

ORDINANCE NO. 2020-025

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF SAN BUENAVENTURA,
CALIFORNIA, ADDING CHAPTER 8.030,
“REGULATING EXPANDED
POLYSTYRENE FOOD CONTAINERS,” TO
THE SAN BUENAVENTURA MUNICIPAL
CODE**

WHEREAS, The City of San Buenaventura ("City") has the authority to enact laws which promote the public health, safety, and general welfare of its residents; and,

WHEREAS, The City is required under state and federal law to implement policies and programs to protect unique coastal resources and environmentally sensitive habitat areas (California Coastal Act), reduce the amount of waste generated in the community that goes to landfills (AB 939), and prevent storm water runoff from polluting creek and ocean waters (National Pollutant Discharge Elimination System Permit Program and the State Municipal Storm Water Permitting Program); and,

WHEREAS, The Ventura community is attractive to residents, businesses, and visitors due to a local economy and quality of life that is centered on a clean and healthy environment, including but not limited to, parks, public open spaces, rivers, creeks, estuaries, tidelands, and the ocean; and,

WHEREAS, The City Council received testimony and other information from community members documenting the fact that expanded polystyrene ("EPS") products often find their way into the local environment since EPS breaks down into smaller pieces and is so light that it floats in water, is easily carried by the wind, even when it has been disposed of properly, and constitutes a significant portion of the litter found in beach cleanups and elsewhere in the City; and,

WHEREAS, Recycling of EPS is not available through the City's franchise waste hauler and is not financially feasible for the City to develop such a program; and,

WHEREAS, There are many alternatives to EPS food containers available; and,

WHEREAS, It is in the City's interest to establish programs and services that reduce the amount of litter in the environment, in particular beach litter and marine pollution, which increase the quality of life for City residents and visitors and protect local wildlife habitat.

The Council of the City of San Buenaventura does ordain as follows:

Section 1. ADDITION TO CODE. Chapter 8.030, "Regulating Expanded Polystyrene Food Containers," is hereby added to the San Buenaventura Municipal Code as follows:

"CHAPTER 8.030

REGULATING EXPANDED POLYSTYRENE FOOD CONTAINERS

Sections:

Sec. 8.030.010. – Purpose.

Sec. 8.030.020. – Definitions.

Sec. 8.030.030. – Expanded Polystyrene Disposable Food Containers Prohibited.

Sec. 8.030.040. – Prohibited Sales.

Sec. 8.030.050. – Exemptions.

Sec. 8.030.060. – Operative Date of Regulations.

Sec. 8.030.070. – Penalties and Enforcement.

Section 8.030.010. Purpose.

The purpose of these provisions is to regulate the use of polystyrene food packaging in order to reduce and prevent the presence of this type of litter in the environment, protect public health, and promote environmentally sustainable practices in the City.

Section 8.030.020. Definitions.

The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

‘City Facility’ or ‘City Facilities’ means any building, structure, or vehicle owned and operated by the City or its agents, agencies, and departments.

‘City Contractor’ means any person or entity that enters into an agreement with the City to furnish products or services to or for the City.

‘Disposable Food Container’ is a term interchangeable with ‘to go’ packaging and ‘food packaging material’ and means all containers that are used to hold Prepared Food or drinks. Disposable Food Containers include clamshells, bowls, plates, trays, cartons, and cups, including, without limitation, food containers for takeout foods or leftovers from partially consumed meals prepared by Food Providers. 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 prepared outside of the City.

‘Event Promoter’ means an applicant for any event permit issued by the City or any City employee responsible for any City-organized event.

‘Expanded Polystyrene’ or ‘EPS’ means blown expanded and extruded polystyrene or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Expanded Polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, ice chests, shipping boxes, and packing peanuts.

‘Expanded Polystyrene Food Container’ means any Disposable Food Container, ice chest, or cooler made of Expanded Polystyrene that is not wholly encapsulated or encased by a more durable material.

‘Food Provider’ means any person or place that provides or sells Prepared Food within the City to the general public to be consumed on the premises or for take-away consumption including, but not limited to (1) a grocery store, supermarket, restaurant, drive-thru, café, coffee shop, snack shop, public food market, farmer’s market, convenience store, or similar fixed place where Prepared Food is available for sale on the premises or for take-away consumption; (2) any mobile store, food vendor, caterer, food truck, vending machine,

or similar mobile outlet; (3) any Franchise restaurant, drive-thru, café, coffee-shop or the like; or (4) 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.

‘Person’ means an individual, business, event promoter, trust, firm, joint stock company, corporation, nonprofit, including a government corporation, partnership, or association.

‘Prepared Food’ means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared.

‘Vendor’ means any store or business that sells or offers goods or merchandise, located or operating within the City, including those referenced in the definition of ‘Food Provider.’

Section 8.030.030. Expanded Polystyrene Disposable Food Containers Prohibited.

A. It is unlawful for any Food Provider to provide Prepared Food in or provide separately any Expanded Polystyrene Food Container, except as exempted in Section 8.030.050.

B. Expanded Polystyrene Food Containers are prohibited from use in all City Facilities.

C. City Contractors in the performance of City contracts and Event Promoters may not provide Prepared Food in

Expanded Polystyrene Food Containers.

Section 8.030.040 Prohibited Sales.

It is unlawful for any Vendor or Event Promoter in the City to sell or otherwise provide any Expanded Polystyrene Food Container, except as exempted in Section 8.030.050.

Section 8.030.050 Exemptions.

A. *Undue Hardship or Practical Difficulty.* The Public Works Director or designee may exempt a Food Provider, Vendor, or Event Promoter from the requirements of this Chapter for up to one year after the operative date of this ordinance if the Food Provider, Vendor, or Event Promoter submits a written application requesting the exemption and explains why this Chapter creates an undue hardship or practical difficulty because there are no available alternatives or such alternatives are not affordable to the Food Provider.

B. *Exemption Procedure.*

1. An exemption application must include all information necessary for the Public Works Director or designee to understand the need for the exemption, including, but not limited to, documentation of facts supporting the claimed exemption. The Public Works Director or designee may require the applicant to provide additional information.

2. The Public Works Director or designee may approve the exemption

application in whole or in part, with or without conditions.

3. The decision of the Public Works Director or designee to grant or deny the exemption must be in writing and will be final.

4. A one-time, one-year exemption granted under subsection A may be allowed by the Public Works Director or designee upon a showing that the undue hardship or practical difficulty that warranted the originally approved exemption continues to exist.

C. *Public Health and Safety.* The Public Works Director or designee may suspend the requirements of this Chapter to the extent necessary to provide for the public's health and safety or for medical necessity.

D. *Exempt Foods.* Prepared Food that is packaged in Expanded Polystyrene outside the City are exempt from the provisions of this Chapter.

E. *Local Emergency.* During the duration of a locally declared emergency, the City, emergency response agencies operating within the City, users of City Facilities, and Food Providers will be exempt from the provisions of this Chapter.

Section 8.030.060 Operative Date of Regulations.

The provisions of this Chapter are not effective until July 1, 2021.

Section 8.030.070 Penalties and Enforcement.

A. Violations of this Chapter will be enforced as follows:

1. If it is determined that a violation of this Chapter has occurred, the City will issue a written warning to the Food Provider which will specify the violation and the appropriate penalties in the event of future violations.

2. Any person violating or failing to comply with any of the requirements of this Chapter after the first violation will be subject to remedies specified pursuant to Chapter 1.050.

3. Each and every sale or other transfer of Expanded Polystyrene Food Containers will constitute a separate violation of this chapter.

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

B. The remedies and penalties provided in this Chapter are cumulative and not exclusive of other remedies and penalties available under other provisions of applicable law.”

Section 2. EFFECTIVE DATE. This Ordinance will take effect on the 30th day following its final passage and adoption.

Section 3. 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 will not affect the validity of the remaining portions of this ordinance. The City Council 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 4. CEQA FINDINGS. The City Council finds that the enactment of this Ordinance is determined to be exempt under Section 15061(b)(3) of Title 14 of the California Code of Regulations (the "State CEQA Guidelines") in that its adoption merely implements a regulatory process that will not foreseeably result in construction activities or other physical activities, either directly or indirectly. It can therefore be foreseen that the enactment of this ordinance does not have the potential to result in significant effects on the environment.

PASSED and ADOPTED this 9th day of November, 2020.



MATT LAVERE
Mayor

ATTEST:



ANTOINETTE M. MANN, MMC, CRM
CITY CLERK

APPROVED AS TO FORM
Gregory G. Diaz, City Attorney

By:  9/22/2020
Andrew Heglund Date
Senior Assistant City Attorney



CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF VENTURA) SS.
CITY OF SAN BUENAVENTURA)

I, ANTOINETTE M. MANN, City Clerk of the City of San Buenaventura, DO HEREBY CERTIFY that the foregoing is a full, true, and correct copy of Ordinance No. 2020-025 that was introduced by said City Council at a regular meeting held October 19, 2020, and adopted by said City Council at a regular meeting held November 9, 2020, by the following vote:

AYES: Councilmembers Nasarenko, Brown, Friedman, Weir, Heitmann, and Deputy Mayor Rubalcava and Mayor LaVere

NOES: None

ABSENT: None

I further certify that said Ordinance No. 2020-025 was published as required by law in the VENTURA COUNTY STAR, a newspaper of general circulation printed and published in said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Buenaventura, California.



Antoinette M. Mann, MMC, CRM
City Clerk
City of San Buenaventura, California



Date Attested

