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Introduced by Councilmember QUAN AND DE LA FUENTE
(USE IF APPLICABLE)

Approved as to Form and Legality

James Atenia
Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Ordinance No. 12747 C.M.S.

AN ORDINANCE TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE AND REQUIRE THE USE OF BIODEGRADABLE OR COMPOSTABLE DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS AND CITY FACILITIES

This ordinance will institute two distinct practices by all food vendors and City Facilities in Oakland. The first is that the use of polystyrene foam disposable food service ware will be prohibited. The second is that all disposable food service ware will be required to be biodegradable or compostable, as long as it is affordable.

WHEREAS, the City of Oakland has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, effective ways to reduce the negative environmental impacts of throw-away food service ware include reusing food service ware and using compostable and biodegradable take-out materials made from renewable resources such as paper, corn starch and sugarcane; and

WHEREAS, polystyrene foam is a common environmental pollutant as well as a non-biodegradable substance that is commonly used as food service ware by food vendors operating in the City of Oakland; and

WHEREAS, there continues to be no meaningful recycling of polystyrene foam food service ware and biodegradable or compostable food service ware is an affordable, safe, more ecologically sound alternative; and

WHEREAS, affordable biodegradable or compostable food service ware products are increasingly available for several food service applications such as cold cups, plates and hinge containers and these products are more ecologically sound than polystyrene foam materials and can be turned into a compost product; and

WHEREAS, the Oakland Coliseum has successfully replaced its cups with biodegradable corn starch cups and has shown an overall cost savings due to organics recycling; and

WHEREAS, over 155 businesses in Oakland engage in organics recycling and it has been demonstrated that the use of biodegradable or compostable food service ware can reduce waste disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill; and

WHEREAS, the natural compost product from these biodegradable or compostable materials is used as fertilizer for farms and gardens, thereby moving towards a healthier zero waste system; and

WHEREAS, disposable food service ware constitutes a large portion of the litter in Oakland's estuary, streets, parks and public places and the cost of managing this litter is high and rising; and

WHEREAS, polystyrene foam is notorious as a pollutant that breaks down 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, a 1986 EPA report on solid waste named the polystyrene manufacturing process as the fifth largest creator of hazardous waste in the United States; and

WHEREAS, in the product manufacturing process as well as the use and disposal of the products, the energy consumption, greenhouse gas effect, and total environmental effect, polystyrene's environmental impacts were second highest, behind aluminum, according to the California Integrated Waste Management Board; and

WHEREAS, styrene, a component of polystyrene, is a known hazardous substance that medical evidence and the Food and Drug Administration suggests leaches from polystyrene containers into food and drink; and

WHEREAS, styrene is a suspected carcinogen and neurotoxin which potentially threatens human health; and

WHEREAS, styrene has been detected in the fat tissue of every man, woman and child tested by the EPA in a 1986 study; and

WHEREAS, the general public is not typically warned of any potential hazard, particularly in the immigrant and non-English-speaking community; and

WHEREAS, due to these concerns nearly 100 cities have banned polystyrene foam food service ware including several California cities, and many local businesses and several national corporations have successfully replaced polystyrene foam and other non-biodegradable food service ware with affordable, safe, biodegradable products; and

WHEREAS, restricting the use of polystyrene foam food service ware products and replacing non-biodegradable food service ware with biodegradable food service ware

products in Oakland will further protect the public health and safety of the residents of Oakland, the City of Oakland's natural environment, waterways and wildlife, would advance the City's goal of Developing a Sustainable City, advance the City's goal of Zero Waste by 2020 and fulfill Article 10 of the Environmental Accords, whereby Oakland partnered with other cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year;

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN CHAPTER 8.07 OF THE MUNICIPAL CODE SHALL BE:

Section 8.07.010 Definitions

"Affordable" means purchasable by the Food Vendor for same or less purchase cost than the non-Biodegradable, non-Polystyrene Foam alternative.

"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.

"Biodegradable" means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

"Compostable" means all materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Compostable Disposable Food Service Ware includes ASTM-Standard Bio-Plastics (plastic-like products) that are clearly labeled, preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic.

"City Facilities" means any building, structure or vehicles owned or operated by the City of Oakland, its agent, agencies, departments and franchisees.

"Customer" means any person obtaining Prepared Food from a Restaurant or Retail Food Vendor.

"Disposable Food Service Ware" means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items that are designed for one-time use and on, or in, which any Restaurant or Retail Food Vendor directly places or packages Prepared Foods or which are used to consume foods. This includes, but is not limited to, service ware for Takeout Foods and/or leftovers from partially consumed meals prepared at Restaurants or Retail Food Vendors.

"Food Vendor" means any Restaurant or Retail Food Vendor located or operating within the City of Oakland.

“Polystyrene Foam” means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials 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, 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.

“Prepared Food” means Food or Beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Vendor’s premises or within the City of Oakland. For the purposes of this ordinance, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises, also known as “takeout food”.

“Restaurant” means any establishment located within the City of Oakland that sells Prepared Food for consumption on, near, or off its premises by Customers. Restaurant for purposes of this Chapter includes Itinerant Restaurants, Pushcarts and Vehicular Food Vendors as those terms are defined in sections 5.49, 8.08, 8.09 of the City of Oakland Municipal Code.

“Retail Food Vendor” means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a Restaurant, located within the City of Oakland that sells Prepared Food.

Section 8.07.040 Prohibited Food Service Ware

A. Except as provided in Section 8.07.042, Food Vendors are prohibited from providing Prepared Food to Customers in Disposable Food Service Ware that uses Polystyrene Foam.

B. All City Facilities are prohibited from using Polystyrene Foam Disposable Food Service Ware and all City Departments and Agencies will not purchase or acquire Polystyrene Foam Disposable Food Service Ware for use at City Facilities.

C. City franchises, contractors and vendors doing business with the City shall be prohibited from using Polystyrene Foam Disposable Food Service Ware in City facilities or on city projects within the City of Oakland.

Section 8.07.041 Required Biodegradable and Compostable Disposable Food Service Ware

A. All Food Vendors using any Disposable Food Service Ware will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application. Food Vendors are strongly encouraged to reuse Food Service Ware in place of using Disposable Food Service Ware. In instances that Food Vendors wish to use a Biodegradable or Compostable Disposable Food Service Ware Product that is not Affordable, a Food Vendor may charge a “take out fee” to customers to cover the cost difference.

B. All City Facilities will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application.

C. City franchises, contractors and vendors doing business with the City will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application.

Section 8.07.042 Exemptions

A. Prepared Foods prepared or packaged outside the City of Oakland are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Oakland are encouraged to follow the provisions of this Chapter.

B. Food Vendors will be exempted from the provisions of this Chapter for specific items or types of Disposable Food Service Ware if the City Administrator or his/her designee finds that a suitable Affordable Biodegradable or Compostable alternative does not exist and/or that imposing the requirements of this Chapter on that item or type of Disposable Food Service Ware would cause undue hardship.

C. Polystyrene Foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

D. Disposable Food Service Ware composed entirely of aluminum is exempt from the provisions of this Chapter.

E. Emergency Supply and Services Procurement: In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter.

Section 8.07.043 Liability and Enforcement

A. The City Administrator or his/her designee will have primary responsibility for enforcement of this Chapter. The City Administrator 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, entering the premises of any Food Vendor to verify compliance.

B. Anyone violating or failing to comply with any of the requirements of this Chapter will be guilty of an infraction pursuant to Chapter 1.28 O.M.C.

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

Section 8.07.044 Violations - Penalties

1. If the City Administrator or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the Food Vendor that a violation has occurred.
2. If the Food Vendor has subsequent violations of this Chapter, the following penalties will apply:
 - a. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
 - b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
 - c. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.
3. Food Vendors may request an administrative hearing to adjudicate any penalties issued under this Chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter. Any determination from the administrative hearing on penalties issued under this Chapter will be final and conclusive.

Section 8.07.045 Study

One year after the effective date of this Chapter, the City Administrator will conduct a study on the effectiveness of this Chapter.

Section 8.07.0456 Effective Date

This Chapter will become effective January 1, 2007.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 30 2006, 2006

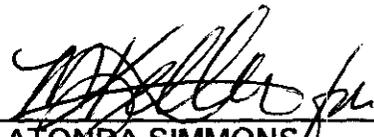
PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, ~~WATKINS~~, REID, CHANG,
AND
PRESIDENT DE LA FUENTE - 7

NOES - 1, Brooks

ABSENT - 0

ABSTENTION - 0

ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the
Council of the City of Oakland