

Unrecyclable takeout food packaging



**What it's doing to our
communities and how we
can stop it**



**Californians
Against Waste**

Conserving Resources. Preventing Pollution. Protecting the Environment.

What's the Problem...

Local Municipalities Are Spending Millions Subsidizing Unrecyclable Plastic

Unrecyclable takeout food packaging is dragging down waste diversion rates, polluting our streets, fields and waterways, and incurring local governments millions in clean up costs. Many local municipalities throughout the state continue to struggle to meet the state-mandated 50% waste diversion requirement.

According to the US EPA, the amount of fast food packaging generated in our society is measured in the millions of tons and virtually all of this waste is currently littered or landfilled. Consistently, state-wide litter composition studies, such as those conducted in New Jersey and Texas, have shown takeout food packaging to comprise 20-30% of all litter, behind only cigarettes. Litter is not just an eyesore—80% of marine debris is land-based, the majority of which comes from urban runoff. The takeout food packaging waste that we see everyday clogging our storm drains is destined for the ocean, where it will join the great snow of litter that plagues our oceans. Indeed, studies have shown that in some parts of the ocean plastic outweighs plankton by a factor of six!



Marine debris poses a significant problem to wildlife and our \$43 billion dollar ocean economy. The economic ramifications of this waste from the clean-up end have been large. The problem is especially great in areas that have been deemed US EPA impaired waterways, and thus must meet Total Maximum Daily Loads for trash, such as the Los Angeles River. Southern California cities alone have spent hundreds of millions on meeting TMDL requirements, and the clean-up costs of marine debris as a whole may well push the \$1 billion mark, according to the California Ocean Protection Council.



Up to 90% of marine debris is plastic, and foamed polystyrene—a large, unrecyclable component of the fast food waste stream—has consistently been shown to be one of the largest categories of marine debris in beach cleanups. Currently there is no environmentally friendly means of disposal for a large percentage of takeout food packaging: though agencies have invested in and promote a nearly comprehensive recycling and composting infrastructure, many of the materials used for takeout food packaging are not recyclable or compostable in these systems.

What's the Solution...

Food Packaging Ordinances Are a Tried, Cost-Effective Solution

First introduced in the 1980s, takeout food packaging ordinances have had a renaissance lately due to concerns over the cost of water pollution cleanup and the overall environmental hazards of plastics waste.

The most effective polystyrene ordinances--like that of the City of Santa Monica's—requires restaurants to use only disposable food products that are recyclable by the municipality's curbside recycling program, like those pictured to the right. Such an ordinance automatically banned expanded (foamed) polystyrene (EPS, aka "styrofoam") which is the largest component of marine debris due to its lightweight and is not recycled by any municipal recycling system in the state due to its low scrap value. Not only do such ordinances encourage local businesses to use disposable food products made from recycled content, they also ensure that a major source of landfill material and litter is instead diverted to recycling, saving petroleum resources, reducing greenhouse gas emissions, and protecting our ecosystem and marine environment. The cost of such a switch for local business owners is nominal, but the environmental pay-off is marked.



Requiring takeout food packaging to be recyclable is not burdensome. Recyclable alternatives, such as paperboard and PET plastic, exist for all applications used by unrecyclable plastics, such as polystyrene. Furthermore, the price difference between these abundant alternatives and the unrecyclable plastic they replace is a nickel or less per container.

Prominent California Takeout Food Packaging Laws

Currently, about 5% of Californians live in communities that require takeout food packaging to be recyclable or compostable. Californians Against Waste believes increasing this number by passing more local

City	Bans Expanded (Foamed) Polystyrene (Styrofoam)	Bans All Polystyrene	Recyclability/Compostability Requirement	Recyclability Requirement	Compostability Requirement	Alternative Packaging Affordability Requirement
Berkeley	X		50%*			
Calabasas	X		X			X
Capitola	X			X		X
Emeryville	X		X			
Malibu	X					
Oakland	X			X		X
Pittsburg				50%*		
San Francisco	X		X			X
Santa Monica	X	X		X		

* by volume

food ordinances is one of the easiest, most cost effective steps Californian communities can take to lessen their litter abatement costs, increase the recycling of resources and waste diversion rates, and decrease the release of greenhouse gasses into the atmosphere.

For more information about food packaging ordinances and unrecyclable food packaging, consult the Californians Against Waste Website.

Appendix

Based on Santa Monica's Law, this Model Ordinance Bans Polystyrene and Requires Takeout Food Packaging be compatible with local recycling infrastructure

WHEREAS, there are currently approximately [x] individual restaurants and food service businesses in The City of [X]; 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 The City of [X]'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 The City of [X] 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 The City of [X]'s residents and visitors.

SECTION [X]. Chapter 5.44 is hereby added to the City of [X] Municipal Code as follows:

[X] 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 [X].

(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 [X], 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).

[X] Prohibition on the Use of Non-Recyclable Plastic Disposable Food Service Containers

A. Except as provided in Section [X1], 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 [X1], 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.

[X1] 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.

[X] 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.

[X] 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.

[X] 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 [X]. Any provision of the City of [X] 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 [X]. 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 [X]. 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.