

ORDINANCE NO. 269

AN ORDINANCE ADDING CHAPTER 8.30  
RELATING TO POLYSTYRENE FOOD PACKAGING TO  
THE MUNICIPAL CODE

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THE CITY COUNCIL OF THE CITY OF DEL REY OAKS DOES ORDAIN AS FOLLOWS:

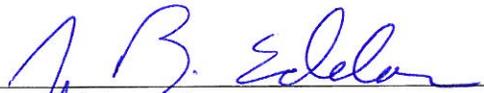
1. Chapter 8.30 added. Chapter 8.30, entitled "Polystyrene Food Packaging," is hereby added to the Municipal Code to read in its entirety as set forth on the attached six (6) pages, marked Exhibit "A" and incorporated herein by this reference thereto.
2. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its final passage.
3. Posting of Ordinance. Within fifteen (15) days after the passage of this ordinance, the City Clerk shall cause it to be posted in the three (3) public places designated by resolution of the City Council.
4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Del Rey Oaks duly held on November 17, 2009, and was passed and adopted at a regular meeting duly held on December 15, 2009, by the following vote:

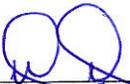
AYES: COUNCIL MEMBERS: Zuccaro, Clark, Cecilio, Allion and Edelen

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

  
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Jerry Edelen, Mayor

ATTEST:

  
\_\_\_\_\_  
Daniel Dawson, City Clerk

CHAPTER 8.30

POLYSTYRENE FOOD PACKAGING

Sections:

- 8.30.010 Findings and Statement of Intent
- 8.30.020 Definitions
- 8.30.030 Prohibited Disposable Food Service Ware
- 8.30.040 Required Biodegradable, Compostable, or Recyclable Disposable Food Service Ware
- 8.30.050 Exemptions for Biodegradable, Compostable or Recyclable Food Service Ware
- 8.30.060 Miscellaneous

8.30.010 Findings and Statement of Intent

The City Council hereby finds and declares that:

A. The City has a responsibility to protect its natural environment, its economy, and the health of its citizens. Solid waste that is non-degradable or non-recyclable poses an acute problem for any environmentally and financially responsible solid waste management program.

B. The City borders or is in close proximity to the Monterey Bay National Marine Sanctuary, a federal preserve that supports one of the most diverse and delicate ecosystems in the world. This sanctuary provides habitat for at least 33 mammals, 94 species of seabirds, 345 species of fish, and contains the largest kelp forest in the nation. The nearby region also encompasses some of the richest farmland in the world as it stretches deep into the Salinas Valley. Agricultural-business interests and tourism constitute the mainstays of the economy of Monterey County. The impact of an environmentally damaged Monterey Bay or the pollution of our rivers would be felt throughout the area.

C. Food and beverage packaging constitutes a significant and growing portion of the waste in the city/county. Laws, policies and regulations pertaining to disposable food service-ware are a vital component in the City's efforts to reduce the amount of disposed waste.

D. Food service-ware made from polystyrene foam is not biodegradable, returnable, or practically recyclable. Polystyrene foam breaks into smaller pieces and, because it is lightweight, may be picked up by the wind even when it has been placed in a waste receptacle.

E. A prevalence of polystyrene foam packaging, which is highly durable and persists longer than any other type of refuse, litters parks and public places, streets and roads, waterways, storm drains and beaches. This litter ultimately floats or is blown into the Monterey Bay, creating a financial cost and adversely impacting our environment. Polystyrene foam that ends up in rivers that wend miles away from Monterey Bay, in the Salinas Valley, also finds its way into Monterey Bay.

F. Mistaking it for food, marine animals and birds often ingest polystyrene foam, which can damage their digestive tracts, often leading to death.

G. Polystyrene foam is manufactured from petroleum, a non-renewable resource.

H. Scientific evidence indicates that styrene leaches from polystyrene foam containers into food and drink. The Environmental Protection Agency (EPA) has found that there are short- and long-term adverse health effects associated with exposure to styrene.

I. It is not economically feasible at this time to recycle polystyrene foam in or near the City.

J. When products are recycled, natural resources are conserved, less energy is used for the production of new products, and valuable landfill space is preserved. When biodegradable products are turned into compost they can reduce water use and reduce the need for fertilizer. Take-out food packaging that is biodegradable, compostable, or recyclable is the most responsible and sustainable choice for the tourist economy, the citizenry and the environment.

K. Biodegradable takeout packaging (such as cups, plates, clamshell containers and cutlery) made from paper, sugarcane, corn bi-products and potato starch is available locally. As these products degrade, they do not harm the environment and are not a permanent blight on the landscape.

L. Eliminating the use of polystyrene foam and other non-biodegradable, non-compostable, non-returnable and non-recyclable food packaging material from all establishments within the City will help protect the local environment, including the Monterey Bay National Marine Sanctuary and the vast Salinas Valley, from contamination and degradation, helping to safeguard this area as a tourist destination and a major grower of agricultural products. It will also support the City's goal of reducing waste and protecting the environment for generations to come.

M. Taking the aforementioned action also will be cost-effective, helping to maximize the operating life of landfills and reducing the economic and environmental expense of managing waste and litter.

#### 8.30.020 Definitions

Unless otherwise expressly stated, whenever used in this chapter the following terms shall have the meanings set forth below:

- A. "Affordable" means that a biodegradable, compostable or recyclable product may cost up to 15 percent more than the purchase cost of the non-biodegradable, non-compostable or non-recyclable alternative(s).
- B. "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.
- C. "Biodegradable" means the ability of organic matter to break down from a complex to a more simple form.
- D. "City Facility" means any building, structure or vehicle owned and operated by the City, its agents, agencies, and departments.
- E. "City Contractor" means any person or entity that has a contract with the City for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be donated or to be purchased at the expense of the City.
- F. "Compostable" means all the materials in the product or package will break down, or otherwise become part of usable compost (e.g. soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware must meet ASTM-Standards for compostability and any bio-

plastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic.

- G. "Disposable Food Service Ware" 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 plastic straws, cup lids, or utensils
- H. "Food Provider" means any vendor located or providing food within the City which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, supermarket, 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.
- I. "Person" means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.
- J. "Polystyrene Foam" means and includes expanded polystyrene that 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).
- K. "Prepared Food" means 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, poultry, fish or eggs unless provided for consumption without further food preparation. It is a policy goal of this City to encourage supermarkets and other vendors to eliminate the use of polystyrene foam for packaging unprepared food.
- L. "Recyclable" means any material that is accepted by the City or special district recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs. Recyclable plastics comprise those plastics coded with the recycling symbols #1 through #5.
- M. "Retail Food Establishment" shall include but is not limited to, any place where food is prepared to include any fixed or mobile restaurant, drive-in, coffee shop, public food market, produce stand, or similar place which food or drink is prepared for sale or for service on the premises or elsewhere.
- N. "Special Events Promoter" means an applicant for any special events permit issued by the City or any City employee(s) responsible for any city/county-organized special event.

#### 8.30.030 Prohibited Disposable Food Service Ware

- A. Food providers within the City may not provide prepared food in any disposable food service ware that contains polystyrene foam.
- B. Disposable food service ware that contains polystyrene foam is prohibited from use in all City facilities.
- C. City contractors in the performance of City contracts and special events promoters may not provide prepared food in disposable food service ware that contains polystyrene foam.

- D. It shall be a policy goal of the City that business establishments located outside the City shall not package any non-food product in any package which utilizes polystyrene foam both block polystyrene or packaging peanuts, or purchase, obtain, keep, distribute or sell for home or personal use, or give, or otherwise provide to customers any packaging which utilizes polystyrene foam. The City shall promote and encourage, on a voluntary basis, the elimination of all polystyrene foam packaging.

#### 8.30.040 Required Biodegradable, Compostable, or Recyclable Disposable Food Service Ware

- A. All food providers within the City utilizing disposable food service ware shall use biodegradable, compostable or recyclable products unless there is no affordable alternative available as determined by the City Manager (see definition of "Affordable" and Section 8.30.050 Exemptions). Food providers may charge a "take-out fee" to cover the difference in cost.
- B. All City facilities utilizing disposable food service ware shall use products that are biodegradable, compostable or recyclable.
- C. City contractors and special events promoters utilizing disposable food service ware shall use biodegradable, compostable, or recyclable products while performing under a City contract or permit.

#### 8.30.050 Exemptions for Biodegradable, Compostable or Recyclable Food Service Ware

- A. No exemptions shall allow for the use of polystyrene foam disposable food service ware.
- B. Upon written application, the City Manager may exempt, in writing, a food provider from the requirement set forth in section 8.30.030 of this Chapter for a non-renewable, one-year period upon the food provider showing, in writing, that this Chapter would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances.
- C. The exemption application shall include all information necessary for the City Manager to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The City Manager may require the applicant to provide additional information.
- D. The City Manager may approve the exemption application in whole or in part, with or without conditions. The City Manager's decision shall be final.
- E. Foods prepared or packaged outside the City and sold inside 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 as it is a policy goal of this City to eliminate the use of polystyrene foam for packaging unprepared food.

#### 8.30.060 Miscellaneous

- A. The City, in accordance with applicable law, may inspect any vendor or food provider's premises to verify compliance.
- B. Each food vendor shall state, in writing, that it is in compliance with this Chapter as part of its initial and annual renewal business license forms.

C. To allow all persons an opportunity to use remaining stock of prohibited products, this Chapter shall become effective and enforceable on the first day of the month that begins after one hundred and eighty (180) days following its following passage and adoption. During the six-month period following its enactment, it shall nonetheless be the policy of the city to encourage voluntary adherence to the requirements of this Chapter.