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CITY OF OAKLAND



ONE FRANK OGAWA PLAZA • 2<sup>ND</sup> FLOOR • OAKLAND, CALIFORNIA 94612

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June 13, 2006

PUBLIC WORKS COMMITTEE  
OAKLAND CITY COUNCIL  
Oakland, California

Re: AN ORDINANCE TO PROHIBIT THE USE OF POLYSTYRENE FOAM  
DISPOSABLE FOOD SERVICE WARE AND REQUIRE THE USE OF  
BIODEGRADABLE OR COMPOSTABLE FOOD SERVICE WARE BY FOOD  
VENDORS AND CITY FACILITIES

Members of the Public Works Committee:

I am proposing an ordinance that will institute two distinct practices by all Oakland food vendors and City facilities. The first is that the use of all polystyrene foam disposable food service ware will be prohibited. The second is that all disposable food service ware will be required to be biodegradable or compostable when it is cost-neutral to the Food Vendor to use these products (meaning the cost is the same or less than the non-polystyrene foam, non-biodegradable/compostable alternative).

This ordinance will further the goal of the Mayor and City Council to develop a sustainable city and create a zero waste community and further efforts to align the disposable products used in our community with the waste systems in place. This ordinance will address solid waste, environmental and toxicity impacts of disposable food service ware in Oakland. This ordinance was developed in collaboration with many experts in the field of solid waste and greening of business. Legislation banning polystyrene foam food packaging has been adopted in nearly 100 American cities including Berkeley and Portland. Furthermore, other Bay Area communities including San Francisco, Palo Alto, Berkeley and Marin County are now considering legislation similar to this proposed ordinance.

Polystyrene foam, a plastics product, is designed for a useful life of minutes or hours but continues to exist in our environment for hundreds or thousands of years. There continues to be no meaningful recycling of polystyrene foam in California.

Biodegradable food service ware can be an affordable, safe, ecologically sound alternative to polystyrene foam and other disposable food service ware. Some Oakland businesses have voluntarily stopped using polystyrene foam products and some utilize biodegradable food service ware as their way of contributing to community health and the environment. Many of these businesses are also realizing waste disposal cost savings because food scrap (biodegradable) waste collection can cost less than garbage collection. Over 155 businesses in Oakland are now recycling organics and this number is growing every year due to overall cost savings.

Non-biodegradable food service ware, especially polystyrene foam, constitutes a large portion of the litter in Oakland and the cost of managing this litter is high and rising. While there are no conclusive medical opinions, there is evidence suggesting that the component styrene, suspected carcinogen and neurotoxin and known hazardous substance, may leach from polystyrene containers into fatty food or drink, posing a potential health risk to people. The EPA National Human Adipose Tissue Survey for 1986 identified styrene residues in 100% of all samples of human fat tissue taken in 1982 in the U.S. Recently, a number of studies and news articles have detailed increased concerns about the cumulative effects of trace chemicals and suspected carcinogens on the human body, especially among children.

#### **FISCAL IMPACT**

The City will absorb any increased costs associated with purchasing non-polystyrene foam products for use in City Facilities. There will also be some cost associated with the complaint-based enforcement of the ordinance by the City Administrator.

#### **BACKGROUND**

Polystyrene foam, also known by the name "Styrofoam", is formed by adding a blowing agent to polystyrene, a petroleum-based plastic material. Polystyrene foam is light-weight (about 95% air), with good insulation properties and is used in all types of products from cups that keep beverages hot or cold to materials that keeps items safe during shipping. The California Integrated Waste Management Board (CIWMB) estimates that Californians use 165,000 tons of polystyrene each year for packaging and food service purposes alone.<sup>1</sup>

In the past, polystyrene foam was banned by cities due in part to the ozone-depleting gases used as blowing agents; most polystyrene foam is now made with less damaging gases. More recent bans have been enacted because of the litter and marine debris impacts of polystyrene foam food packaging as well as overall environmental health. Nearly 100 cities nationwide including other California coastal cities such as Malibu, Aliso Viejo, San Juan Capistrano, Huntington Beach and San Clemente have banned

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<sup>1</sup> *Use and Disposal of Polystyrene in California*, California Integrated Waste Management Board, December 2004.

polystyrene foam food service ware. Polystyrene foam food service ware is also banned across China, Taiwan and India and other types of plastics are being banned all over the world.

This proposed ordinance is consistent with several bills at the state level that seek to move towards zero waste and managing plastics: AB1866 (Karnette) would prohibit any state facility from selling, possessing or distributing polystyrene foam food containers; AB 1940 (Koretz) would convene a multi-agency task force to make progress in reducing marine debris statewide; AB 2147 (Harman) would clarify the definition of “compostable”, “biodegradable” and “degradable” compostable plastic food and beverage containers in order to promote compatibility with waste management systems; AB 319 (Chan) bans some plastic products containing Phthalates and Bisphenol-A; SB 1379 (Perata) establishes a biomonitoring program to determine, assess and monitor the presence and concentration of chemicals in the tissue and blood of Californians.

On May 10<sup>th</sup>, 2006, a public meeting was convened at City Hall to inform food vendors and the community about this proposed ordinance and get feedback on how to make the ordinance more effective. The meeting was attended by community members, several members of the waste disposal community, and at least two Chambers of Commerce. In addition, all major Chambers of Commerce and several franchise owners and food service ware vendors have been consulted about the proposed ordinance.

While using biodegradable disposable food ware is preferable, the use of disposable food service ware in general will continue to have significant impacts on solid waste disposal and consumption of natural resources, local waterways, and litter. All food vendors should evaluate how they can reduce the use of all disposable food service ware and *maximize the portion of their food service ware that is reused.*

## **KEY ISSUES AND IMPACTS**

### **Solid Waste and Recycling**

The California Integrated Waste Management Act of 1989 requires that all California jurisdictions achieve and maintain a landfill diversion rate of 50%, beginning in 2000. In 2002, the City adopted a goal of 75% reduction of waste going to landfills by 2010 in alliance with a countywide 75% waste reduction goal. In March 2006, Oakland City Council joined cities, counties and states worldwide in adopting a goal of zero waste by the year 2020. Zero waste principals, as applied to municipal solid waste, include improving “downstream” reuse/recycling of end-of-life-products, pursuing “upstream” re-design strategies to reduce the volume and toxicity of discarded products and materials, and promoting low-impact or reduced consumption lifestyles.

Oakland achieved a landfill diversion rate of 55% in 2004<sup>2</sup>. The greatest opportunity for additional solid waste diversion is related to targeting waste reduction and recycling in the commercial sector.<sup>3</sup> Collection of commercial organics, primarily food scraps, is a

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<sup>2</sup> Result not yet certified by California Integrated Waste Management Board.

<sup>3</sup> City of Oakland Public Works Agency/Environmental Services Division Strategic Plan for 75% Reduction and Recycling of Solid Waste, February 28, 2006.

key program targeted in the Strategic Plan for 75% Solid Waste Diversion, adopted by Council in March 2006.

There is currently no meaningful recycling of post-consumer polystyrene foam food service ware, due in part to contamination from food residue and in part to the economic unfeasibility of such a service. Polystyrene foam is also non-biodegradable, and a common contaminant in food scraps collection programs. Unlike polystyrene foam food service ware, biodegradable food service ware can be included in commercial and residential food scraps collection programs, and processed at composting facilities rather than landfilled. The natural compost products made from these biodegradable materials are used as soil amendments on farms, commercial nurseries and gardens.

Oakland is already a leader in residential organics recycling. Since the February 2005 rollout of weekly residential recycling services that accepted food scraps along with yard trimmings, yard trimmings tonnage in 2005 increased over 46% compared to 2004, to 33,500 tons. An estimated 15% of households participated in the food scraps collection service in 2005. It is expected that participation will grow as food scraps recycling becomes a mainstream behavior, just as can, bottle and paper recycling did during the 1990s.

This ordinance will support and complement the Public Works Agency's Business Recycling Technical Assistance Project, a targeted program described in the Strategic Plan for 75% Solid Waste Diversion, which commences in July 2006. This project will enroll businesses in organics recycling programs, as well as the new Small Business Recycling Service that is part of the Franchise Agreement with Waste Management of Alameda County, and the Agreement For Residential Recycling with California Waste Solutions. *Businesses can realize cost savings by shifting their discards from the garbage service to lower-cost food scrap recycling services.* Commercial food scraps collection services are currently provided in Oakland's competitive, open market for source-separated, commercial recyclable materials, by two service providers, Waste Management of Alameda County and Norcal Waste Systems of Alameda County. As noted, over 150 Oakland businesses already are recycling their food scraps and organic discards with these providers.

### **Litter and Marine Pollution**

Polystyrene foam, though inexpensive and effective as a food service ware product, has many drawbacks and hidden costs which are later passed on to the public. Polystyrene foam presents unique management issues because of its lightweight nature, floatability, and prevalence to be blown from disposal sites even when disposed of properly. It is estimated polystyrene foam comprises 15% of the litter collected in storm drains.<sup>4</sup> Pollution of our waterways and waterfront negatively affects tourism and quality of life in Oakland.

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<sup>4</sup> *Use and Disposal of Polystyrene in California*, California Integrated Waste Management Board, December 2004.

Polystyrene foam breaks down into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife. At least 162 marine species including most seabirds have been reported to have eaten plastics and other litter. Studies measuring plastics found up to five kilometers off the California Coast have found high levels of small plastic pieces from land-based sources, especially after storm events.<sup>5</sup> The small pieces are similar in size and sometimes more abundant than plankton, and represent a large risk to filter feeders (marine animals that eat suspended in water).

### **Toxicity and Health**

There are potential health impacts from polystyrene foam disposable food service ware associated with the production of polystyrene and with the leaching of some of its chemical components into food and drink. The general public is not typically warned of these public hazards, particularly in the immigrant and non-English-speaking community.

The process of manufacturing polystyrene pollutes the air and creates large amounts of liquid and solid waste. In the categories of energy consumption, greenhouse gas effect, and total environmental effect, polystyrene's environmental impacts were found to be second highest, behind aluminum.<sup>6</sup> Additionally, the National Bureau of Standards Center for Fire Research identified 57 chemical byproducts released during the combustion of polystyrene foam.<sup>7</sup> Benzene, a chemical component of polystyrene foam, is a known carcinogen and enters the human body either through the skin or respiratory system.<sup>8</sup> Styrene, another component of polystyrene, is a suspected carcinogen and neurotoxin and known hazardous substance. The EPA and FDA state that chemical components of polystyrene may leach from food containers into food and drink; the FDA recommends that plastic takeout containers never be microwaved for this reason.<sup>9</sup>

There have been increasing calls for legislators to protect the public from the cumulative effects chemicals we are exposed to every day in our environment.<sup>10</sup> The cumulative effects of chemicals on the human body, also known as "body burden", are mostly unknown. Body burden studies show that we are exposed to complex mixtures of chemicals that are linked to health harms.<sup>11</sup> It is our responsibility as elected officials to take precautionary steps to protect our citizens from these risks.

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<sup>5</sup> *Use and Disposal of Polystyrene in California*, California Integrated Waste Management Board, December 2004.

<sup>6</sup> *Use and Disposal of Polystyrene in California*, California Integrated Waste Management Board, December 2004.

<sup>7</sup> Earth Resource Foundation <http://www.earthresource.org/campaigns/capp/capp-styrofoam.html> Accessed April 25, 2006.

<sup>8</sup> US Occupational and Health Administration <http://www.osha.gov/SLTC/benzene/index.html> Accessed May 23, 2006.

<sup>9</sup> Environmental Protection Agency [http://www.epa.gov/safewater/contaminants/dw\\_contamfs/styrene.html](http://www.epa.gov/safewater/contaminants/dw_contamfs/styrene.html) Accessed May 23, 2006, Food and Drug Administration, [http://www.fda.gov/fdac/features/2002/602\\_plastic.html](http://www.fda.gov/fdac/features/2002/602_plastic.html) Accessed May 23, 2006.

<sup>10</sup> "Getting Serious About Chemicals", Oakland Tribune, January 31, 2006.

<sup>11</sup> Environmental Working Group <http://www.ewg.org/bodyburden/results.php> Accessed May 23, 2006

## **Environmental Obligation**

The City of Oakland has a duty to protect the natural environment and natural resources for future generations. The City may exercise environmental stewardship by reducing the amount of polystyrene foam and non-biodegradable food service ware that enters our waste stream, our storm drain, watershed and waterfront.

A common argument against polystyrene foam food service ware bans is that food service litter is not caused by a particular product or material but is instead caused by human behavior and further suggest that the use of biodegradable food service ware may actually increase litter because of the perception that it does not need to be disposed of in a trash receptacle. Some food service litter is unintended and actually a result of drifts from waste receptacles, waste haulers or events. Public education and existing litter laws have not to date eliminated food service litter from our community. Whatever the cause, the high costs of litter cleanup and collection are borne by the City and its residents and several different strategies must be utilized to address the problem. The intent of this ordinance is to deal with one specific and significant issue in Oakland (polystyrene foam) and simultaneously propose an evolution in disposable food service ware in Oakland.

Oakland has steadily moved forward with environmental initiatives and has become the 6<sup>th</sup> greenest city in the U.S.<sup>12</sup> and is currently positioning itself to become a leader in the emerging green economy.

## **POLICY DESCRIPTION**

This ordinance applies to all food vendors in the City of Oakland, including restaurants, itinerant restaurants or retail food vendors and applies to all disposable food service ware products used by them, including: containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items designed for one-time use both on and off the food vendors' premises. The ordinance also applies to the City of Oakland and its facilities, departments and franchisees. There are two parts to this ordinance:

### **A. Polystyrene Foam Ban**

This ordinance prohibits the use of all polystyrene foam disposable food service ware.

#### Alternatives to Polystyrene Foam and Their Costs

Alternative products to polystyrene foam are widely available and used widely in other cities with polystyrene foam bans. These alternative materials include

- Uncoated Paper
- Coated paper
- Cardboard
- Aluminum
- Other plastics
- Bio-products (discussed below).

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<sup>12</sup> Green Guide Institute, 2006.

In general, alternatives to polystyrene foam cost a few cents more per item and vary in price with the product type, weight and durability. The actual cost to a food vendor to switch to an alternative product will be largely dependant on the amount and types of disposable food service ware that it currently uses. Overlooking unquantified costs passed on the public such as litter, blight, environmental and possible health costs, polystyrene foam is currently the least expensive food service ware material, although prices continue to rise due to increasing crude oil prices<sup>13</sup>.

## **B. Required Transition to Biodegradable and Compostable Disposable Food Service Ware**

This ordinance would require the use of biodegradable and compostable disposable food service ware by all food vendors (not only those transitioning from polystyrene foam), as long as it is cost-neutral.

For the purposes of this ordinance, biodegradable means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal and compostable means all the materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device.

### Biodegradable and Compostable Products and Their Costs

Biodegradable and compostable food service ware includes the following:

- Uncoated paper products
- Coated paper products
- Some bio-products (discussed below).

Because of the affordability provision, compliance with this part of the ordinance will be cost-neutral to food vendors. Depending on the product, biodegradable or compostable alternatives often cost the same as their plastic counterparts. Other specific compostable products which are new to the market can cost up to twice as much before prices come down. Some biodegradable or compostable food products already cost the same or less as their counterparts, and therefore food vendors should start to use these products now. For example, compostable plastic cups (for cold drinks) and clamshells (for salads) are generally the same price as plastic cups and plastic clam shells, depending on the distributor. Many restaurants and cafes already use paper cups and plates because they are affordable and effective.

For some products such as hot food containers, biodegradable or compostable options are not always as inexpensive as coated paper or plastic containers, so while their use is encouraged, it will only be required when it becomes affordable. As the demand for biodegradable and compostable products increases, we expect to see a larger variety of

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<sup>13</sup> KPMG [http://www.kpmginsiders.com/display\\_analysis.asp?cs\\_id=140493](http://www.kpmginsiders.com/display_analysis.asp?cs_id=140493) Accessed May 23, 2006

biodegradable and compostable products at lower prices become available to Food Vendors.

We are working with the Public Works Department, CEDA, the Chambers of Commerce and others to understand and meet the education needs of Oakland food vendors and food packaging vendors so that Food Vendors will know which products are appropriate for use in Oakland and packaging vendors will understand which products to supply. It is my intent that Oakland Food vendors will be able to buy all the biodegradable and compostable products that they need from their existing vendors. We are also working with vendors of bio-products to make those products more widely available and affordable in Oakland.

The Oakland Alameda County Coliseum and Arena are transitioning to using compostable food service ware products for their food sales and Oakland restaurants such as the Nomad Café are successfully using compostable products as well.

### **Bio-products**

Bio-products are manufactured from renewable resources such as corn starch, sugar cane, or a combination of bamboo, tapioca and water. “Bio-plastics”, a subset of bio-products, are relatively new products with performance and physical characteristics of plastics but made from plant products and byproducts instead of petroleum. Like plastic and paper products, many bio-plastics can be customized with business logos.

Bio-plastic products used to meet the requirements of this ordinance must:

1. meet ASTM Standards. The American Society for Testing and Materials (ASTM) International has established standards for the compostability of bio-products (standards D6400 and D6868). Bio-plastics that meet the ASTM compostability standard demonstrate an ability to break down in a municipal compost system within a certain amount of time.
2. be clearly labeled: preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM-standard compostable plastic from non-ASTM-standard compostable plastic.

It is important to note that all types of disposable food packaging products cause environmental impacts. Most paper products, especially those for hot foods and beverages, are lined with a petroleum-based polyethylene coating. These products are not designed for composting programs but are currently generally accepted in Oakland. The majority of non-polystyrene foam disposable food service ware, with the exception of beverage containers, are made of clear polystyrene rigid plastic containers. Rigid plastic containers are made of petroleum-base polymers and many of these products have poor insulating value and are some are not intended for hot foods or drinks.

**Exemptions and Enforcement**

Enforcement of the ordinance will be on a complaint basis only. The City Administrator will be authorized to enforce the ordinance and issue fines for violations if a citizen complaint is not remedied. Food Vendors will be exempted for specific items or types of Disposable Food Service Ware if the City Administrator or his/her designee finds that a suitable Affordable Biodegradable or Compostable alternative does not exist and/or that imposing the requirements of this Chapter on that item or type of Disposable Food Service Ware would cause undue hardship.

The City Administrator or his/her designee will determine if a violation of this chapter occurred and will issue a written warning notice to the Food Vendor that a violation has occurred.

If a Food Vendor has subsequent violations, the following penalties will apply:

- a. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
- b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
- c. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.

**Effective Date**

This ordinance would become effective January 1, 2007.

Fellow Councilmembers, I urge you to support this proposed ordinance. Restricting the use of polystyrene foam food service ware in Oakland will conserve natural resources, reduce the use of non-renewable resources, protect the City of Oakland's natural environment, waterways and wildlife, and protect the public health of the residents of Oakland. This action would fulfill Article 10 of the Environmental Accords, whereby Oakland partnered with cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year.

Sincerely,



**JEAN QUAN**  
Vice-Mayor and  
Councilmember, District 4



**WHEREAS**, over 155 businesses in Oakland engage in organics recycling and it has been 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 Oakland's estuary, 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 EPA states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy." and

**WHEREAS**, a 1986 EPA report on solid waste named the polystyrene manufacturing process as the fifth largest creator of hazardous waste in the United States; 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, behind aluminum, 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 suggests leaches from polystyrene containers into food and drink; and

**WHEREAS**, styrene is a suspected carcinogen and neurotoxin which potentially threatens human health; and

**WHEREAS**, styrene has been detected in the fat tissue of every man, woman and child tested by the EPA in a 1986 study; 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 have banned polystyrene foam food service ware including several California cities, and many local businesses and several national corporations 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 in Oakland will further protect the public health and safety of the residents of Oakland, the City of Oakland's natural environment, waterways and wildlife, would advance the City's goal of Developing a Sustainable City, advance the City's goal of Zero Waste by 2020 and fulfill Article 10 of the Environmental Accords, whereby Oakland partnered with other cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year;

**THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN CHAPTER 8.07 OF THE MUNICIPAL CODE SHALL BE:**

**Section 8.07.010 Definitions**

“Affordable” means purchasable by the Food Vendor for same or less purchase cost than the non-Biodegradable, non-Polystyrene Foam alternative.

“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.

“Biodegradable” means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

“Compostable” means all materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Compostable Disposable Food Service Ware includes ASTM-Standard Bio-Plastics (plastic-like products) that are clearly labeled, preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic.

“City Facilities” means any building, structure or vehicles owned or operated by the City of Oakland, its agent, agencies, departments and franchisees.

“Customer” means any person obtaining Prepared Food from a Restaurant or Retail Food Vendor.

“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 or which are used to consume foods. 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.

“Food Vendor” means any Restaurant or Retail Food Vendor located or operating within the City of Oakland.

“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.

“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 Oakland. For the purposes of this ordinance, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises, also known as “takeout food”.

“Restaurant” means any establishment located within the City of Oakland that sells Prepared Food for consumption on, near, or off its premises by Customers. Restaurant for purposes of this Chapter includes Itinerant Restaurants, Pushcarts and Vehicular Food Vendors as those terms are defined in sections 5.49, 8.08, 8.09 of the City of Oakland Municipal Code.

“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 Oakland that sells Prepared Food.

#### **Section 8.07.040 Prohibited Food Service Ware**

- A. Except as provided in Section 8.07.042, Food Vendors are prohibited from providing Prepared Food to Customers in Disposable Food Service Ware that uses Polystyrene Foam.
- B. All City Facilities are prohibited from using Polystyrene Foam Disposable Food Service Ware and all City Departments and Agencies will not purchase or acquire Polystyrene Foam Disposable Food Service Ware for use at City Facilities.
- C. City franchises, contractors and vendors doing business with the City shall be prohibited from using Polystyrene Foam Disposable Food Service Ware in City facilities or on city projects within the City of Oakland.

#### **Section 8.07.041 Required Biodegradable and Compostable Disposable Food Service Ware**

- A. All Food Vendors using any Disposable Food Service Ware will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application. Food Vendors are strongly encouraged to reuse Food Service Ware in place of using Disposable Food Service Ware. In instances that Food Vendors wish to use a Biodegradable or Compostable Disposable Food Service Ware Product that is not Affordable, a Food Vendor may charge a “take out fee” to customers to cover the cost difference.

B. All City Facilities will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application.

C. City franchises, contractors and vendors doing business with the City will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application.

#### **Section 8.07.042 Exemptions**

A. Prepared Foods prepared or packaged outside the City of Oakland are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Oakland 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 Administrator or his/her designee finds that a suitable Affordable Biodegradable or Compostable alternative does not exist and/or that imposing the requirements of this Chapter on that item or type of Disposable Food Service Ware would cause undue hardship.

C. Polystyrene Foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

D. Disposable Food Service Ware composed entirely of aluminum is exempt from the provisions of this Chapter.

E. Emergency Supply and Services Procurement: In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter.

#### **Section 8.07.043 Liability and Enforcement**

A. The City Administrator or his/her designee will have primary responsibility for enforcement of this Chapter. The City Administrator 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, entering the premises of any Food Vendor to verify compliance.

B. Anyone violating or failing to comply with any of the requirements of this Chapter will be guilty of an infraction pursuant to Chapter 1.28 O.M.C.

C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

**Section 8.07.044 Violations - Penalties**

1. If the City Administrator or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the Food Vendor that a violation has occurred.
2. If the Food Vendor has subsequent violations of this Chapter, the following penalties will apply:
  - a. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
  - b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
  - c. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.
3. Food Vendors may request an administrative hearing to adjudicate any penalties issued under this Chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter. Any determination from the administrative hearing on penalties issued under this Chapter will be final and conclusive.

**Section 8.07.045 Effective Date**

This Chapter will become effective January 1, 2007.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006

**PASSED BY THE FOLLOWING VOTE:**

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG,  
AND  
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California