

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 OCT -2 PM 3: 35

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Public Works Agency
DATE: October 14, 2008

RE: Informational Report On The Implementation Of Oakland Municipal Code Chapter
8.07 Polystyrene Foam Food Service Ware

SUMMARY

Oakland Municipal Code Chapter 8.07 Polystyrene Foam Food Service Ware, adopted by Council through approval of Ordinance No. 12747 on June 26, 2006, bans the use of polystyrene foam to serve commercially prepared food, and requires that when disposable food service ware is used it be biodegradable or compostable, if it is cost-neutral to the food vendor. This report provides an update on staff efforts to inform and educate the public and businesses affected by the Ordinance, and enforcement activities to date, as required by Section 8.07.045.

FISCAL IMPACT

This report is informational only; no fiscal impacts are included.

BACKGROUND

The Polystyrene Foam Food Service Ware Ordinance affects approximately 1300 Oakland businesses that serve Prepared Food, including restaurants, itinerant restaurants and retail food vendors, and applies to all disposable food service ware products used by them. Prepared Food includes food and beverages that are served, packaged or processed on the Food Vendor's premises within the City of Oakland. Prepared Food does not include raw or butchered meat, fish or poultry. The Ordinance also applies to the City of Oakland and its facilities, departments and franchises.

This Ordinance furthers efforts to align the disposable products used in our community with the waste systems in place. The Ordinance addresses solid waste, and environmental and toxicity impacts of disposable food service ware in Oakland, by encouraging the use of reusable, recyclable, and biodegradable and compostable food service ware, and banning the use polystyrene foam, which is not recyclable, compostable, or biodegradable, and may pose a health risk to consumers. In addition, non-biodegradable food service ware, especially polystyrene foam, makes up a significant portion of the litter in Oakland and the cost of removing this litter from the streets and waterways continues to climb.

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KEY ISSUES AND IMPACTS

The Ordinance, adopted on June 26, 2006, went into effect on January 26, 2007. In November 2006, Councilmember Jean Quan hosted a “green” food service ware fair that featured local suppliers of food service ware. The purpose of the fair was to present information on products compliant with the requirements of the new Ordinance. The Public Works Agency participated in the fair by sending staff to explain the requirements of the Ordinance and provide information about alternative food ware products and vendors. After ordinance implementation, PWA staff conducted outreach efforts to affected businesses, providing information and education in multiple languages, and through multiple means and venues, including:

- Launched a dedicated web site www.oaklandgreenware.com – January 2007
- Established Ordinance information and non-compliance/complaint tracking service through the 238-SAVE Recycling Hotline – January 2007
- Hand delivered informational flyers (Attachment A) to approximately 100 downtown businesses – January-March 2007
- Hand delivered flyers to approximately 70 restaurants as part Small Business Recycling recruitment – March-June 2007
- Made presentations to various business associations – January-June 2007
- Provided additional information for compliance to 35 businesses after violations were reported through Recycling Hotline – January-June 2007
- Sent formal warning letters (Attachment B) to 17 businesses for reported violations – June 2007-present
- Direct mailed informational brochure (Attachment C) to affected businesses – July 2007
- Outreach at Art & Soul and EarthEXPO festivals – 2007 and 2008

Outreach to Oakland residents, informing them of the polystyrene foam ban and how to report violations was provided through garbage bill inserts sent to 95,000 residential customers in July 2007 (Attachment D), and October 2008 (Attachment E).

Through September 15, 2008, the Recycling Hotline has recorded 76 reports of non-compliance with the Ordinance. Through June 30, 2007, these reports were handled informally, with staff visiting 35 alleged violators and providing additional information about the ordinance, including: allowable food ware alternatives, local vendors for alternative products, and possible penalties for non-compliance. In July 2007 staff direct mailed an informational brochure on the Ordinance to all 1314 affected businesses, and through a garbage bill insert, notified the public how to report business that violate the ordinance.

Since July 2007, staff has sent warning letters to 17 Food Vendors that have been reported to be in violation of the Ordinance, and letters are pending for an additional 11 reported violations. Eight Oakland restaurants have been reported as violators of the ordinance after having been sent

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a warning letter regarding Ordinance violation, accounting for 14 of the 76 reports cited above. Due to unresolved technical issues regarding enforcement procedures and the amounts of potential fines, these repeat violators have yet to be issued citations or additional notices by the City. However, establishment of fees in the Master Fee Schedule that correspond to the fine amounts stated in the Ordinance, similar to recently established fees for garbage receptacle violations, should resolve these issues. Staff will work with the Budget Office on adding fees to the Master Fee Schedule at the next opportunity.

While staff expects that the October 2007 residential bill insert may stimulate new reports of restaurants violating the Ordinance, the Recycling Hotline receives only one or two violation reports each month, whether directly from the public or forwarded by other City offices. In addition, the Recycling Hotline has received no complaints from businesses regarding the cost of compliance. Informal observation indicates that Ordinance compliance is increasing as new products that comply with the ordinance become readily available and community interest in "green" business practices continues.

Because the Ordinance also applies to the City of Oakland, and in order to lead by example, PWA staff has arranged for the acquisition, through purchase order, of biodegradable food service ware and food scrap collection services to a variety of large and small "zero waste" events, including Bike-to-Work-Day and the Art & Soul Festival. In addition, PWA has acquired food scrap collection services for the Civic Center Complex and now offers, upon request, food scrap services for small receptions where reusable or biodegradable food service ware are used.

SUSTAINABLE OPPORTUNITIES

Economic: The Ordinance stimulates local markets for biodegradable and compostable food service ware.

Environmental: The Ordinance encourages waste reduction, recycling, and the reduction of litter in streets and waterways.

Social Equity: The Ordinance positively affects commercial and residential areas that are most likely to suffer the adversely impacts of litter.

DISABILITY AND SENIOR CITIZEN ACCESS

This report has no impacts on disability and senior citizen access.

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RECOMMENDATION(S) AND RATIONALE

This is an informational report only; staff is not making a recommendation to the City Council.

ACTION REQUESTED OF THE CITY COUNCIL

This is an informational report only, and no action is requested of the City Council.

Respectfully submitted,



Raul Godinez II, P.E.
Director, Public Works Agency

Reviewed by:
Brooke A. Levin, Assistance Director

Reviewed by:
Susan Kattchee, Environmental Services Manager

Prepared by:
Becky Dowdakin, Solid Waste & Recycling Prog. Supervisor
Environmental Services Division

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

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**Disposable Food Service Ware
To-go containers**

Frequently Asked Questions

Greenware Ordinance

STARTS JANUARY 1, 2007
Oakland Municipal Code Section 8.07

Who has to follow the Ordinance?

All Oakland food vendors selling prepared food including **restaurants, delis, fast-food establishments, vendors at fairs, and food trucks. All City Facilities.**

What are alternatives to polystyrene foam?

Uncoated paper, coated paper, cardboard, other plastics, aluminum foil food service ware, and "bio-plastics" are all permitted by this ordinance.

What are biodegradable and compostable food ware products?

Uncoated paper products, coated paper products, and some "bio-plastics" (made from corn, potato, and other plant materials).

What is wrong with polystyrene foam?

Polystyrene foam is non-renewable, non-biodegradable, and virtually non-recyclable. It ends up in landfills, waterways or the ocean. It breaks down into smaller and smaller pieces which are often mistaken for food and ingested by marine mammals, birds, and fish. Medical evidence, according to the FDA, EPA, and OSHA, suggests that chemicals in polystyrene foam are carcinogenic and may leach into food or drink.

Are there exceptions to these requirements?

There is no exception to the prohibition of polystyrene foam. Non-compostable and non-biodegradable products may be used if vendor can show that no alternative exists at the same or lower cost.

What are the penalties for non-compliance?

Violations will result in fines: 1st = warning, 2nd = \$100, 3rd = \$200, 4th = \$500

Enforcement is by the City of Oakland, not the County Health Inspector. Enforcement is complaint-driven, meaning *your customers* may notify the City of violations.

What else can my business do to reduce food service ware waste?

You can allow customers to bring their own mugs to buy drinks. In instances that food vendors wish to use a biodegradable or compostable product that is not the same or less cost than the non biodegradable or compostable alternative, a food vendor may charge a "take out fee" to cover the cost difference. You can use reusable dishes and cups instead of disposable ones for "eat-in" customers. You can use organics recycling service at your business to turn food packaging waste into compost.

How can my business get food scraps recycling?

Call the **City of Oakland Recycling Hotline at 238-SAVE (7283)** for assistance with any of your business recycling needs.

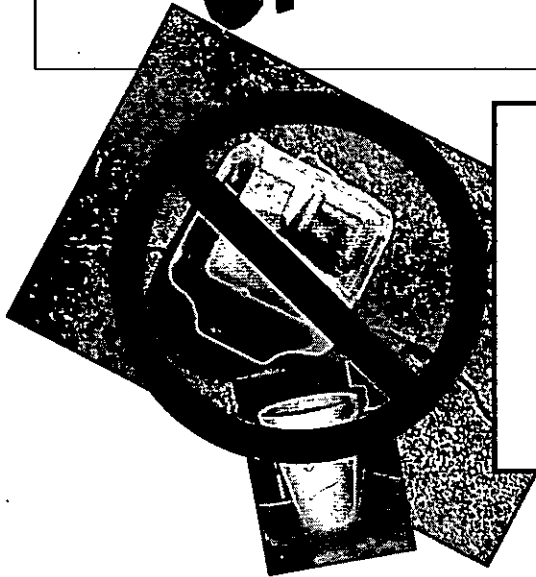
Disposable Food Service Ware
To-go containers

WHAT YOU NEED TO KNOW

CITY OF
OAKLAND

Greenware Ordinance

STARTS JANUARY 1, 2007
Oakland Municipal Code Section 8.07



1

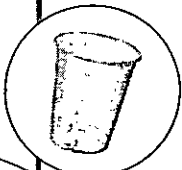
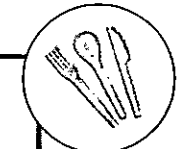
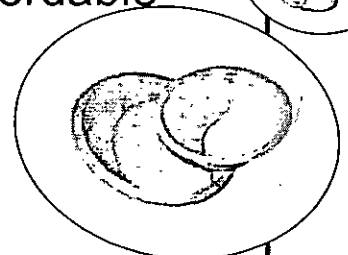
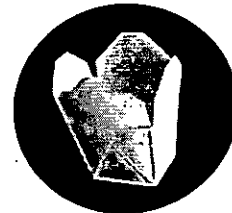
Oakland food vendors/restaurants may no longer use polystyrene foam (Styrofoam®) disposable food service ware. Violations may result in fines. (See back.)

2

Oakland food vendors and restaurants must change to biodegradable/compostable disposable food service ware such as paper or "bio-plastic", as it becomes affordable (same or less cost).

Resources to Help You Meet City Requirements:

- ✓ Ask your current supplier about products that meet the City's new requirements for food service ware.
- ✓ Call the City of Oakland Recycling Hotline at **238-SAVE** (7283) for a list of biodegradable food service ware suppliers, or for any questions related to this ordinance.
- ✓ Visit oaklandgreenware.com for more suppliers and information.



Para recibir más información en español llame al 238-6812.
 自行車道提案提出寶貴意見。如需獲得更多中文資訊，或有任何建議，請致電：238-6812。
 Để biết thêm chi tiết bằng tiếng Việt và để nhận xét góp ý, xin gọi số 238-6812.

Food service ware is a large contributor to litter, blight and waste throughout Oakland. In addition, many food service ware products made from plastic may be hazardous to our health. To make our city cleaner and healthier and help our community achieve zero waste, Oakland has passed a disposable food packaging ordinance. Similar ordinances are now being adopted across California.

See reverse for exceptions and more information.



CITY OF OAKLAND



250 Frank H. Ogawa Plaza, Suite 5301

OAKLAND, CALIFORNIA 94612-2034

Public Works Agency
Environmental Services Division

FAX (510) 238-7286
TDD (510) 238-3254

DATE

NAME

BUSINESS NAME

ADDRESS

Oakland, CA 946XX

Re: Formal Warning to Comply with Chapter 8.07, Title 8 of the Oakland Municipal Code: Polystyrene Foam Food Service Ware

Dear NAME:

This is to inform you that this office has received complaints of the following violation of the Polystyrene Foam Food Service Ware Ordinance, Chapter 8.07 of Title 8 of the Oakland Municipal Code, at your business: BUSINESS NAME located at BUSINESS ADDRESS.

1. That your business serves prepared food on polystyrene foam food service ware.

The City reserves the right to inspect your business to determine whether you are in compliance with the terms of the above cited regulations. After DATE, you must ensure that prepared foods are not served on polystyrene foam food service ware at BUSINESS NAME.

If you are found to be in violation of the Polystyrene Foam Food Service Ware Ordinance after DATE, you are subject to enforcement action including but not limited to the following:

Pursuant to Title 1, Chapter 1.12 of the Oakland Municipal Code, Administrative Citations and the imposition of fines ranging up to the amounts reflected below:

- \$100.00 fine for the first violation
- \$250.00 fine for the second violation
- \$500.00 fine for each subsequent violation within one year

Attachment B

Pursuant to Title 1, Chapter 1.28 of the Oakland Municipal Code, Infraction Citations, which upon conviction are punishable by fines of not more than:

- \$100.00 fine for the first violation
- \$200.00 fine for the second violation
- \$500.00 fine for each subsequent violation within one year

Also, continuing violation of the Polystyrene Foam Food Service Ware Ordinance may subject your business to abatement action by the City's Nuisance Enforcement Unit. The City's remedies for nuisance abatement include initial notice processing fees of \$3500 plus \$1000 per day penalties for each day that the nuisance continues.

If the City issues a Notice of Violation as a result of an inspection that establishes the use of polystyrene foam food service ware after the date of **DATE**, you will be liable for fee charge re-inspection fees of \$89. Failure to pay these fees can result in the property being liened pursuant to the Special Assessment Lien process.

We sincerely hope that enforcement action will not be necessary. To facilitate your compliance with the ordinance, please find enclosed a copy of the brochure that was sent to all food vendors in July 2007. It contains additional information about the ordinance requirements, which you may find helpful. If your food service ware vendor is unaware of substitute products, you will find many helpful resources, including a Distributors List and a list of Bio-Based Products, at the City's Public Works Agency website, www.oaklandgreenware.com.

Thank you for your cooperation in helping to make our City a healthier place to do business. If you have any questions about this matter, you may contact the Recycling Hotline at (510) 238-SAVE (7283) for more information.

Sincerely,

Becky Dowdakin
Solid Waste & Recycling Program Supervisor

cc: PWA 2008 Polystyrene Foam File
Property Owner

Enclosure: Guide for Oakland Food Vendors

OAKLAND'S GREENWARE ORDINANCE

*Polystyrene Foam Food Service Ware
Oakland Municipal Code section 8.07*

*Food service ware
contributes to litter and blight
on our streets, in our creeks
throughout Oakland, and in
the Bay.*

*According to the EPA, FDA
and OSHA, many food service
ware products made from
polystyrene foam may be
hazardous to our health.*

*To make our city cleaner and
healthier and help our
community achieve zero
waste, Oakland has passed a
disposable food packaging
ordinance.*

*This information is provided by the City of Oakland
Public Works Agency Recycling Program
(510) 238-SAVE (7283)
www.oaklandrecycles.com*

中文: (510) 614-5495
Espanol: (510) 614-5496
Tiếng Việt: (510) 614-5497

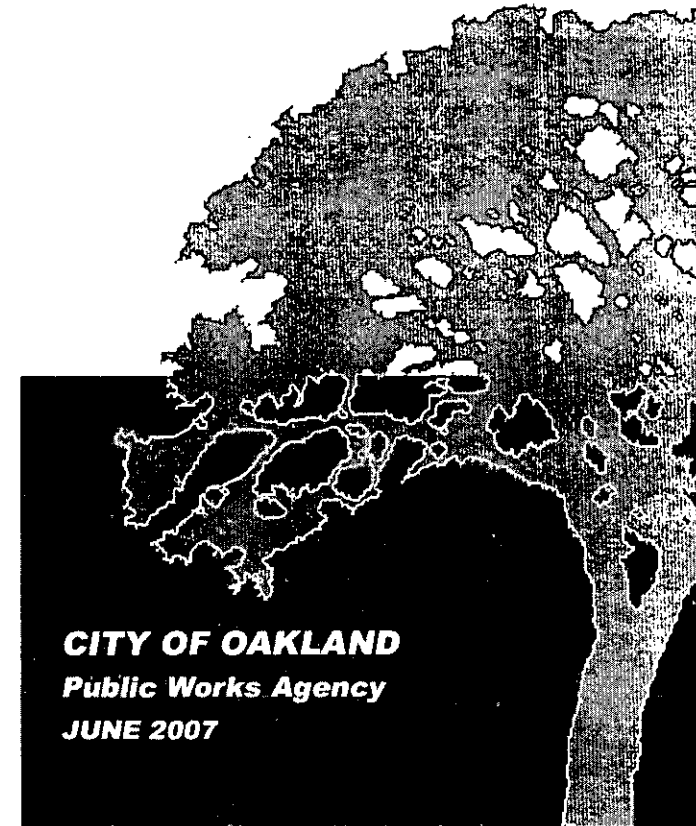


*City of Oakland
Public Works Agency
Environmental Services Division
250 Frank Ogawa Plaza; Suite 5301
Oakland, CA 94612*



A Guide For

Oakland Food Vendors



**CITY OF OAKLAND
Public Works Agency
JUNE 2007**

WHAT YOU NEED TO KNOW

Effective January 1, 2007, Oakland food vendors may not use polystyrene foam (Styrofoam®) disposable foodservice ware.

In Addition, Oakland food vendors and restaurants must change to biodegradable/compostable disposable food service ware such as paper or "bioplastic", as it becomes affordable (same or lower cost).

Disposable food service ware includes all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items that are designed for one-time use that any restaurant or retail food vendor uses to serve or package food to go.

All Oakland food vendors selling prepared food, including restaurants, delis fast-food restaurants, vendors at fairs, food trucks, and all City Facilities must comply.



RESOURCES TO HELP YOU MEET CITY REQUIREMENTS

- ◆ Ask your current supplier about products that meet the City's new requirements for to-go containers
- ◆ Visit www.oaklandgreenware.com for a list of suppliers
- ◆ Call **238-SAVE** with your questions about the ordinance

FREQUENTLY ASKED QUESTIONS

What are the alternatives to polystyrene foam? Uncoated paper, coated paper, cardboard, other plastics, aluminum foil foodservice ware, and "bioplastics" are good alternatives.

What are biodegradable and compostable foodservice ware products? Uncoated paper products, coated paper products, and "bio plastics"-made from corn, potato, and other plant materials.

Are there exceptions to these requirements?

There is no exception to the prohibition of polystyrene foam. Non-compostable and non-biodegradable products may be used if a vendor can show that no alternative exists at the same or lower cost.

PENALTIES

The City will investigate all reported violations. Food Vendors found in violation of the ordinance will be subject to the following fines:

- 1st offense = Warning
- 2nd offense = \$100 fine
- 3rd offense = \$200 fine
- 4th offense = \$500 fine

OTHER TIPS

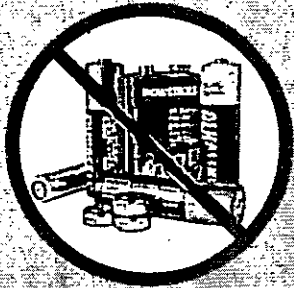
- ◆ Allow customers to bring their own mugs when purchasing drinks.
- ◆ Charge a take-out fee for approved to-go containers that cost more.
- ◆ Use reusable dishes for dine-in customers.

Polystyrene is made from petroleum, and it is non-renewable, non-biodegradable, and virtually non-recyclable. It ends up in landfills, waterways and the ocean. It breaks down into smaller pieces which are often mistaken for food and ingested by marine mammals, birds and fish. The EPA, FDA and OSHA suggest that chemicals in polystyrene foam are carcinogenic and may leach into food and drink.

For questions about the ordinance, or for assistance in identifying a supplier, please call **238-SAVE (7233)** or visit www.oaklandgreenware.com

Keep Our City Safe!

BATTERIES ARE NOT ACCEPTABLE IN RECYCLING OR GARBAGE CARTS.



Effective February 2006, state law prohibits disposal of common household and rechargeable batteries. They must be separated for special handling because they contain substances that threaten human health and the environment.

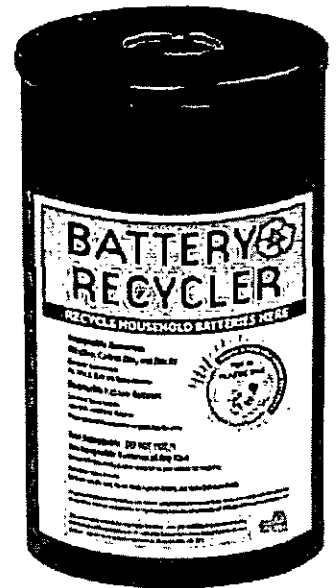
To dispose of batteries safely and legally:

Take common household (non-rechargeable) batteries to:

- The "Battery Recycler" at Oakland Public Libraries and Recreation Centers
- Alameda County Household Hazardous Waste Facility
2100 East 7th Street, Oakland
Facility operates on a rotating schedule.
Go to www.household-hazwaste.org or call (800) 606-6606 for specific days and times, or additional information.
Alameda County residents only.

Take rechargeable batteries to:

- Original retailer for recycling
- Also accepted at Alameda County Household Hazardous Waste Facility



For information, options and more locations, contact:

StopWaste.Org at (877)STOPWASTE (786-7927) or www.StopWaste.Org.

Help Put Green into Action in Oakland...

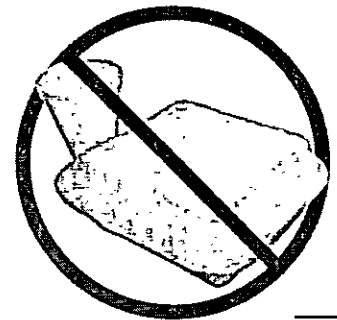
Ask for compostable paper "to-go" containers at your favorite restaurants and take-out spots, and then put them in your green yard trimmings cart for food scraps recycling.



NEW LAW IN OAKLAND BANS POLYSTYRENE FOAM (Styrofoam). Restaurants may no longer serve food or beverages in polystyrene foam containers.

- Here's why:**
- Can not be recycled in Oakland's Residential Recycling Program
 - It becomes litter around town, in waterways and the Bay
 - It breaks down into small pieces that are harmful when eaten by wildlife
 - Medical evidence suggests that chemicals in polystyrene foam are carcinogenic and may leach into food or drink

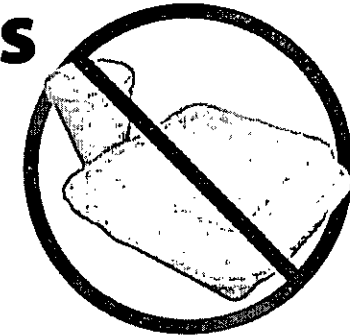
To report polystyrene foam violatons at restaurants: Call (510) 238-SAVE



- Polystyrene foam is non-renewable, non-biodegradable, and non-recyclable
- Chemicals in polystyrene foam could be harmful and may leach into food or drink
- Polystyrene foam breaks down into small pieces that are harmful to wildlife
- Polystyrene foam pollutes storm drains, creeks, Lake Merritt, the Bay and the ocean
- Polystyrene foam contributes to street litter and blight

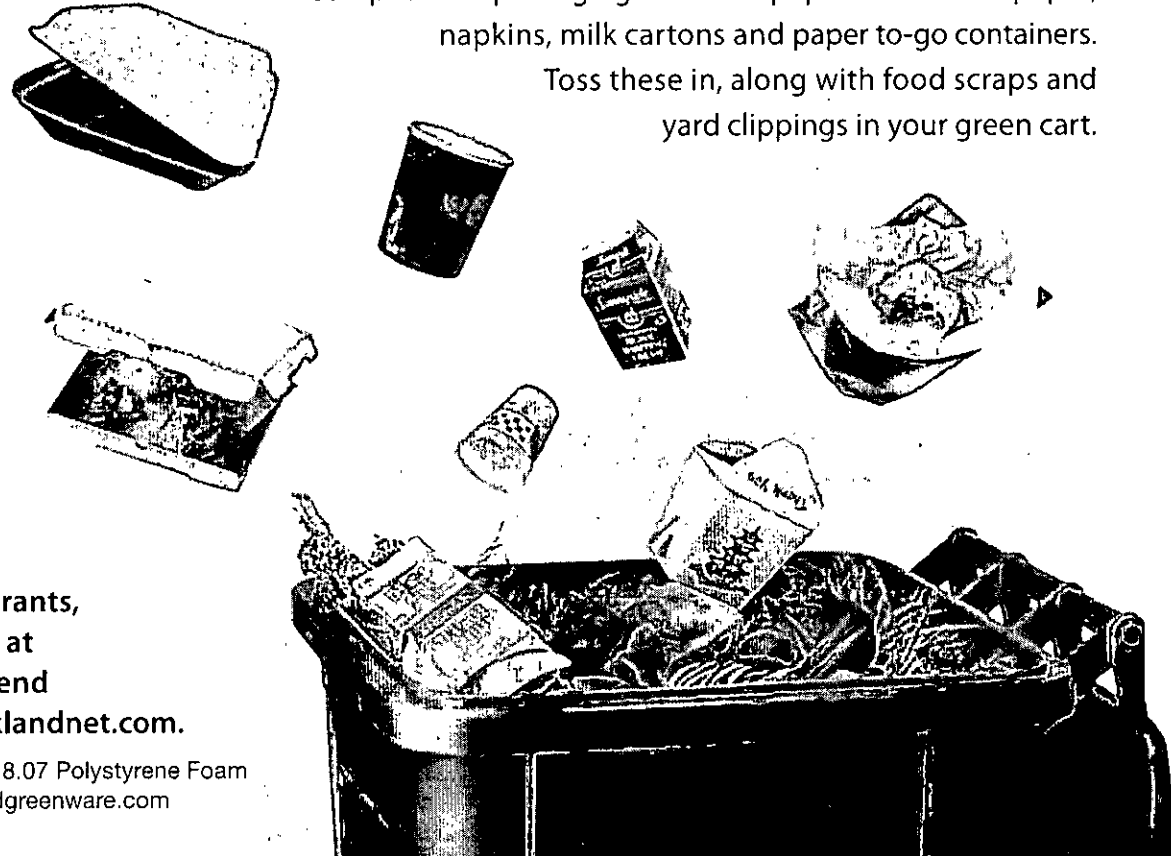
Give Foam Containers The Boot!

It is illegal in Oakland to serve commercially prepared foods in polystyrene foam containers.



There are better environmental alternatives!

Compostable packaging includes: paper and waxed paper, napkins, milk cartons and paper to-go containers. Toss these in, along with food scraps and yard clippings in your green cart.



To report violating restaurants,
call the Recycling Hotline at
510-238-SAVE (7283) or send
an email to recycling@oaklandnet.com.

Oakland Municipal Code Section 8.07 Polystyrene Foam
Food Service Ware www.oaklandgreenware.com