

ORDINANCE NO. 1362

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY ADDING  
CHAPTER 8.62 OF TITLE 8 OF THE DALY CITY MUNICIPAL CODE  
RE: PROHIBITING FOOD VENDORS FROM USING POLYSTYRENE BASED  
DISPOSABLE FOOD SERVICE WARE

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The City Council of the City of Daly City, County of San Mateo, State of California,  
ORDAINS as follows:

**SECTION 1:** Chapter 8.62 is hereby added to Title 8 of the Daly City Municipal Code  
and shall read as follows:

**Chapter 8.62**

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

**8.62.010 Findings and purpose.**

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

**8.62.020 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

#### **8.62.030 Prohibited use polystyrene-based disposable food service ware.**

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

#### **8.62.040 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.

#### **8.62.050 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 San Mateo County Environmental Health Division.
  - (2) A written exemption request shall include all information and documentation necessary for the Director of the San Mateo County Environmental Health Division to make a finding that imposition of this chapter would cause an undue hardship as defined in Section 8.62.050(a).
  - (3) The Director of the San Mateo County 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 San Mateo County 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 8.62.050 (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

**8.62.060 Administrative fine.**

- (a) Grounds for Fine. A fine may be imposed upon findings made by the Director of the San Mateo County 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 San Mateo County 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 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 San Mateo County Environmental Health Division or his or her designee after the hearing, the fine shall be referred to a collection agency.

**8.62.070 Authorization of enforcement by San Mateo County personnel.**

The County of San Mateo, its officers, employees and agents are hereby authorized to enforce this ordinance on behalf of the city, within the jurisdiction areas of this city.

**SECTION 2: Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Daly City hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 3:** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378, that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project as provided by the Act, in that it does not have a potential for resulting in a detrimental physical change in the environment, directly or ultimately, as provided in Title 14, Section 15378(a), and that it is also exempt under the definition of "project" in Section 15378(b)(3) in that it concern general policy and procedure making.

**SECTION 4:** **Publication and Effective Date.** Pursuant to the provisions of Government Code Section 36933, a summary of this ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post it in the City Clerk's Office a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall (1) publish the summary and (2) post in the City Clerk's Office a certified copy of the full text of this ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting. This ordinance shall be in full force and effect thirty (30) days after adoption by the City Council of the City of Daly City

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Introduced this 23<sup>rd</sup> day of July, 2012.

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the 13<sup>th</sup> day of August, 2012, by the following vote:

AYES, Councilmembers Buenaventura, Canepa, Guingona

Klatt, Torres

NOES, Councilmembers None

Absent, Councilmembers: None



CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

SAL TORRES

MAYOR OF THE CITY OF DALY CITY

CITY COUNCIL, CITY OF DALY CITY, STATE OF CALIFORNIA  
**ORDINANCE SUMMARY**

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1. SUMMARY

Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors operating in the City of Daly City. Polystyrene, often referred to by the trademark Styrofoam, has also become a problematic environmental pollutant given its non-biodegradable, and nearly non-reusable nature. The proposed Ordinance would prohibit the use by food vendors of polystyrene-based disposable food service ware within the City of Daly City.

Chapter 8.62 is added to the Daly City Municipal prohibiting food vendors from using polystyrene based disposable food service ware.

2. CERTIFICATION AND POSTING AFTER ADOPTION

This Ordinance was adopted on August 13, 2012. Within fifteen days after adoption (1) the Summary of this Ordinance was published in a newspaper of general circulation and circulated in the City, and (2) a certified copy of this Ordinance, with the names of those City Council members voting for or against, or otherwise voting, was posted in my office, all in accordance with Government Code Section 36933.

The vote was recorded as follows:

FOR: Buenaventura, Canepa, Guingona, Klatt, Torres

AGAINST: None

ABSTAIN: None

ABSENT: None

Dated: August 13, 2012

  
CITY CLERK OF THE CITY OF DALY CITY