

**ORDINANCE NO. 07 -004**

**AN ORDINANCE OF THE CITY OF EMERYVILLE ADOPTING CHAPTER 14, "FOOD SERVICE WASTE REDUCTION," OF TITLE 6 OF THE EMERYVILLE MUNICIPAL CODE; AND AMENDING SECTION 1-2.01(f) OF CHAPTER 2 OF TITLE 1 OF THE EMERYVILLE MUNICIPAL CODE REGARDING VIOLATIONS**

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

**WHEREAS**, many businesses in the City of Emeryville and neighboring cities engage in organics recycling and have 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 Emeryville's marina, 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 United States Environmental Protection Agency (EPA) states, “that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy”; 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, 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 (“FDA”) suggest may penetrate into food and drink stored in polystyrene containers; and

**WHEREAS**, styrene is a suspected carcinogen and neurotoxin which potentially threatens human health; 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, including several California cities, have banned polystyrene foam food service ware, and local businesses 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 will further protect the public health and safety of the residents of Emeryville, the environment, waterways and wildlife which would advance the goal of developing as a sustainable City;

**NOW THEREFORE THE CITY COUNCIL OF THE CITY OF EMERYVILLE HEREBY ORDAINS AS FOLLOWS:**

**SECTION ONE. PURPOSE AND INTENT**

The purpose and intent of this Ordinance is to adopt Chapter 14 of Title 6 of the Emeryville Municipal Code prohibiting the use of polystyrene foam disposable food service ware and requiring the use of compostable or recyclable disposable food service ware by food vendors and City facilities.

**SECTION TWO. ADOPTING CHAPTER 14 OF TITLE 6**

Chapter 14 of Title 6 of the Emeryville Municipal Code is hereby adopted to read as follows:

**CHAPTER 14. FOOD SERVICE WASTE REDUCTION**

**Sections:**

**6-14.01 Definitions.**

**6-14.02 Prohibited Food Service Ware.**

- 6-14.03 Required Biodegradable/Compostable or Recyclable Disposable Food Service Ware.**
- 6-14.04 Exemptions.**
- 6-14.05 Enforcement; Notices of Violation; Penalties.**
- 6-14.06 Effective Date.**

**6-14.01 Definitions.**

As used in this Chapter, certain words and phrases are defined as follows:

- (a) “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.
- (b) “Compostable” means all materials in the product or package are capable of undergoing biological decomposition or otherwise becoming part of a usable compost (e.g., soil-conditioning material or mulch) in a safe and timely manner in an appropriate composting program or facility. Compostable Disposable Food Service Ware includes ASTM-Standard bio-plastics or plastic-like products that are clearly labeled, such that any compost collector and processor can easily distinguish the ASTM-Standard compostable plastic from non-ASTM-Standard compostable plastic. For the purposes of this Chapter, the term “biodegradable” shall have the same meaning as compostable. This Chapter uses the terms biodegradable and compostable interchangeably, and in all cases whether the terms are used separately, in the disjunctive, or in the conjunctive, they shall always be interpreted and applied consistent with this definition of the term “compostable.”
- (c) “City” means the City of Emeryville.
- (d) “City Facilities” means any building, structure or vehicles owned or operated by the City of Emeryville.
- (e) “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 for consumption. 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.
- (f) “Food Vendor” means any restaurant or retail food vendor located or operating within the City of Emeryville.
- (g) “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.

- (h) “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 Emeryville. For the purposes of this Chapter, prepared food includes food which may be eaten on or off the premises, including “take-out food.” Prepared food does not include raw, butchered meats, fish, and/or poultry sold from a butcher case or similar retail appliance.
- (i) “Recyclable” means material that can be sorted, cleansed, and reconstituted using recycling services offered in the City for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
- (j) “Restaurant” means any establishment located within the City of Emeryville that sells prepared food for consumption on, near, or off its premises. For purposes of this Chapter, the term includes a Restaurant operating from a temporary facility, cart, vehicle, or mobile unit.
- (k) “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 Emeryville that sells prepared foods.

**6-14.02 Prohibited Food Service Ware.**

- (a) Food vendors are prohibited from providing prepared food in disposable food service ware that contains polystyrene foam or non-ASTM-Standard compostable plastic.
- (b) All City facilities are prohibited from using polystyrene foam or non-ASTM-Standard compostable plastic disposable food service ware. City departments are prohibited from purchasing or acquiring polystyrene foam or non-ASTM-Standard compostable plastic disposable food service ware for use at City facilities.
- (c) The use or distribution of polystyrene foam or non-ASTM-Standard compostable plastic disposable food service ware at special events sponsored or co-sponsored by the City shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event food vendors and any other party, including nonprofit organizations, who enter into an agreement with one or more of the co-sponsors of the event to distribute prepared food at the event or otherwise provide an event-related service.
- (d) All food vendors doing business with the City shall be prohibited from using polystyrene foam or non-ASTM-Standard compostable plastic disposable food service ware on City facilities, City projects, or City events.

**6-14.03 Required Biodegradable/Compostable or Recyclable Disposable Food Service Ware.**

- (a) All food vendors using any disposable food service ware shall use biodegradable/compostable or recyclable disposable food service ware unless it can be shown that a biodegradable/compostable or recyclable product is not available for a specific application. Food vendors are strongly encouraged to use reusable food service ware in place of using disposable food service ware.
- (b) All City facilities using any disposable food service ware shall use biodegradable/compostable or recyclable disposable food service ware.
- (c) All food vendors doing business with the City and who use any disposable food service ware shall use biodegradable/compostable or recyclable disposable food service ware unless the food vendor can show a biodegradable/compostable or recyclable product is not available for a specific application.

**6-14.04 Exemptions.**

- (a) Prepared foods prepared or packaged outside the City are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City 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 Manager or his/her designee finds that a suitable biodegradable/compostable or recyclable alternative does not exist.
- (c) Polystyrene foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.
- (d) Any person may seek an exemption from the requirements of this Chapter by filing a request on a form specified by the City Manager. The City Manager, consistent with this Chapter, may waive any specific requirement of this Chapter for a period of not more than one year if the person seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. A person granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship if the person wishes to have the exemption extended. The City Manager's decision to grant or deny an exemption or to grant or deny extension of a previously issued exemption shall be in writing and shall be final. "Undue hardship," shall be construed to include, but not be limited to:
  - (1) Situations where there are no acceptable alternatives to polystyrene foam packaging for reasons which are unique to the applicant;
  - (2) Situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

**6-14.05 Enforcement; Notices of Violation; Penalties.**

- (a) The City Manager or his/her designee will have primary responsibility for enforcement of this Chapter. 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: maintaining lists of biodegradable/compostable or recyclable food service ware and suppliers; maintaining lists of generally exempted food service ware items and products; and inspecting the premises of any food vendor to verify compliance.
- (b) If the City Manager or his/her designee determines that a person is in violation of this Chapter, he/she shall issue a written notice warning of the violation. If, after issuance of such notice, the City Manager finds continued violations of the provisions of this Chapter, the City Manager may apply for or impose the various sanctions provided in this section.
- (c) Anyone violating or failing to comply with any of the requirements of this Chapter will be guilty of an infraction pursuant to Section 1-2.01(f) of the City Municipal Code.
- (d) The City Manager may issue an administrative civil liability citation anyone violating or failing to comply with any of the requirements of this Chapter, in an amount not exceeding \$100.00 for the first violation, \$200.00 for the second violation in the same year, and \$400.00 for each subsequent violation in the same year. In determining administrative civil penalties, the City Manager shall consider the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, the frequency of past violations, and any action taken to mitigate the violation.
- (e) Any person to whom the City Manger issues a notice of violation or an administrative civil liability citation may request an administrative hearing to appeal such warning or determination of liability by filing a written request with the City Manager or his/her designee. The City Manager, or his/her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter before a hearing officer. Any determination from the administrative hearing officer shall be final.
- (f) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- (g) The remedies and penalties provided in this Section are cumulative and not exclusive of one another.

**6-14.06 Operative Date.**

This Ordinance shall become operative on January 1, 2008.

**SECTION THREE. AMENDING SECTION 1-2.01(f) OF CHAPTER 2 OF TITLE 1**

Section 1-2.01(f) of Chapter 2 of Title 1 of the Emeryville Municipal Code is hereby amended to read as follows. Additions are indicated in underlined type and deletions are indicated in ~~strikeout~~ type. Provisions not explicitly listed are unchanged.

**1-2.01. Violations Misdemeanors or Infractions.**

- (f) Any person violating any of the following provisions or failing to comply with any of the following provisions of this Code shall be guilty of an infraction:

| Title    | Chapter   | Article       | Section |
|----------|-----------|---------------|---------|
| <u>6</u> | <u>14</u> | <u>Entire</u> |         |

**SECTION FOUR. CEQA DETERMINATION**

The City Council finds, pursuant to Title 14 of the California Administrative Code, '15061(b)(3) and '15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. This action is further exempt from the definition of Project in '15378(b)(3) in that it concerns general policy and procedure making.

**SECTION FIVE. SEVERABILITY**

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

**SECTION SIX. EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code '33693.

**SECTION SEVEN. CODIFICATION**

Sections Two and Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Four, Five, Six and Seven shall NOT be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, March 20, 2007 and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, April 3, 2007 by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_ ABSENT: \_\_\_\_\_

EXCUSED: \_\_\_\_\_ ABSTAINED: \_\_\_\_\_

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY