

CITY OF ALAMEDA ORDINANCE NO. 2977
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING SECTION 4-4 TO ARTICLE I (LITTERING AND MAINTENANCE OF PROPERTY) OF CHAPTER IV (OFFENSES AND PUBLIC SAFETY) TO PROHIBIT POLYSTYRENE FOAM FOOD SERVICE WARE AND AMENDING SECTION 1-5.6 OF CHAPTER 1 (GENERAL) TO AUTHORIZE ADDITIONAL CITY EMPLOYEES TO SERVE AS CODE ENFORCEMENT OFFICERS

Approved as to Form

Debra A. Highsmith
City Attorney

BE IT ORDAINED by the City Council of the City of Alameda that:

Section 1. The Alameda Municipal Code is amended by adding Section 4-4 (PROHIBITION OF POLYSTYRENE FOAM FOOD SERVICE WARE) to Article I (LITTERING AND MAINTENANCE OF PROPERTY) of Chapter IV (OFFENSES AND PUBLIC SAFETY), which shall read as follows:

4-4 POLYSTYRENE FOAM FOOD SERVICE WARE

4-4.1 Title

This section shall be known as the Alameda Polystyrene Foam Food Service Ware Reduction Law.

4-4.2 Purpose and Findings

The City Council finds that polystyrene foam food service ware constitutes a significant adverse environmental impact. Solid waste that is non-degradable or non-recyclable poses an acute problem for any program of integrated waste management. Such waste covers the City's streets, parks, public places, and open spaces. It clogs storm drains, arch culverts, and catch basins thereby significantly increasing time and expense to public works maintenance crews during a storm event. It enters the marine and natural environment and is damaging to the environment and marine wildlife.

Products which are degradable or recyclable offer environmentally sound alternatives to non-degradable and non-recyclable products currently used. By decaying into their constituent substances, degradable products, compared to their non-degradable equivalents, are less of a danger to the natural environment, less likely to be a permanent blight on the urban landscape, less likely to engender storm drainage system maintenance expenses, and less likely to cause flooding due to clogged storm drains, arch culverts, and catch basins. Recycling of products reduces costly waste of natural resources and energy used in production of new products as well as costly disposal of waste in landfills.

4-4.3 Definitions

“Affordable” means purchasable by the Food Vendor of a non-polystyrene form container for the same or less purchase cost than the non-biodegradable, non-compostable 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 and is consistent with the materials accepted at the composting facility used by the City’s franchisee for integrated waste management.

“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 consistent with the composting facility used by the City’s franchisee for integrated waste management. Compostable disposable food service ware must meet ASTM standards for compostability and must be clearly labeled.

“City facilities” means any building, structure or vehicle owned or operated by the City of Alameda, its agencies, departments and the integrated waste franchisee that are located within the City of Alameda.

“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 Alameda.

“Polystyrene foam” means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Company 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-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make items such as 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 for consumption. 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”, for the purposes of this Article, means any establishment located within the City of Alameda that sells prepared food for consumption on, near, or off its premises by customer. “Restaurant,” for purposes of this Article, includes itinerant restaurants, pushcarts and vehicular food vendors.

“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 Alameda that sells prepared food.

4-4.4 Prohibited food service ware

a. 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. Except as provided in Section 4-4.6 of this Article, agents, 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 Alameda.

4-4.5 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 provide reusable food service ware in place of disposable food service ware. In instances where food

vendors decide 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 contractors and vendors doing business with the City will use biodegradable food service ware in City facilities or on City projects within the City of Alameda, unless they can show an affordable biodegradable or compostable product is not available for a specific application.

4-4.6 Exemptions

a. Prepared foods packaged outside the City of Alameda are exempt from the provisions of this Article. Purveyors of food prepared or packaged outside the City of Alameda are encouraged to follow the provisions of this Article.

b. Food vendors that are currently existing or are established in the City by July 1, 2008, will be exempted from the provisions of this Article prohibiting the use of polystyrene foam food service ware if the City Manager or his/her designee finds that an undue hardship exists. Exemptions may be granted for up to a one-year period from the effective date of the Ordinance.

The phrase "undue hardship" shall be construed to include, but not be limited to a food vendor demonstrating to the satisfaction of the City Manager or his/her designee that there is significant difficulty or expense incurred by meeting the prohibition which directly impacts the food vendor's ability to conduct business or the food vendor has been deprived a legally protected right.

Significant difficulty will be established based on, but not necessarily limited to, the food vendor documenting the list of suppliers contacted and explaining how it has determined that no acceptable alternative is available at a commercially reasonable price, for reasons which are uniquely burdensome to the food vendor and its type of operation(s) or the food being served.

Significant cost will be established by, but not necessarily limited to, demonstrating that the acceptable alternative food ware is not available at a commercially reasonable price and the additional cost associated with providing the acceptable alternative food ware is uniquely burdensome to the food vendor based on the type of operation(s) affected, the overall size of the business, the number, type and location of its facilities and the impact on the overall financial resources of the food vendor. It shall also consider the ability to recover the additional costs through existing expenses and resources, the availability of tax credits and deductions, and/or outside funding.

c. Polystyrene foam coolers and ice chests that are intended for reuse are exempt from the provision of this Article.

d. Disposable food service ware composed entirely of aluminum is exempt from the provisions of this Article.

e. Emergency supply and services procurement: In a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety, City facilities, food vendors, agents, contractors, and vendors doing business with the city shall be exempt from the provisions of this Article.

4-4.7 Liability and enforcement

a. The Public Works Director or his/her designee will have primary responsibility for enforcement of this Article. The Public Works Director or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Article, including, but not limited to, entering the premises of any food vendor during regular business hours to verify compliance.

b. Anyone violating or failing to comply with any of the requirements of this Article will be subject to an administrative citation pursuant to Section 1.7 et seq. of the Alameda Municipal Code.

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

4-4.8 Violations – Penalties

a. Enforcement of the provisions of this Article shall be pursuant to the provisions adopted for the imposition of administrative citations and the hearing procedures related to those citations adopted under Section 1-7 et seq. of the Alameda Municipal Code.

Section 2. Section 1-5.6 (AUTHORIZATION OF CODE ENFORCEMENT OFFICERS; LIMITATIONS) of Chapter 1 (GENERAL) of the Alameda Municipal Code is amended to add new categories of employees empowered to issue citations, which shall read as follows:

1-5.6 Authorization of Code Enforcement Officers; Limitations

a. The following classification of City employees and agents shall have the authority under Penal Code Section 836.5 to issue citations for violations of the Alameda Municipal Code:

1. Fire/Building Code Compliance Officer;
2. Planning and Building Director;
3. Public Works Director;
4. Public Works Maintenance Superintendent;
5. City Engineer;
6. Building Official;
7. Combination Building Inspector;
8. Supervising Building Inspector;
9. Environmental Services Manager;
10. Environmental Services Program Specialist I and II.
11. Any other position designated by the City Manager

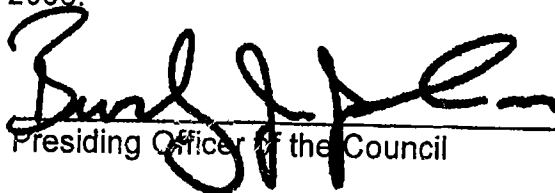
Section 3. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council of the City of Alameda hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 4. All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance hereby adopted, to the extent of such conflict only, are hereby repealed.

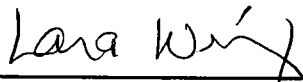
Section 5. The City hereby finds and determines that this Ordinance is not subject to the requirements of the California Environmental Quality Act (CEQA). Specifically, the basis for the exemptions include, without limitation, the following (each providing a separate and independent basis and when viewed collectively providing an overall basis for an exemption): (1) CEQA Guidelines section 15061(b)(3); (2) CEQA Guidelines section 15378(a); (3) CEQA Guidelines section 15378(b)(2); (4) CEQA Guidelines section 15308; and (5) CEQA Guidelines section 15307.

Section 6. The City Clerk of the City of Alameda is hereby directed to cause this ordinance to be published in the Official Newspaper of the City of Alameda.

Section 7. This ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect on July 1, 2008.


Presiding Officer of the Council

Attest:



Lara Weisiger, City Clerk
City of Alameda

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I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 2nd day of January, 2008 by the following vote to wit:


AYES: Councilmembers deHaan, Gilmore, Matarrese, Tam and Mayor Johnson – 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 3rd day of January, 2008.



Lara Weisiger, City Clerk
City of Alameda