

City Council Meeting 1-9-07  
Santa Monica, California

**ORDINANCE NUMBER (CCS)**  
**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF**  
**SANTA MONICA BANNING NON-RECYCLABLE PLASTIC DISPOSABLE**  
**FOOD SERVICE CONTAINERS**

WHEREAS, there are currently approximately 300 individual restaurants and food service businesses in Santa Monica; and

WHEREAS, many of these businesses use disposable food containers made from expanded polystyrene (EPS) and other non-recyclable plastics; and

WHEREAS, EPS is not biodegradable and as a result persists in the environment for hundreds and possibly thousands of years; and

WHEREAS, EPS material easily breaks down into smaller pieces and is so light that it floats in water and is easily carried by the wind, even when it has been disposed of properly; and

WHEREAS, numerous studies have documented the prevalence of EPS debris in the environment, including in storm drains and on beaches, causing Santa Monica's residents to pay thousands of dollars in clean-up costs; and

WHEREAS, marine animals and birds often confuse EPS for a source of food and the ingestion of EPS often results in reduced appetite and nutrient absorption and possible death by starvation of birds and marine animals; and

WHEREAS, recycling of EPS products is not currently economically viable; and

WHEREAS, there are several alternatives to EPS disposable food service containers available in Santa Monica from existing food packaging suppliers; and

WHEREAS, an important goal of the City's Sustainable City Plan is to procure and use sustainable products and services; and

WHEREAS, it is the City's desire to reduce the amount of beach litter and marine pollution and to protect local wildlife, both of which increase the quality of life for Santa Monica's residents and visitors,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 5.44 is hereby added to the Santa Monica Municipal Code as follows:

**5.44.010 Definitions**

(a) "Biodegradable" refers to the ability of a material to decompose into elements normally found in nature within a reasonably short period of time after disposal.

- (b) “City Facilities” refers to buildings and structures owned or leased by the City of Santa Monica.
- (c) “Disposable Food Service Container” 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 straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.
- (d) “Expanded Polystyrene” (EPS) means polystyrene that has been expanded or “blown” using a gaseous blowing agent into a solid foam.
- (e) “Food Provider” means any establishment, located or providing food within the City of Santa Monica, which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, super market, 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.
- (f) “Non-Recyclable Plastic” refers to any plastic which cannot be feasibly recycled by a municipal recycling program in the State of California, including polystyrene and expanded polystyrene.
- (g) “Polystyrene” means and includes expanded polystyrene which 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). The term “polystyrene” also includes clear or solid polystyrene which is known as “oriented polystyrene”.
- (h) “Prepared Food” means any 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, fish or eggs unless provided for consumption without further food preparation.
- (i) “Recyclable Plastic” means any plastic which can be feasibly recycled by a municipal recycling program in the State of California. Recyclable plastics comprise those plastics with the recycling symbols #1 through #5 including polyethylene terephthalate (PET or PETE), high density polyethylene (HDPE), low density polyethylene (LDPE), and polypropylene (PP).

**5.44.020 Prohibition on the Use of Non-Recyclable Plastic Disposable Food Service Containers**

- A. Except as provided in Section 5.44.030, food providers are prohibited from dispensing prepared food to customers in disposable food service containers made from expanded polystyrene.
- B. Except as provided in Section 5.44.030, food providers are prohibited from dispensing prepared food to customers in disposable food service containers made from non-recyclable plastic.
- C. All City Facilities, City-managed concessions, City sponsored events, and City permitted events are prohibited from using disposable food service containers made from expanded polystyrene or non-recyclable plastic.

#### **5.44.030 Exemptions**

(a) The Director of the Environmental and Public Works Management Department (EPWM), or his/her designee, may exempt a food provider from the requirements of this ordinance for a one year period, upon showing by the food provider that the conditions of this ordinance would cause undue hardship. An “undue hardship” shall be found in:

1. Situations unique to the food provider where there are no reasonable alternatives to expanded polystyrene or non-recyclable plastic disposable food service containers and compliance with this Chapter would cause significant economic hardship to that food provider;
2. Situations where no reasonably feasible available alternatives exist to a specific and necessary expanded polystyrene or non-recyclable plastic food container.

A food provider granted an exemption by the City must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

(b) An exemption application shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The Director may require the applicant to provide additional information to permit the Director to determine facts regarding the exemption application.

(c) The Director may approve the exemption application, in whole or in part, with or without conditions.

(d) Exemption decisions are effective immediately and final and are not appealable.

#### **5.44.040 Enforcement and Notice of Violations**

A. The Director of EPWM or his/her designee shall have primary responsibility for enforcement of this ordinance and the Director of EPWM or his/her designee shall have authority to issue citations for violation of this Chapter. The Director of EPWM or his/her designee is authorized to establish regulations or administrative procedures and to take any and all actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, but not limited to, inspecting any vendor’s premises to verify compliance in accordance with applicable law.

B. Anyone violating or failing to comply with any of the requirements of this chapter or of any regulation or administrative procedure authorized by it shall be guilty of an infraction.

C. The City Attorney may seek legal, injunctive, or any other relief to enforce this chapter and any regulation or administrative procedure authorized by it.

D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

#### **5.44.050 Penalties and Fines for Violations**

Violations of this ordinance shall be enforced as follows:

A. For the first violation, the Director of EPWM or his/her designee, upon determination that a violation of this chapter has occurred, shall issue a written warning notice to the food provider which

will specify the violation and the appropriate penalties in the event of future violations.

B. Thereafter, the following penalties shall apply:

1. A fine not exceeding one hundred dollars (\$100.00) for the first violation following the issuance of a warning notice.

2. A fine not exceeding two hundred and fifty dollars (\$250.00) for the second and any other violation that occurs following the issuance of a warning notice.

C. Fines are cumulative and each day that a violation occurs shall constitute a separate violation.

**5.44.60 Effective Dates**

A. No food provider shall distribute or utilize disposable food service containers containing expanded polystyrene or non-recyclable plastic on or after one year following the adoption of this ordinance by the City Council.

B. No City facilities, City managed concessions, City sponsored events or City permitted events shall distribute or utilize disposable food service containers containing expanded polystyrene or non-recyclable plastic on or after the effective date of this ordinance

SECTION 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

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MARSHA JONES MOUTRIE

City Attorney