

MARIN COUNTY BOARD OF SUPERVISORS
ORDINANCE NO. 2009- _____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF
MARIN PROHIBITING THE USE OF POLYSTYRENE FOAM DISPOSABLE
FOOD PACKAGING AND REQUIRING THE USE OF ENVIRONMENTALLY
PREFERABLE FOOD PACKAGING BY RETAIL FOOD VENDORS,
RESTAURANTS AND COUNTY FACILITIES LOCATED IN THE
UNINCORPORATED AREA OF THE COUNTY OF MARIN.**

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN DOES HEREBY
ORDAIN AS FOLLOWS:

SECTION 1. Chapter 7.25 is hereby added to the Marin County Code to read as
follows:

**“CHAPTER 7.25 USE OF POLYSTYRENE AND BIODEGRADABLE DISPOSABLE
FOOD PACKAGING”**

7.25.010 FINDINGS

The Marin County Board of Supervisors finds as follows:

- (a) Polystyrene foam used in food packaging is not biodegradable and is a common environmental pollutant.
- (b) Styrene, a component of polystyrene foam, is a known hazardous substance and is classified as a possible human carcinogen by the United States Environmental Protection Agency (“EPA”).
- (c) The EPA believes styrene may leach from polystyrene foam containers into food and drink and, according to EPA studies, is now detectable in the fat tissue of every man, woman and child in the United States.
- (d) Acute exposure to styrene in humans results in mucous membrane and eye irritations and gastrointestinal effects. Chronic exposure results in effects on the central nervous system including lethargy, drowsiness, staggering and sleepiness.
- (e) Polystyrene foam is manufactured from non-renewable petroleum products and in a 2004 study, the California Integrated Waste Management Board (CIWMB) ranked polystyrene’s environmental impacts second highest, behind aluminum, in the categories of energy consumption, greenhouse gas effect, and total environmental effect.
- (f) Polystyrene foam products can take hundreds of years to deteriorate in the environment or a landfill.

6/11/09 DRAFT

- (g) There is no meaningful reuse or recycling of polystyrene foam products.
- (h) Polystyrene foam litter poses an environmental threat to creeks and waterways, contaminates the public storm drain systems and has serious negative impacts on tourism and wildlife.
- (i) Polystyrene foam is notorious as a pollutant that breaks down into smaller, non-biodegradable pieces that pose significant threats to marine and other wildlife from ingestion and entanglement.
- (j) Discarded packaging from single servings of food and beverages constitutes a significant and growing portion of the waste stream.
- (k) Cost-effective, re-usable, and biodegradable food packaging products are readily available for numerous food service applications such as cold cups, plates and hinge containers and are less toxic and more environmentally friendly than polystyrene foam.
- (l) Numerous jurisdictions in California have adopted ordinances banning the use of polystyrene foam packaging with local and national businesses successfully replacing polystyrene foam and other non-biodegradable food packaging with affordable durable and reusable food service ware or biodegradable products.
- (m) Restricting the use of polystyrene foam products will protect the public health and safety of the County's residents and the County's environment, waterways and wildlife.

7.25.020 DEFINITIONS

- (a) "Biodegradable" means capable of undergoing biological decomposition from the action of naturally occurring microorganisms such as bacteria and fungi over a period of time.
- (b) "ASTM-approved" means meeting the standards of the American Society for Testing and Materials (ASTM) International.
- (c) "County" means the County of Marin.
- (d) "County Facility" means any building or structure owned, leased or operated by the County of Marin.
- (e) "Cost-effective" means not more than a 15 percent increase in purchase cost over the cost of a non-biodegradable alternative.
- (f) "Customer" means any person obtaining Prepared Food from a Restaurant or Retail Food Vendor.

6/11/09 DRAFT

(g) “Disposable Food Packaging” means all containers, bowls, plates, trays, cartons, cups, forks, knives, spoons, straws, lids, bags, sacks, wrapping and other items that are designed for one-time use and are used in the transport, storage or consumption of Prepared Food or Takeout Food. This includes, but is not limited to, packaging for food left over from partially consumed meals prepared at Restaurants or Retail Food Vendors.

(h) “Durable Food Service Items” means any container, bowl, plate, tray, cup, fork, knife, spoon, lid, and other items that are designed for multiple use and are used in the storage or consumption of Prepared Food.

(i) “Biodegradable Disposable Food Packaging” means any of the following: uncoated paper and cardboard; coated paper and cardboard that meets ASTM Standards for biodegradable coatings and liners (D6868-03); and Bio-Plastics that meet ASTM Standards for biodegradability (D6400-99). If available, bio-plastics should be clearly labeled, preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM Standard compostable bio-plastic from non-biodegradable plastic.

(j) “Polystyrene Foam” means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly 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.

(k) “Prepared Food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of the Retail Food Vendor or Restaurant. For the purposes of this Chapter, Prepared Food does not include raw, butchered meats, fish and/or poultry not packaged in the County and which are sold from a butcher case or similar appliance. Prepared Food may be eaten either on or off the premises. Prepared Food includes Takeout Food.

(l) “Restaurant” means any establishment located within the County that sells Prepared Food or Takeout Food for consumption on or off its premises. Restaurant includes itinerant restaurants, pushcarts and vehicular food vendors.

(m) “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 County that sells Prepared Food or Takeout Food.

(n) “Takeout Food” means food or beverages requiring no further preparation to be consumed and which generally are purchased to be consumed off the premises of the Restaurant or Retail Food Vendor.

6/11/09 DRAFT

7.25.030 PROHIBITED FOOD PACKAGING

(a) Except as otherwise provided in this Chapter, Retail Food Vendors and Restaurants are prohibited from providing Prepared Food or Takeout Food to Customers in, on or with Disposable Food Packaging, when any part of such packaging includes Polystyrene Foam.

(b) All County Facilities, County managed concessions, County sponsored events, and County permitted events are prohibited from using Disposable Food Packaging, when any part of such packaging includes Polystyrene Foam. No County department shall purchase or acquire Disposable Food Packaging for use at any County Facility, when any part of such packaging includes Polystyrene Foam. No organization or individual using a County Facility shall use Disposable Food Packaging at the County Facility, when any part of such packaging includes Polystyrene Foam.

(c) Polystyrene Foam coolers and ice chests intended for reuse are exempt from the provisions of this Chapter.

(d) The County shall prohibit the use of polystyrene foam or non-recyclable plastic food service containers by vendors, franchisees, lessees, contractors or other commercial food and beverage purveyors at all County Government Center facilities and County parks. Prohibited products include, but are not limited to, polystyrene foam food containers, bowls, plates, trays, cartons, and cups which are not intended for reuse, on or in which any foods or beverages are placed or packaged.

(e) The Parks Department and the Department of Public Works shall incorporate this prohibition into all new and contracts, leases, permits, agreements, etc.

(f) The use or distribution of polystyrene foam or non-recyclable plastic food service containers at special events at County facilities that are sponsored or co-sponsored by the County shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event vendors, and any other party (including non-profit organizations) who have an agreement with one or more of the co-sponsors of the event to sell goods or beverages at the event or otherwise provide an event-related service.

(g) The prohibition on the use of polystyrene foam or non-recyclable plastic food service containers will not be enforced upon individuals who are attending the function solely as a visitor or spectator. Written agreements with any vendor, including non-profit organizations, to sell food or beverages at an event that is sponsored or co-sponsored by the County of Marin, shall specifically prohibit the usage and distribution of polystyrene foam or non-recyclable food service containers.

7.25.040 BIODEGRADABLE FOOD PACKAGING

All County Facilities, Retail Food Vendors and Restaurants using Disposable Food Packaging are encouraged to use Durable Food Service Items. If Durable Food Service Items are not feasible, County Facilities, Retail Food Vendors and Restaurants are required to use Biodegradable Disposable Food Packaging in place of non-Biodegradable Disposable Food Packaging unless it can be shown that a Cost-Effective, Biodegradable product is not available for a specific application. The determination whether a Cost-Effective, Biodegradable product is or is not available for a specific application shall be made by the Deputy Director of Environmental Health Services upon sufficient evidence provided by the party seeking the exemption. At the minimum, the party seeking the exemption shall provide the Deputy Director of Environmental Health Services with a list of suppliers contacted by the party to determine if a Biodegradable alternative exists and sufficient financial information establishing undue hardship.

7.25.050 ENFORCEMENT AND PENALTIES

(a) County Facilities, Retail Food Vendors and Restaurants shall comply with the provisions of this Chapter at the time new Disposable Food Packaging is ordered and received or within ninety (90) days from the effective date of this Chapter, whichever occurs first.

(b) Enforcement of this chapter shall be pursuant to Marin County Code sections 7.24.040 through 7.24.060, inclusive.

SECTION 2: California Environmental Quality Act

This ordinance is categorically exempt from the provisions of the California Environmental Quality Act under California Code of Regulations, Title 14, Section 15308 as an action by a regulatory agency for the protection of the environment.

SECTION 3: Severability

If any article, section, subsection, subdivision, paragraph, sentence, clause, phrase or word of this ordinance is, for any reason, held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The Marin County Board of Supervisors hereby declares that it would have adopted each article, section, and sentence thereof, irrespective of the fact that any one or more of said provisions be declared unconstitutional or invalid.

SECTION 4: Effective Date

This ordinance shall be and is hereby declared to be in full force and effect as of thirty (30) days from and after the date of its passage and shall be published once before the expiration of fifteen (15) days after its passage, with the names of the supervisors voting

6/11/09 DRAFT

for and against the same in the INDEPENDENT JOURNAL, a newspaper of general circulation published in the County of Marin.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this ____ day of _____, 2009 by the following vote:

AYES: SUPERVISORS

NOES:

ABSENT:

PRESIDENT, BOARD OF SUPERVISORS

Attest:

Clerk

34181
111-004