

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF XXXXXX
ADDING CHAPTER X.XX TO THE XXXXXX
MUNICIPAL CODE TO PROHIBIT THE USE
AND DISTRIBUTION OF POLYSTYRENE
FOAM FOOD WARE AND CERTAIN OTHER
POLYSTYRENE FOAM PRODUCTS,
AND PROHIBITING POLYSTYRENE FOAM
PRODUCTS IN BEACHES AND PUBLIC PARKS**

WHEREAS, the City of XXXXXX has a duty to protect the natural environment, the economy, and the health of its citizens;

WHEREAS, polystyrene foam, commonly but often incorrectly referred to as “styrofoam,” is an environmental pollutant that is commonly used for packaging and as food service ware in the City;

WHEREAS, due to the physical properties of polystyrene foam, the U.S. Environmental Protection Agency states that “such materials can have serious impacts upon human health, wildlife, and aquatic environment, and the economy”;

WHEREAS, polystyrene foam, a lightweight petroleum-based plastic material, is commonly littered or blown out of trash receptacles and migrates to the storm drain system and eventually to the ocean and beaches;

WHEREAS, littered polystyrene foam is difficult to clean up and litters the environment;

WHEREAS, polystyrene foam breaks down in the marine environment into smaller pieces, which are non-biodegradable and which negatively impact water quality and harms marine life that often mistake pieces of polystyrene for food;

WHEREAS, the World Economic Forum has found an increasing rate of plastics entering the oceans and predicts that, without significant action to reduce that flow, by 2050 there will be more plastic than fish in our oceans, by weight. According to the report, most of these plastics come from packaging, including food and beverage containers, and much of these plastics are made from polystyrene foam;

WHEREAS, polystyrene foam food ware and packing materials constitute a significant source of litter in the City’s streets, parks, and public places, and the cost of managing this litter is substantial;

WHEREAS, polystyrene foam is difficult or impossible to recycle, as it is easily contaminated and difficult to sort, and is not compostable;

WHEREAS, the reduction of food soiled polystyrene foam food ware may advance waste stream reduction and reduce the presence of this non-biodegradable material in landfills;

WHEREAS, polystyrene contains a chemical used in the production process called “styrene” that has been linked to cancer as well as reproductive and developmental disorders by the National Research Council, and that leaches from polystyrene into food and drink, according to the Styrene Information Research Center, whose membership consists of approximately 95% of the North American styrene industry;

WHEREAS, due to these concerns, more than 100 U.S. cities have enacted ordinances banning or restricting the sale and/or use of polystyrene foam food ware and/or packing materials, and many local businesses and national corporations have successfully replaced polystyrene foam and other non-biodegradable food ware and packing materials with alternative, cost-competitive products; and

WHEREAS, restricting the use of polystyrene foam food ware and other polystyrene foam products will protect the public, health, and safety of the City’s residents, as well as its natural environment, beaches, waterways, and wildlife.

The XXXXXX City Council hereby ordains as follows:

SECTION 1: RECITALS

The above recitals are true and correct and are incorporated as though fully set forth herein.

SECTION 2: ADDITION OF CHAPTER X.XX, “EXPANDED POLYSTYRENE FOAM WASTE REDUCTION ORDINANCE”

Chapter X.XX of the XXXXXX Municipal Code is hereby added as follows:

**CHAPTER X.XX
EXPANDED POLYSTYRENE WASTE REDUCTION ORDINANCE**

Sections:

Section X.10	Title.
Section X.20	Purpose.
Section X.30	Definitions.
Section X.40	Use and Distribution of Expanded Polystyrene Foam Food Ware and Other Products Prohibited.
Section X.50	Prohibition Against Expanded Polystyrene Foam Products in Public Spaces.
Section X.60	Penalties and Enforcement

Section X.10 Title.

This Chapter shall be referred to as the “EXPANDED POLYSTYRENE WASTE REDUCTION ORDINANCE.”

Section X.20 Purpose.

The City of XXXXXX has a duty to protect the natural environment, the economy, and the health of its citizens. The purpose of this Chapter is to regulate the use and distribution of Polystyrene Foam products in order to protect the health of XXXXX’s citizens and promote a healthy environment and sustainable practices within the City.

Section X.30 Definitions.

For the purpose of this Chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

- (a) “City Contractors and Lessees” means any Person or entity that has a contract with the City for public works or improvements to be performed; for a franchise, concession, or lease of property; or for goods and services or supplies to be purchased at the expense of the City, or to be paid for out of City monies.
- (b) “City Facility” means any building, structure, or vehicle owned or operated by the City.
- (c) “Polystyrene Foam” means blown polystyrene and expanded and extruded foams 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 cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons, and is commonly but often incorrectly referred to as “styrofoam.”
- (d) “Food Ware” means all containers, bowls, plates, trays, cups, lids, straws, forks, spoons, knives, napkins, and other like items that are designed for one-time use for Prepared Foods, including without limitation, service ware for takeout foods, and/or leftovers from partially consumed meals.
- (e) “Packing Material” means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage.
- (f) “Person” means an individual, trust, firm, or company, including a government corporation, partnership, or association.

- (g) “Prepared Food” means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared (collectively “prepared”) for individual customers or consumers. Prepared Food does not include raw eggs, butchered meats, fish, and/or poultry sold from a butcher, a refrigerator case, or similar retail appliance.

Section X.40 Use and Distribution of Polystyrene Foam Food Ware and Other Products Prohibited.

- (a) City Facilities may not use, provide, or make available Prepared Food in Food Ware made, in whole or in part, from Polystyrene Foam.
- (b) Any Person who rents City Facilities may not bring or use Polystyrene Foam Food Ware in the City Facility. This requirement shall be a requirement in the City’s Special Events and City Facility rental policies and any related rental agreements.
- (c) City Contractors and Lessees in City Facilities and while performing under a City contract or lease may not use, provide, or make available Prepared Food in Food Ware made, in whole or in part, from Polystyrene Foam.
- (d) City Departments may not purchase, acquire, or use Food Ware that is made, in whole or in part, from Polystyrene Foam.
- (e) City Departments may not purchase, acquire, or use Packing Materials, including shipping boxes and packing peanuts, made, in whole or in part, from Polystyrene Foam.

Section X.50 Prohibition Against Expanded Polystyrene Products in Public Spaces.

- (a) All unencapsulated Polystyrene Foam products are prohibited within the City’s beaches and public parks, and on any City marina, pier, dock, or boat ramp. Prohibited items include but are not limited to:
 - a. Polystyrene Foam Food Ware,
 - b. Polystyrene Foam coolers, ice chests, or similar containers that are not wholly encapsulated or encased within a more durable material, and
 - c. Polystyrene Foam pool or beach toys that are not wholly encapsulated or encased within a more durable material.
- (b) Any Person who brings any unencapsulated Polystyrene Foam product, including those listed in subsection X.50 (a), to a beach or public park within the City, or on to any City marina, pier, dock, or boat ramp shall be subject to fines and enforcement in accordance with Section X.60.

Section X.60 Penalties and Enforcement

- (a) The City Manager, or his or her designee (the “Enforcement Officer”), shall issue a written warning to any Person he or she determines is violating this Chapter. If after issuing a written warning of violation, the Enforcement Officer

finds that the Person continues to violate the provisions of this Chapter, the Enforcement Officer may impose the various sanctions provided in this Section.

- (b) Any Person who violates the provisions of Sections X.40 and X.50 following a written warning as described in subsection X.60 (a) shall be subject to the following fines:
- a. A fine of no more than \$100 for a first violation;
 - b. A fine of no more than \$200 for a second violation; and
 - c. A fine of no more than \$500 for each subsequent violation within the same 12-month period.

SECTION 3: SEVERABILITY

The City Council declares that should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

SECTION 4: NO CONFLICT WITH FEDERAL OR STATE LAW

This Chapter is intended to be a proper exercise of the City's police power to promote the general welfare and role as a market participant, to operate only upon its own officers, agents, employees, and facilities, and other persons acting within the City's boundaries, and not to regulate inter-city or interstate commerce.

SECTION 5: EFFECTIVE DATE

This ordinance shall take effect thirty (30) days after its second reading.

SECTION 6: CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

Passed and adopted by the City Council of XXXXXX at a regular meeting held on the ___ day of _____, 2018, by the following vote: