regulatory Agencies for Protection of the Environment.

Section 3. Enacted. Chapter 4.175 titled Polystyrene Regulations is added to Title 4 to read as follows:

Chapter 4.175 POLYSTYRENE AND PLASTIC FOOD PACKAGING REGULATIONS

**4.175.010 Purposes.**

The purpose of this chapter is to regulate the use of certain single use expanded polystyrene and plastic products in order to reduce and prevent the presence of this type of litter in the environment and to promote environmentally sustainable practices in the City of South Lake Tahoe.

**4.175.020 Definitions.**

- A. "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.
- B. "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.
- C. "Disposable foodservice ware" means single-use disposable products used in the restaurant and food service industry for serving prepared food and includes, but is not limited to, cups, bowls, plates, trays, cartons, clamshell containers, cup lids, straws, stirrers, forks, spoons, knives, napkins, trays, and other items primarily designed for use in consuming food.
- D. "Expanded Polystyrene" or "EPS" means a foam material made of blown Polystyrene, and expanded and extruded foams (sometimes called Styrofoam™) which are thermoplastic petrochemical materials utilizing a styrene monomer which is often used to hold prepared food.
- E. "Expanded Polystyrene Products" means any item such as coolers, ice chests, cups, bowls, plates, clamshells containers, shipping boxes, packing peanuts, packaging materials or any other merchandise made from expanded polystyrene that is not wholly encapsulated or encased by a more durable material.
- F. "Food provider" generally means any vendor, business, organization, entity, group, or individual that offers food or beverages to the public for consumption on or off premises, regardless of whether there is a charge for the food. "Food provider" typically includes restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, delicatessens, itinerant restaurants and mobile food vendors.
- G. "Prepared food" means any food, including beverages, which is served or prepared for consumption, including ready-to-eat and takeout food. Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.
- H. "Plastic Cutlery" means any utensil, such as a fork, spoon, spork, or knife, made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources intended for only one-time use. "Plastic cutlery" includes compostable and biodegradable petroleum or biologically based polymer forms of cutlery, but does not include forms of cutlery that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.
- I. "Plastic Beverage Straw" means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, for transferring a beverage from its container to the mouth of the drinker. "Plastic Beverage

Straw” includes compostable and biodegradable petroleum or biologically based polymer straws, but does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.

- J. “Plastic Stirrer” means a device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources. “Plastic stirrer” includes compostable and biodegradable petroleum or a biologically based polymer stirrers, but does not include stirrers that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.
- K. “Vendor” means any store or business which sells or offers goods or merchandise, located or operating within the City of South Lake Tahoe, including those referenced in and “Food Provider.”

#### **4.175.030 Polystyrene Ban.**

- A. No food provider shall sell or otherwise provide prepared food in EPS disposable foodservice ware.
- B. No vendor shall sell or otherwise provide EPS foodservice ware or Expanded Polystyrene Products.
- C. No person shall use EPS foodservice ware or Expanded Polystyrene Products at a City Facility or at a special event regulated by the City of South Lake Tahoe’s approved Special Event Guidelines.

#### **4.175.040 Plastic Ban.**

- A. No food provider shall sell or otherwise provide plastic cutlery, plastic beverage straws, or plastic stirrers except upon request.

#### **4.175.050 Exemptions.**

- A. The following are exempt from the provisions of this chapter:
  - 1. Food prepared or packaged outside of the City, provided such food is not altered or repackaged within the City limits.
  - 2. Raw meat, fish and other raw food trays.
  - 3. Products made from Expanded Polystyrene which are wholly encapsulated or encased by a more durable material. 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.
- B. The City Manager or his/her designee may exempt any applicant from the provisions of this Chapter as follows:
  - 1. For a one-year period, upon a showing by the applicant that the conditions of this chapter would cause undue hardship. An “undue hardship” shall be found in the following situations:
    - a. Where compliance with this chapter would cause significant economic hardship to the applicant; or
    - b. Where no reasonably feasible alternative exists to a specific and necessary Expanded Polystyrene Product.

2. In order to extend the exemption, an applicant previously granted an undue hardship exemption by the City must re-apply prior to the end of the exemption period and demonstrate continued undue hardship.
3. An undue hardship exemption application shall include all information necessary for the City Manager to make a decision, including by not limited to documentation establishing the undue hardship. The City Manager or his/her designee may require the applicant to provide additional information to permit the City Manager to determine facts regarding the exemption application.
4. The City Manager or his/her designee may approve the undue hardship exemption application, in whole or in part, with or without conditions.
5. The decision of the City Manager may be appealed by the applicant to the City Council. Appeals shall be filed, in writing, with the City Clerk, within ten (10) days of the applicant receiving written notice of the City Manager's decision and shall be accompanied by any applicable fee set by resolution of the City Council. If the City Council determines that a hearing is necessary, notice of such hearing shall be given to the applicant at least ten (10) days prior to the hearing. The City Council's decision on such appeals shall be final.

#### **4.175.060 Operative Date.**

This chapter shall become effective on OCTOBER 1, 2018.

#### **4.175.070 Enforcement and Violation – Penalty.**

- A. A violation of any provision of this chapter by any person, food provider or vendor is subject to the following administrative fines, which shall be appealable pursuant to the procedures in Chapter 2.30.
  1. A fine not exceeding \$100.00 for a first violation.
  2. A fine not exceeding \$200.00 for a second violation of this chapter within one year.
  3. A fine not exceeding \$500.00 for each additional violation of this chapter within one year.
- 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.

**4.175.080 Severability.**

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid or ineffective by any court of competent jurisdiction, or by reason of any preemptive legislation, that invalidity shall not affect the validity of the remaining provisions of this chapter. The city council declares that it would have passed this chapter and each section, subsection, subdivision, sentence, clause and phrase, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or words be declared invalid.

Section 4. Effective Date. This ordinance shall take effect thirty (30) days after its second reading by the City Council.

**First Reading held by the City Council on March 2018.**

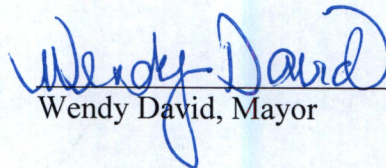
**PASSED AND ADOPTED** this 3rd day of April 2018, by the following vote:

AYES: DAVID, DAVIS, AND COLLIN

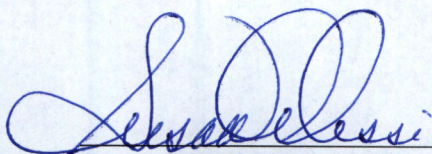
NOES:

ABSTAIN:

ABSENT: SASS AND LAINE

  
Wendy David, Mayor

ATTEST:

  
Susan Alessi, City Clerk