

## TYPE B - FOODWARE ORDINANCE TEMPLATE

### CHAPTER 5.80 - BAN ON POLYSTYRENE FOOD SERVICE WARE

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#### **5.80.010 - Purpose.**

The purpose of this Chapter is to establish standards and procedures to reduce adverse environmental and public health impacts and promote environmentally sustainable practices in the City by prohibiting the use of certain disposable polystyrene food containers.

- A. Polystyrene Food Service Ware, a lightweight petroleum-based plastic material, is commonly littered or blown out of trash receptacles and migrates to the storm drain system and eventually to the ocean and beaches. In the marine environment, this material breaks down into smaller pieces, which negatively impacts water quality and harms marine wildlife, which often mistakes polystyrene pieces for food.
- B. Littered Polystyrene Food Service Ware, especially expanded foam, is difficult to clean up and may cumulatively result in increased litter. Reduction of polystyrene in the environment will advance compliance with federal, state and city clean water mandates including compliance with Total Maximum Daily Loads and other requirements of the National Pollutant Discharge Elimination System.
- C. Education about and reduction of food-soiled Polystyrene Food Service Ware, which can be difficult to clean and recycle, may advance waste stream reduction and recycling efforts and reduce the presence of this non-biodegradable material in landfills.
- D. Polystyrene Food Service Ware has been shown to pose human health impacts to workers and consumers and these impacts can be mitigated by reducing its use.

#### **5.80.020 - Definitions.**

For purposes of this chapter, the following terms shall have the following meanings:

**“City Facility”** means any building, structure, property, park, open space, or vehicle, owned or leased by the City, or its agents, agencies, or departments.

**“City Contractor”** means any person that enters into a written contract or verbal agreement to furnish products or services to or for the City.

**“City-Sponsored Event”** means any event, activity or meeting organized or sponsored by the City or any department of the City.

**“Disposable Food Service Ware”** or **“Disposables”** means single-use, disposable products used for serving or transporting Prepared Food. This includes but is not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, or any other container in or on which Prepared Foods are placed or packaged for consumption, but excludes single-use disposable straws, cup lids, and utensils.

**“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. Food Provider includes but is not limited to (1) a grocery store, supermarket, restaurant, drive-thru, cafe, 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.

**“Person”** means any person, business, corporation, or event organizer or promoter; public, nonprofit or private entity, agency or institution; or partnership, association or other organization or group, however organized.

**“Polystyrene”** means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The Resin Code for polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies to all Polystyrene Food Service Ware, regardless of whether it exhibits a Resin Code.

**“Polystyrene Food Service Ware”** means Disposable Food Service Ware that contains or utilizes Polystyrene.

**“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. 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.

**“Resin Code”** means a resin identification code placed on plastics to identify the material composition for separation of different types of plastics for recycling.

#### **5.80.030 - Food packaging prohibitions.**

- A. No Food Provider shall distribute or sell Prepared Food in any Polystyrene Food Service Ware at any location within the City. Food Providers that distribute Prepared Food in Disposable Food Service Ware shall (1) distribute only Disposables that exhibit a Resin Code other than No. 6 or PS, or (2) maintain documentation onsite of the composition of the

Disposable Food Service Ware. Documentation may include information from the supplier, manufacturer, or bulk packaging for the Disposables, and any other relevant information demonstrating that the disposable material is not polystyrene.

- B. No Person shall distribute or sell Prepared Food in any Polystyrene Food Service Ware at City Facilities that have been rented, leased or are otherwise being used with permission of the City. This Subsection is limited to use of City facilities for which a Person has entered into an agreement with the City to rent, lease or otherwise occupy a City facility. All facility rental agreements for any City facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of Polystyrene Food Service Ware while using City facilities. The facility rental agreement shall indicate that the violating contractor's security deposit will be forfeited if the City Manager or his/her designee determines that Polystyrene Food Service Ware was used in violation of the rental agreement.
- C. No Person shall use or distribute Polystyrene Food Service Ware at City-sponsored events, City-managed concessions and City meetings open to the public. This subsection shall apply to the function organizers, agents of the organizers, City Contractors, Food Providers and any other Person that enters into an agreement with one or more of the function sponsors to sell or distribute Prepared Food or otherwise provide a service related to the function.
- D. The City, its Departments, and its City Contractors, agents, and employees acting in their official capacity, shall not purchase or acquire Polystyrene Food Service Ware, or distribute it for public use.

#### **5.80.040 - Exemptions.**

- A. Food prepared or packaged outside the City is exempt from the provisions of this Chapter, provided such food is not altered, packaged or repackaged within the City limits unless otherwise stated.
- B. Food provided by the City's School District under its official Food Service program.
- C. Coolers and ice chests made of Polystyrene intended for reuse are exempt from the provisions of this Chapter.
- D. The City Manager or his/her designee may exempt any Person from Section 5.80.030 following the operative date of this ordinance, as follows:
  - 1. A request for an exemption shall be filed in writing with the City Manager or his/her designee and shall include documentation of the reason for the claimed exemption and any other information necessary for the City to make its decision. The City may require the applicant to provide additional information as necessary to make the required determinations.
  - 2. The City Manager or his/her designee may approve the exemption for a maximum of one (1) year, with or without conditions, upon finding that compliance would create an

undue hardship. Undue hardship shall be construed to include but not be limited to situations where:

- a. There are no reasonable alternatives to Polystyrene Food Service Ware for reasons that are unique to the applicant; or
  - b. Compliance with the requirements of this Chapter would deprive a person of a legally protected right. The exemption may be extended for additional terms of up to one (1) year each, upon a showing of the continuation of the legal right.
3. The City Manager's written decision on the exemption is effective within ten (10) days of the decision. Decisions of the City Manager may be appealed to the City Council. Appeals shall be filed in writing with the City Clerk within ten (10) days of the decision and shall be accompanied by a fee set by resolution of the City Council. Notice of hearing shall be given to the applicant at least ten (10) days prior to the hearing. The City Council shall make its decision within sixty (60) days of receiving the appeal.
- E. Section 5.80.030 shall not apply to individuals bringing food for personal consumption at City Facilities, including but not limited to City parks and the beach, provided the facility is being used for individual recreation or similar purposes and such facility use is not part of a larger organized event that is otherwise governed by that Section.
- F. Food Providers that are obligated to purchase or have purchased Polystyrene Food Service Ware under a contract entered into within the year prior to the operative date of this ordinance are exempt from the provisions of this Chapter for six (6) months following its operative date.

#### **5.80.050 - Enforcement and compliance.**

- A. This Chapter shall be enforced by the City Manager or his/her designee. Nothing in this Chapter shall be construed to create a private cause of action. 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, inspecting any Food Provider's premises and requiring documentation of the composition of Polystyrene Food Service Ware material to verify compliance.
- B. Violations of the provisions of this Chapter are subject to the administrative penalty provisions of Chapter 1.10.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive of one another.
- E. All Food Providers required under this Code to have a business license shall certify compliance with this Chapter on the annual business license renewal application.