

ORDINANCE NO. 3426 C.S.

**AN ORDINANCE OF THE CITY OF MONTEREY
AMENDING CHAPTER 14 BY ADDING ARTICLE 3
REQUIRING THE USE OF
ENVIRONMENTALLY ACCEPTABLE FOOD PACKAGING**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, The Monterey Bay National Marine Sanctuary is a federally protected marine area offshore of California's Central Coast. The sanctuary is one of the most productive marine areas in the world with 33 species of marine mammals, 94 species of seabirds, 345 species of fish, 4 species of turtles, 31 phyla of invertebrates and more than 450 species of algae. There are numerous endangered species according to the National Marine Sanctuary.

WHEREAS, Polystyrene is a plastic resin that is used to make up a wide range of consumer goods and packaging, and in its "foamed" or "expanded" state is frequently used to produce takeout containers for food. However, unlike many other types of packaging, littered polystyrene foam remains permanently in the environment where it breaks into tiny pieces that disperse widely. Polystyrene foam means and includes expanded polystyrene (EPS), which is not collected for recycling in the Central Coast region because it is not economically viable. There are presently no manufacturers in the region using this material as a feedstock.

WHEREAS, The City of Monterey has seen first-hand the impact of polystyrene foam plastic litter in our storm drains, in our fields, on our roadways and highways, in our rivers, in the ocean and on our beaches. Banning polystyrene foam take-out packaging locally will help to address marine pollution by requiring the use of environmentally preferable alternatives while helping to educate business owners and citizens on the positive impact their packaging choices can make.

WHEREAS, the City of Monterey has a responsibility to protect its natural environment, its economy, and the health of its citizens. Solid waste that is non-degradable or non-recyclable poses an acute problem for any environmentally and financially responsible solid waste management program.

WHEREAS, food and beverage packaging constitutes a significant and growing portion of the waste in the City. Laws, policies and regulations pertaining to disposable food service-ware are a vital component in the City of Monterey's efforts to reduce the amount of disposed waste.

WHEREAS, food service-ware made from polystyrene foam is not biodegradable, returnable, or practically recyclable. Polystyrene foam breaks into smaller pieces and, because it is lightweight, may be picked up by the wind even when it has been placed in a waste receptacle.

WHEREAS, a prevalence of polystyrene foam packaging, which is highly durable and persists longer than any other type of refuse, litters parks and public places, streets and roads, waterways, storm drains and beaches. This litter ultimately floats, or is blown into the Monterey Bay.

WHEREAS, it is not economically feasible at this time to recycle polystyrene foam in or near the City of Monterey.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: A new Article 3 is hereby added to Chapter 14 of the Monterey City Code, commencing with section 14-15, as set forth below:

“ARTICLE 3

Sec. 14-15. Definitions. Unless otherwise expressly stated, whenever used in this Article the following terms shall have the meanings set forth below:

- (a) “Affordable” means that a biodegradable, compostable or recyclable product may cost up to 15 percent more than the purchase cost of the non-biodegradable, non-compostable or non-recyclable alternative(s).
- (b) “ASTM Standard” means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.
- (c) “Biodegradable” means the ability of organic matter to break down from a complex to a more simple form.
- (d) “City Facility” means any building, structure or vehicle owned and operated by the City of Monterey, its agents, agencies, and departments.
- (e) “City Contractor” means any person or entity that has a contract with the City of Monterey for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be donated or to be purchased at the expense of the City.
- (f) “Compostable” means all the materials in the product or package will break down, or otherwise become pad of usable compost (e.g. soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic.
- (g) “Director” shall mean the Deputy City Manager Plans and Public Works, or his/her designee.
- (h) “Disposable Food Service Ware” means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers. This does not include single-use disposable items such as plastic straws, cup lids, or utensils.

- (i) "Food Provider" means any vendor located or providing food within the City of Monterey which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, supermarket, delicatessen, catering truck or vehicle, or any other person who provides prepared food; and any organization, group or individual which regularly provides food as a part of its services.
- (j) "Person" means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.
- (k) "Polystyrene Foam" means and includes expanded polystyrene that is a thermoplastic petrochemical material utilizing a styrene monomer and 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). To include but not limited to Polystyrene Foam Plate, bleached paperboard plate with low density polyethylene coating and bleached paperboard plate with polystyrene coating.
- (l) "Prepared Food" means food or beverage prepared for consumption on the food provider's premises, using any cooking or food preparation technique. This does not include any raw uncooked meat, poultry, fish or eggs unless provided for consumption without further food preparation. It is a policy goal of this City to encourage supermarkets and other vendors to eliminate the use of polystyrene foam for packaging unprepared food.
- (m) "Recyclable" means any material that is accepted by the City or special district recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs. Recyclable plastics comprise those plastics coded with the recycling symbols #1 through #5.
- (n) "Retail Food Establishment" shall include but is not limited to, any place where food is prepared to include any fixed or mobile restaurant, drive-in, coffee shop, public food market, produce stand, or similar place which food or drink is prepared for sale or for service on the premises or elsewhere.
- (o) "Special Event" means any special event, regardless of size, sponsored by any commercial or non-profit organization, group, or individual, which is held within the City of Monterey and at which food and/or drinks are being provided for public consumption. This definition shall apply whether such food and/or drinks are prepared within or outside of the Monterey City limits.

Sec. 14-16. Prohibited Disposable Food Service Ware.

- (a) Food providers within the City of Monterey shall not provide prepared food in any disposable food service ware that contains or utilizes polystyrene foam.
- (b) Disposable food service ware that contains polystyrene foam is prohibited from use in all City of Monterey facilities.
- (c) Promoters and participants of special events as defined in this Article are prohibited from providing prepared food in any disposable food service ware that contains or utilizes polystyrene foam.

- (d) The prohibition of disposable food service ware containing or utilizing polystyrene foam shall also apply to all City of Monterey contractors in the performance of City of Monterey contracts and special events sponsored by the City.
- (e) It shall also be a policy goal of the City that business establishments located outside the City limits, but that may sell their products within the City of Monterey, shall not package any food product in any package that contains or utilizes polystyrene foam. The City of Monterey shall promote and encourage, on a voluntary basis, the elimination of all polystyrene foam disposable food service ware by these outside business establishments.

Sec. 14-17. Required Biodegradable, Compostable, Or Recyclable Disposable Food Service Ware.

- (a) All food providers within the City of Monterey utilizing disposable food service ware shall use only biodegradable, compostable or recyclable products, unless there is no affordable alternative available as determined by the Director.
- (b) All City of Monterey facilities utilizing disposable food service ware shall use only products that are biodegradable, compostable or recyclable.
- (c) All promoters and participants in special events utilizing disposable food service ware shall use only products that are biodegradable, compostable or recyclable.
- (d) City of Monterey contractors and promoters or participants in City-sponsored special events utilizing disposable food service ware shall also be required to use only biodegradable compostable, or recyclable products while performing under a City of Monterey contract or permit.

Sec. 14-18. Exemptions For Biodegradable Compostable Or Recyclable Food Service Ware.

- (a) There are no exemptions that allow for the use of polystyrene foam disposable food service ware by food providers within the City of Monterey.
- (b) The City of Monterey may exempt a food provider from the requirements set forth in sections 14-16 and 14-17 of this Article for a non-renewable, one-year period upon the food provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Director shall prepare a written decision to grant or deny a one-year exemption, which decision shall be final.
- (c) An exemption application shall include all information necessary for the Director to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The applicant may be required to provide additional information.
- (d) The Director may approve the exemption application in whole or in part, with or without conditions.

- (e) Foods prepared or packaged outside the City of Monterey and sold inside the City are exempt from the provisions of this ordinance except for those foods prepared or packaged in connection with a special event held within the City. Other purveyors of food prepared or packaged outside the City are encouraged to follow the provisions of this ordinance as it is a policy goal of this City to eliminate the use of polystyrene foam for packaging unprepared food.

Sec. 14-19. Enforcement And Notice Of Violation.

- (a) The remedies provided by this ordinance are cumulative and in addition to any other remedies available at law or in equity.
- (b) Violations of this ordinance shall be prosecuted as misdemeanors, punishable as set forth in section 1-7 of this code. In addition, each and every such violation shall be subject to the administrative citation process set forth in Article 2, Chapter 1, of this code.
- (c) In addition to the remedies set forth above, the City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this ordinance.
- (d) The Director shall be responsible for enforcing this ordinance and shall have authority to issue citations for violations.
- (e) The Director, in accordance with applicable law, may inspect any vendor or food provider's premises to verify compliance.
- (f) Food vendors shall state that they are in compliance with this ordinance on their annual business license renewal forms.

Sec. 14-20. Penalties And Fines For Violations.

Violations of this ordinance shall be enforced as follows:

- (a) For the first violation, a written warning shall be issued to the food provider specifying that a violation of this ordinance has occurred, and which further notifies the food provider of the appropriate penalties to be assessed in the event of future violations. The food provider will have 30 days to comply.
- (b) Upon failure of the food provider to comply within the 30-day period set forth in subsection (a) above, the City may pursue enforcement of this ordinance utilizing any of the remedies set forth in Section 14-19 above.
- (c) If issuance of an administrative citation is deemed to be the appropriate enforcement method, such citation shall issue following the failure of the food provider to comply within the 30-day notice period set forth in subsection (a) above. The fine amount shall be set forth in the City's Administrative Fine Resolution. In lieu of said fine, the City may allow the violator to submit receipts demonstrating the purchase of at least \$100 worth of biodegradable, compostable, or recyclable products after the citation date, as an alternative disposable food service ware for the items which led to the violation.

- (d) Following the issuance of a first administrative citation, second and subsequent violations of this ordinance shall result in the issuance of additional administrative citations. The fine amounts of these subsequent violations shall be set as forth in the City's Administrative Fine Resolution.
- (e) Food providers who violate this ordinance in connection with special events, as defined in this Article, shall be assessed a graduated administrative fine which shall increase in amount depending upon the number of persons attending said special event. The amount of the graduated administrative fine shall be established and set forth in the City's Administrative Fine Resolution."

SECTION 3: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

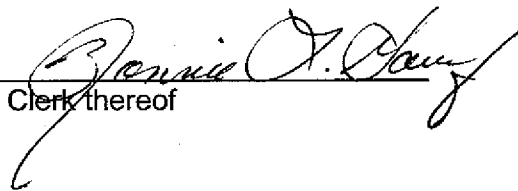
SECTION 4: This ordinance shall take effect six months from and after its final passage and adoption, in order to allow vendors to use up any remaining stock of prohibited product. This ordinance shall become mandatory on the first day of the month following this six-month voluntary period

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 17th day of February 2009 by the following votes:

AYES:	5	COUNCILMEMBERS:	Della Sala, Downey, Haferman, Selfridge, Sollecito
NOES:	0	COUNCILMEMBERS:	NONE
ABSENT:	0	COUNCILMEMBERS:	NONE

ATTEST:

APPROVED:



City Clerk thereof



Mayor of Said City

STATE OF CALIFORNIA
COUNTY OF MONTEREY
CITY OF MONTEREY

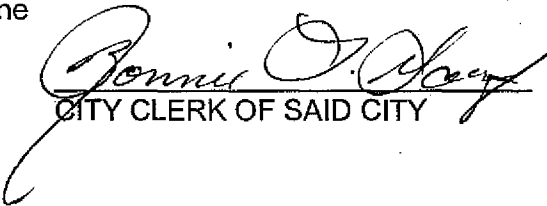
I, Bonnie L. Gawf, CITY CLERK OF THE CITY OF MONTEREY, AND EX-OFFICIO CLERK OF THE COUNCIL THEREOF, HEREBY CERTIFY THAT THE FOREGOING ORDINANCE WAS DULY PASSED TO PRINT IN THE OFFICIAL NEWSPAPER OF SAID CITY BY THE COUNCIL THEREOF ON THE 3rd DAY OF February 2009, BY THE FOLLOWING VOTE:

AYES: 5 COUNCILMEMBERS: Della Sala, Downey, Haferman, Selfridge, Sollecito

NOES: 0 COUNCILMEMBERS: None

ABSTAIN: 0 COUNCILMEMBERS: None

PUBLICATION: February 7, 2009


CITY CLERK OF SAID CITY