

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2011-011

AN ORDINANCE OF THE CITY OF SAN LEANDRO, AMENDING CHAPTER 3-8 OF THE SAN LEANDRO MUNICIPAL CODE TO PROHIBIT THE USE OF POLYSTYRENE FOAM FOOD SERVICE WARE BY ALL FOOD VENDORS, CITY DEPARTMENTS, AND CITY CONTRACTORS, AND AT CITY-SPONSORED EVENTS

WHEREAS, the City of San Leandro desires to protect the natural environment, its economy, and the health of its residents and visitors; and

WHEREAS, CalRecycle estimates that Californians use 165,000 tons of polystyrene foam each year for packaging and food service purposes alone, and currently there is no economically feasible means of recycling this product locally; and

WHEREAS, disposable food service ware constitutes a portion of the litter in San Leandro's streets, parks and public places that increases City maintenance 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, the City's goal is to replace polystyrene foam food service ware with reusable, recyclable or compostable alternatives; and

WHEREAS, the City encourages the use of unbleached, non-coated, recycled-content paper food ware and other fiber-based food ware as the most environmentally preferable alternatives when the use of reusable food ware is not feasible; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of San Leandro and is exempt from the requirements of the California Environmental Quality Act ("CEQA"), as amended, pursuant to Guideline 15061(b)(3) and Guideline 15308, of the CEQA Guidelines; and

WHEREAS, the City supports pending legislation to ban expanded polystyrene food packaging as well as statewide efforts to reduce the prevalence of expanded polystyrene and other plastic litter; and

WHEREAS, to date at least 45 cities and counties in California that share this goal have passed ordinances or enacted resolutions banning polystyrene foam food service ware.

NOW THEREFORE, the City Council of the City of San Leandro does **ORDAIN** as follows:

SECTION 1. AMENDMENT OF CODE. Chapter 3-8 of the San Leandro Municipal Code is amended to read as follows:

Article 2. BAN ON POLYSTYRENE FOAM FOOD SERVICE WARE

3-8-200 TITLE. This Article shall be known as the “City of San Leandro Ban on Polystyrene Foam Food Service Ware” and may be so cited.

3-8-205 PURPOSE AND INTENT. The purpose and intent of this Article is to protect the City’s natural environment, its economy, and the health of its residents and visitors by substituting polystyrene foam food service ware with compostable or recyclable food service ware at all food vendors, City departments, and City facilities served by contractors, and at City-sponsored events.

3-8-210 DEFINITIONS. For the purpose of this Article the following definitions shall govern unless the context clearly requires otherwise:

- (a) “City” means the City of San Leandro.
- (b) “City Department” means any governmental subdivision of the City.
- (c) “City Facility” means any premises or lands owned or operated by the City.
- (d) “City-Sponsored Event” means any activity that is organized by the City and any private activity whose organizers voluntarily request any endorsement or recognition from the City that is unrelated to any requirements for such an event under applicable law.
- (e) “Compostable” means all materials in the product or package will break down into, or otherwise become a part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner consistent with the composting facility used by the City’s franchisee or by the Oro Loma Sanitary District’s franchisee for integrated waste management.
- (f) “Contractor” means any individual, group, or organization that has a contract with the City for work or improvement to be performed, for a franchisee, concession, for grant monies, goods and services, or supplies to be donated or to be purchased at City expense.
- (g) “Food Vendor” means any establishment located within the City of San Leandro, or any establishment which provides prepared food or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food; and any individual, group, or organization which regularly provides food as part of its services.
- (h) “Food Service Ware” means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared food and includes, but is not limited to, plates, cups, bowls, trays, and hinged or lidded containers. This definition does not include single-use straws, drink lids or utensils.
- (i) “In Association With” means any combination of food service ware with any form of prepared food for the purposes of containment, consumption, or display to promote consumption.

(j) "Prepared Food" means any food or beverage prepared for consumption on or off a premises or lands using any cooking or food preparation technique, or any raw foods provided for consumption without requiring further food preparation. Prepared food does not include uncooked meat, fish, poultry, or eggs unless provided for consumption without further food preparation.

(k) "Person" means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, governmental entity, partnership, or association.

(l) "Polystyrene Foam" means the thermoplastic petrochemical material utilizing the styrene monomer, which may be marked with resin symbol #6, processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene Foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

(m) "Recyclable" means any material that is accepted by the City recycling program, including, but not limited to, paper, glass, metal, cardboard, and plastic that can be recycled, salvaged, processed, or marketed by any means other than landfilling or burning whether as fuel or otherwise, so that they are returned to use by society. For the purposes of this article, recyclable plastic does not include polystyrene foam labeled with resin symbol #6.

3-8-215 POLYSTYRENE FOAM FOOD SERVICE WARE PROHIBITED.

(a) The following are prohibited from using polystyrene foam food service ware in association with prepared food:

- (1) Food vendors;
- (2) City departments; and
- (3) Contractors that serve any City facility.

(b) Food vendors, City departments, and contractors that serve any City facility are prohibited from using polystyrene foam food service ware in association with prepared food at any City-sponsored event.

3-8-220 REQUIRED USE OF COMPOSTABLE OR RECYCLABLE FOOD SERVICE WARE.

(a) Notwithstanding the provisions of section 3-8-225, the following are required to use compostable or recyclable food service ware in association with prepared food:

- (1) Food vendors;
- (2) City departments; and
- (3) Contractors that serve any City facility.

(b) Notwithstanding the provisions of section 3-8-225, food vendors, City departments, and contractors that serve any City facility are required to use compostable or recyclable food service ware in association with prepared food at any City-sponsored events

3-8-225 EXEMPTIONS.

(a) Food vendors that are currently existing or are established in the City by the effective date of the ordinance will be exempted from the provisions of this Article prohibiting the use of polystyrene foam food service ware for a period of time to be determined by the City Manager on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to,

situations unique to the food vendor not generally applicable to other persons in similar circumstances.

(b) Prepared foods prepared and packaged outside of the City of San Leandro and prepared foods prepared and packaged in the City of San Leandro for use outside of the City of San Leandro are excluded from the provisions of this Article. Purveyors of food prepared and packaged outside the City of San Leandro are encouraged to follow these provisions in accordance with the City's stated policy goal to eliminate the use of polystyrene foam food service ware in all possible applications.

(c) Retailers, wholesalers and suppliers of polystyrene foam food service ware within the City of San Leandro are excluded from the provisions of this Article, but are encouraged to promote the sale, purchase, and use of compostable and recyclable food service ware options in San Leandro in accordance with the City's stated policy goal to eliminate the use of polystyrene foam food service ware in all possible applications.

(d) Emergency supplies or services procurement: Food vendors, City departments, City facilities, and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

3-8-230 ENFORCEMENT AND PENALTIES.

(a) The Public Works Services Director, or the Director's designee, shall have the primary responsibility for enforcement of this Article. If the Director or his/her designee determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred. Subsequent violations of the Article by a food vendor shall be subject to the enforcement and penalties set forth below.

(b) Any violation of this Article that occurs after the issuance of a written warning to a food vendor is subject to an administrative citation pursuant to Article 1-12-400 *et seq.* of the San Leandro Municipal Code.

(c) The San Leandro City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Article.

3-8-240 EFFECTIVE DATE. This ordinance shall take effect on November 1, 2012.

SECTION II. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION III. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect on November 1, 2012. The title thereof shall be published once and a complete copy thereof shall be posted on the City Council Chamber bulletin board for five (5) days prior to its second reading by the City Council.

Introduced by Councilmember Prola on this 19th day of September, 2011, and passed to print by the following called vote:

Members of the Council:

AYES: Councilmembers Cutter, Gregory, Prola, Reed; Mayor Cassidy (5)

NOES: Councilmember Souza (1)

ABSENT: Councilmember Starosciak (1)

ATTEST: Marian Handa
Marian Handa, City Clerk

Passed and adopted this 3rd day of October, 2011, after publication on September 26, 2011, by the following called vote:

Members of the Council:

AYES:

NOES:

ABSENT:

ATTEST: Marian Handa
Marian Handa, City Clerk

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