

**ORDINANCE NO. 1861-2011**

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF BURLINGAME ADDING CHAPTER 8.10  
TO THE BURLINGAME MUNICIPAL CODE  
TO PROHIBIT FOOD VENDORS FROM USING  
POLYSTYRENE BASED DISPOSABLE  
FOOD SERVICE WARE**

The City Council of the City of Burlingame does ordain as follows:

**Division 1.** Factual background

**WHEREAS**, the County of San Mateo has adopted an ordinance prohibiting food vendors from using polystyrene based disposable food service ware; and

**WHEREAS** the City Council finds that polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors operating in the City of Burlingame. Polystyrene, often referred to by the trademark Styrofoam, has also become a problematic environmental pollutant given its non-biodegradable, and nearly non-reusable nature; and

**WHEREAS** the City Council finds that polystyrene-based, single-use food service ware consistently constitutes a substantial portion of the trash and litter found on the streets and in the storm drains within the City of Burlingame; and

**WHEREAS** the City Council finds that effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using compostable materials made from renewable resources such as paper, cardboard, corn starch, potato starch, and/or sugarcane; and

**WHEREAS** the City Council does, accordingly, find and declare that it should restrict the use by food vendors of polystyrene-based disposable food service ware, and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF  
BURLINGAME DOES ORDAIN AS FOLLOWS:**

**Division 2.** The Burlingame Municipal Code is hereby amended to add Chapter 8.10 to read as follows:

**“Chapter 8.10. Prohibition of the Use of Polystyrene Based Disposable Food Service Ware by Food Vendors**

**Section 8.10.010. Adoption of San Mateo County Ordinance by Reference**

Chapter 4.107 of Title 4 of the San Mateo County ordinance code, entitled “Prohibition on the Use of Polystyrene Based Disposable Food Service Ware by

Food Vendors”, and any amendment thereto, are hereby adopted by this reference and made part of the Burlingame Municipal Code and are, accordingly, effective in this city. Certified copies of Chapter 4.107 of Title 4, as adopted hereby, and any subsequent amendment, shall be deposited with the City Clerk, and shall be at all times maintained by the Clerk for use and examination by the public.

**Section 8.10.020. Authorization of Enforcement By San Mateo County Personnel.**

The County of San Mateo, its officers, employees and agents are hereby authorized to enforce, on behalf of the city, Chapter 4.107 “Prohibition on the Use of Polystyrene Based Disposable Food Service Ware by Food Vendors” of Title 4 of the San Mateo County ordinance code, and any amendments thereto, within the jurisdiction areas of this city. Such enforcement authority includes, but is not limited to, the collection of fees and fines, expending such revenue in the enforcement of the prohibition on the use of polystyrene based disposable food service ware by food vendors, holding hearings, suspending permits and issuing administrative fines.

**Division 3.** This ordinance shall be effective January 1, 2012.

**Division 4.** This ordinance is not subject to the California Environmental Quality Act because it is not a “project” which would have a direct physical change or a reasonably foreseeable indirect physical change on the environment pursuant to CEQA Guidelines section 15378. And, even if it were a project subject to CEQA review, this project would be exempt from CEQA pursuant to section 15307 [exemptions for actions to protect natural resources] , section 15308 [exemptions for actions to protect the environment], section 15378(b)(2) [exemption for policymaking], and 15183 [actions consistent with the general plan].

**Division 5.** This ordinance, or a summary as applicable, shall be published as required by law.

  
\_\_\_\_\_  
Terry Nagel, Mayor

I, Mary Ellen Kearney, City Clerk of the City of Burlingame, do hereby certify that the foregoing ordinance was introduced at a regular meeting of the City Council held on the 2nd day of May, 2011, and adopted thereafter at a regular meeting of the City Council held on the 16th day of May, 2011, by the following vote:

AYES: COUNCILMEMBERS: **BROWNRIGG, DEAL, KEIGHRAN, NAGEL**  
NOES: COUNCILMEMBERS: **NONE**  
ABSENT: COUNCILMEMBERS: **BAYLOCK**

  
\_\_\_\_\_  
Mary Ellen Kearney, City Clerk

ORDINANCE NO. 04542  
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA

\* \* \* \* \*

**AN ORDINANCE ADDING CHAPTER 4.107, COMPRISING OF SECTIONS 4.107.010  
THROUGH 4.107.080 TO TITLE 4 OF THE SAN MATEO COUNTY  
ORDINANCE CODE PROHIBITING FOOD VENDORS FROM USING  
POLYSTYRENE BASED DISPOSABLE FOOD SERVICE WARE**

The Board of Supervisors of the County of San Mateo, State of California,  
**ORDAINS** as follows

**SECTION 1.** Chapter 4.107, comprising of sections 4.107.010 through 4.107.080, is hereby added to Title 4 of the San Mateo County Ordinance Code and shall read as follows:

**Chapter 4.107 PROHIBITION ON THE USE OF POLYSTYRENE BASED  
DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS**

**4.107.010 Findings and purpose.**

The Board of Supervisors finds and determines that:

- (a) Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors operating in the County of San Mateo. Polystyrene, often referred to by the trademark Styrofoam, has also become a problematic environmental pollutant given its non-biodegradable, and nearly non-reusable nature.
- (b) Polystyrene-based, single-use food service ware constitutes a substantial portion of the litter within the County of San Mateo.
- (c) Effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using

compostable materials made from renewable resources such as paper, cardboard, corn starch, potato starch, and/or sugarcane.

- (d) This Board does, accordingly, find and declare that it should restrict the use by food vendors of polystyrene-based disposable food service ware.

#### **4.107.020 Definitions.**

For purposes of this chapter, the following terms have the following meanings:

- (a) "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, also known as clamshells. This does not include straws, utensils, or cup lids nor does it include disposable packaging for unprepared foods.
- (b) "Food vendor" means any vendor, business, organization, entity, group or individual, including a licensed retail food establishment that provides prepared food at a retail level.
- (c) "Polystyrene-based" 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 polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene (EPS)), and clear or solid polystyrene known as oriented polystyrene.
- (d) "Prepackaged food" means any properly labeled processed food, prepackaged to

prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source.

- (e) "Prepared food" means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared. Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.

**4.107.030 Prohibited use polystyrene-based disposable food service ware.**

No food vendor shall use polystyrene-based disposable food service ware when providing prepared food.

**4.107.040 Exemptions.**

- (a) Prepackaged food is exempt from the provisions of this chapter.
- (b) Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this chapter.
- (c) Food vendors at the San Francisco International Airport are exempt from the provisions of this chapter.

**4.107.050 Request For An Exemption.**

Any food vendor may seek an exemption from the requirements of this chapter upon demonstrating that strict application of the requirements would cause undue hardship.

- (a) An "undue hardship" shall be found in:
  - (1) Situations unique to the food vendor where a suitable alternative does not exist for a specific application; and/or
  - (2) Situations where no reasonably feasible available alternative exists to a

specific and necessary container prohibited by this chapter.

- (b) The application process for exemption shall be as follows:
- (1) The food vendor seeking an exemption shall submit a written exemption request to the Environmental Health Division.
  - (2) A written exemption request shall include all information and documentation necessary for the Director of the Environmental Health Division to make a finding that imposition of this chapter would cause an undue hardship as defined in Section 4.107.050(a).
  - (3) The Director of the Environmental Health Division may require the applicant to provide additional information in order to make a determination regarding the exemption application.
  - (4) Exemption decisions are effective immediately and are final and not subject to appeal.
  - (5) The Director of the Environmental Health Division or his/her designee may grant an exemption for a period of up to one year upon a finding that the food vendor seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship as defined in 4.107.050 (a).
- (c) If a food vendor granted an exemption wishes to have the exemption extended, it must re-apply for the exemption prior to the expiration of the one year exemption period and demonstrate continued undue hardship. Extensions may be granted for intervals not to exceed one year.

**4.107.060 Administrative fine.**

- (a) Grounds for Fine. A fine may be imposed upon findings made by the Director of the Environmental Health Division, or his or her designee, that any food vendor

has used polystyrene-based disposable food service ware in violation of this Chapter.

- (b) Amount of Fine. Upon findings made under subsection (a), the food vendor shall be subject to an administrative fine as follows:
- (1) A fine not exceeding one hundred dollars (\$100) for a first violation;
  - (2) A fine not exceeding two hundred dollars (\$200) for a second violation;
  - (3) A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations;
  - (4) Each day that a food vendor uses polystyrene-based disposable food service ware when providing prepared food shall constitute a separate violation.
- (c) Fine Procedures. Notice of the fine shall be served on the food vendor. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be either that (1) the food vendor did not use polystyrene-based disposable food service ware when providing prepared food or (2) the food vendor would have been granted an exemption under 4.107.050 if the food vendor had applied for such exemption. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that one of the above listed grounds for a contest have been met and shall be a final administrative order, with no administrative right of appeal.
- (d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the Environmental Health Division or his or her designee after the hearing, the fine

shall be referred to a collection agency.

**4.107.070 Severability.**

If any provision of this chapter or the application of such provision to any person or in any circumstances shall be held invalid, the remainder of this chapter, or the application of such provision to person or in circumstances other than those as to which it is held invalid, shall not be affected thereby.

**4.107.080 Enforcement of this chapter when adopted.**

The Environmental Health Division is hereby directed to enforce Chapter 4.107 of Title 4 within an incorporated area of the County of San Mateo if the governing body of that incorporated area does each of the following:

- (a) Adopts, and makes part of its municipal code:
  - (1) Chapter 4.107 of Title 4 in its entirety by reference; or
  - (2) An ordinance that contains each of the provisions of Chapter 4.107 of Title 4;
- (b) Authorizes, by ordinance or resolution, the Environmental Health Division to enforce the municipal code adopted pursuant to subsection (a) of this section, such authorization to include, without limitation, the authority to hold hearings and issue administrative fines within the incorporated area of the public entity.

**SECTION 2.** This Ordinance shall be effective as of July 1, 2011.

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# POLYSTYRENE FOODWARE ORDINANCE

## *Frequently Asked Questions*



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### ***Who has to follow the Ordinance?***

All food vendors who operate in unincorporated San Mateo County, selling prepared food as listed in the Ordinance, including but not limited to restaurants, cafes, delis, fast-food establishments, vendors at fairs, and food trucks. Food vendors in cities that adopt the County Ordinance must follow the Ordinance beginning on the effective date of their city's Ordinance adoption. The Burlingame City Council is tentatively scheduled to consider adoption of the County Ordinance on May 2, 2011; an effective date will be determined at the time of adoption.

### ***What does the Ordinance prohibit?***

Foam and solid Polystyrene food service ware as listed in the Ordinance, including but not limited to containers, bowls, plates, and cups. Ask your supplier if you are unsure if your products are Polystyrene. The Ordinance becomes effective in unincorporated areas of the County of San Mateo effective July 1, 2011.

### ***What is wrong with Polystyrene food service ware?***

- It is not recyclable.
- It is a common item that is littered on streets that ends up in storm drains, on beaches, and in the Bay and Ocean.
- It breaks down into smaller pieces that may be ingested by wildlife resulting in reduced appetite, reduced nutrient absorption, and starvation.
- It contains hazardous chemicals that may leach from Polystyrene containers into food and drink and may cause cancer.

### ***What food service ware does the Ordinance allow?***

- Any type of biodegradable, compostable, reusable, or recyclable food service ware.
- Acceptable products include: Aluminum, plastics coded with #1, 2, 4 or 5, uncoated or coated paper, cardboard, and plastics made from corn, potatoes, sugar, or other plant based products.

## POLYSTYRENE FOODWARE ORDINANCE – Frequently Asked Questions

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### ***What are the penalties for non-compliance?***

Violations may result in fines, as follows:

1<sup>st</sup> Violation = \$100

2<sup>nd</sup> Violation = \$200

3<sup>rd</sup> Violation = \$500 (each day observed using Polystyrene = 1 violation)

Enforcement is done by the County of San Mateo Health Inspector.

### ***What can my business do to reduce food service ware costs?***

- Allow and encourage customers to bring their own mugs to buy drinks.
- Charge a “take out fee” to cover the cost difference.
- Use reusable dishes and cups instead of disposable ones for “eat-in” customers.

### ***Questions?***

Visit: [www.smhealth.org/food](http://www.smhealth.org/food)

# Adrienne J. Tissier

Member • Board of Supervisors • San Mateo County

April 19, 2011

RECEIVED

APR 22 2011

CITY CLERK'S OFFICE  
CITY OF BURLINGAME

Hon. Terry Nagel and Councilmembers  
City Hall  
501 Primrose Road  
Burlingame, CA 94010

Dear Mayor ~~Nagel~~ and Councilmembers:

Expanded polystyrene – commonly referred to by the Dow Chemical trademark Styrofoam – is a petroleum-based, lightweight plastic material with many industrial, commercial and retail uses. Its low cost and moisture-resistant and insulating properties have given retail food vendors an inexpensive and convenient container, especially for disposable, take-out use.

However, polystyrene has also been identified as an environmental pollutant, given its non-biodegradable, non-recyclable and nearly non-reusable nature. Polystyrene foam is showing up along roadways, waterways and in the ocean. Reducing the daily use of disposal polystyrene foodservice containers will help reduce the volume of this pollutant.

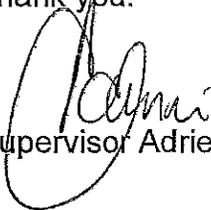
Recognizing the problem, your Board of Supervisors recently adopted an ordinance prohibiting retail food vendors from using polystyrene-based containers. This ordinance takes effect July 1, 2011, and only affects the unincorporated portions of San Mateo County; the majority of retail food vendors are located within municipal jurisdictions.

A few cities in San Mateo County already have their own ordinances prohibiting polystyrene. However, I would encourage all San Mateo County cities to adopt, by reference, the county's ordinance to create uniformity and also because the county's regular restaurant inspectors can assist with education and enforcement.

Enclosed is recommended language for consideration by your council and city attorney, plus a copy of the full county ordinance.

If you have any questions or concerns, please contact me at your convenience.

Thank you.

  
Supervisor Adrienne J. Tissier

RECEIVED

APR 22 2011

CITY OF BURLINGAME  
CDD-PLANNING DIV.

400 County Center, Redwood City, California 94063

Direct Line (650) 363-4572 • Fax (650) 599-1027

**ORDINANCE NO. \_\_\_\_\_**  
**CITY COUNCIL, CITY OF \_\_\_\_\_,**  
**STATE OF CALIFORNIA**

\* \* \* \* \*

**AN ORDINANCE ADDING CHAPTER \_\_\_\_\_ TO THE CITY OF \_\_\_\_\_**  
**ORDINANCE CODE**  
**PROHIBITING FOOD VENDORS FROM USING POLYSTYRENE BASED**  
**DISPOSABLE FOOD SERVICE WARE**

The City Council of the of the City of \_\_\_\_\_, State of California, **ORDAINS** as follows

**WHEREAS**, the County of San Mateo has adopted an ordinance prohibiting food vendors from using polystyrene based disposable food service ware; and

**WHEREAS** this Council finds that polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors operating in the City of \_\_\_\_\_. Polystyrene, often referred to by the trademark Styrofoam, has also become a problematic environmental pollutant given its non-biodegradable, and nearly non-reusable nature; and

**WHEREAS** this Council finds that polystyrene-based, single-use food service ware constitutes a substantial portion of the litter within the City of \_\_\_\_\_; and

**WHEREAS** this Council finds that effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using compostable materials made from renewable resources such as paper, cardboard, corn starch, potato starch, and/or sugarcane; and

**WHEREAS** this Council does, accordingly, find and declare that it should restrict the use by food vendors of polystyrene-based disposable food service ware, and

**WHEREAS** the City Council **ORDAINS** as follows:

**SECTION 1.** Chapter \_\_\_\_ is added to City of \_\_\_\_\_ Ordinance Code and shall read as follows:

**Chapter \_\_\_\_ "Prohibition on the Use of Polystyrene Based Disposable Food Service Ware"**

**Section            Authorization of Enforcement by San Mateo County Personnel**

Chapter 4.107 "Prohibition on the Use of Polystyrene Based Disposable Food Service Ware by Food Vendors" of Title 4 of the San Mateo County ordinance code, and any amendment thereto, are hereby adopted and made effective in this city. Certified copies

**ORDINANCE NO. 04542**  
**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,**  
**STATE OF CALIFORNIA**

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**AN ORDINANCE ADDING CHAPTER 4.107, COMPRISING OF SECTIONS 4.107.010 THROUGH 4.107.080 TO TITLE 4 OF THE SAN MATEO COUNTY ORDINANCE CODE PROHIBITING FOOD VENDORS FROM USING POLYSTYRENE BASED DISPOSABLE FOOD SERVICE WARE**

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**Chapter 4.107 PROHIBITION ON THE USE OF POLYSTYRENE BASED DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS**

**4.107.010 Findings and purpose.**

The Board of Supervisors finds and determines that:

- (a) Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors operating in the County of San Mateo. Polystyrene, often referred to by the trademark Styrofoam, has also become a problematic environmental pollutant given its non-biodegradable, and nearly non-reusable nature.
- (b) Polystyrene-based, single-use food service ware constitutes a substantial portion of the litter within the County of San Mateo.
- (c) Effective ways to reduce the negative environmental impacts of disposable food

- (d) "Prepackaged food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source.
- (e) "Prepared food" means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared. Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.

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**4.107.040 Exemptions.**

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- (b) Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this chapter.
- (c) Food vendors at the San Francisco International Airport are exempt from the provisions of this chapter.

**4.107.050 Request For An Exemption.**

Any food vendor may seek an exemption from the requirements of this chapter upon demonstrating that strict application of the requirements would cause undue hardship.

- (a) An "undue hardship" shall be found in:
  - (1) Situations unique to the food vendor where a suitable alternative does not exist for a specific application; and/or

the Environmental Health Division, or his or her designee, that any food vendor has used polystyrene-based disposable food service ware in violation of this Chapter.

- (b) Amount of Fine. Upon findings made under subsection (a), the food vendor shall be subject to an administrative fine as follows:
- (1) A fine not exceeding one hundred dollars (\$100) for a first violation;
  - (2) A fine not exceeding two hundred dollars (\$200) for a second violation;
  - (3) A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations;
  - (4) Each day that a food vendor uses polystyrene-based disposable food service ware when providing prepared food shall constitute a separate violation.
- (c) Fine Procedures. Notice of the fine shall be served on the food vendor. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be either that (1) the food vendor did not use polystyrene-based disposable food service ware when providing prepared food or (2) the food vendor would have been granted an exemption under 4.107.050 if the food vendor had applied for such exemption. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that one of the above listed grounds for a contest have been met and shall be a final administrative order, with no administrative right of appeal.
- (d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the

Regularly passed and adopted this 1<sup>st</sup> day of March, 2011.

AYES and in favor of said ordinance:

Supervisors:

\_\_\_\_\_  
CAROLE GROOM  
\_\_\_\_\_  
DON HORSLEY  
\_\_\_\_\_  
ROSE JACOBS GIBSON  
\_\_\_\_\_  
ADRIENNE J. TISSIER  
\_\_\_\_\_

NOES and against said ordinance:

Supervisors:

\_\_\_\_\_  
NONE  
\_\_\_\_\_  
\_\_\_\_\_

Absent Supervisors:

\_\_\_\_\_  
NONE  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Carole Groom

\_\_\_\_\_  
President, Board of Supervisors  
County of San Mateo  
State of California

Certificate of Delivery

I certify that a copy of the original ordinance filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

\_\_\_\_\_  
*Marie L. Peterson*

\_\_\_\_\_  
Marie L. Peterson, Deputy  
Clerk of the Board of Supervisors