

File No. 160383 Committee Item No. 2  
 Board Item No. 20

**COMMITTEE/BOARD OF SUPERVISORS**  
 AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date June 16, 2016

Board of Supervisors Meeting Date JUNE 28, 2016

**Cmte Board**

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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**OTHER (Use back side if additional space is needed)**

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Department of the Environment Memo - 04/18/2016</u>   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referral CEQA - 04/26/2016</u>                        |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referral FYI - 04/26/2016</u>                         |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referral SBC - 04/26/2016</u>                         |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Response Categorically Exempt - 05/06/2016</u>        |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Response SBC - 05/27/2016</u>                         |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Commission on the Environment Reso No. 009-16-COE</u> |
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Completed by: Erica Major Date June 10, 2016  
 Completed by: JMM Date 6/21/2016

1 [Environment Code - Food Service and Packaging Waste Reduction]

2  
3 **Ordinance amending the Environment Code to prohibit the sale of food service ware**  
4 **and other specified products including packing materials that are made from**  
5 **polystyrene foam or that are non-recyclable and non-compostable; setting an operative**  
6 **dates ~~date of January 1, 2017~~; and affirming the Planning Department's determination**  
7 **under the California Environmental Quality Act.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
11 **Board amendment additions** are in double-underlined Arial font.  
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
13 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. The Planning Department has determined that the actions contemplated in  
17 this ordinance comply with the California Environmental Quality Act (California Public  
18 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the  
19 Board of Supervisors in File No. 160383 and is incorporated herein by reference. The Board  
20 affirms this determination.

21 Section 2. Findings.

22 (a) The City and County of San Francisco has a duty to protect the natural  
23 environment, the economy, and the health of its citizens.

1 (b) Polystyrene foam, commonly but often incorrectly referred to as "styrofoam" aka  
2 "Styrofoam", is an environmental pollutant that is commonly used for packaging and as food  
3 service ware in the City and County of San Francisco.

4 (c) Due to the physical properties of polystyrene foam, the U.S. Environmental  
5 Protection Agency (EPA) states "that such materials can have serious impacts upon human  
6 health, wildlife, and aquatic environment, and the economy."

7 (d) Polystyrene foam packaging and food service ware cannot be recycled through  
8 San Francisco's recycling (blue bin) collection program and is otherwise difficult or impossible  
9 to recycle, and is not compostable. Compostable or recyclable disposable packaging and  
10 food service ware are an affordable, safe, more ecologically sound alternative.

11 (e) Disposable food service ware and packaging foam constitute a significant source of  
12 litter on San Francisco's street, parks, and public places, and the costs of managing this litter  
13 is substantial.

14 (f) A new report by the Ellen MacArthur Foundation, World Economic Forum, and  
15 McKinsey & Company finds an increasing rate of plastics entering the oceans and predicts  
16 that, without significant action to reduce that flow, by 2050 there will be by weight more plastic  
17 in the oceans of the world than fish. According to the report, most of these plastics come from  
18 packaging, including food and beverage containers, and much of these plastics are made  
19 from polystyrene foam.

20 (g) (f) The Bay Area Stormwater Management Agencies Association and Caltrans  
21 found that between 8 to 15% of plastics in San Francisco storm drains are polystyrene foam.  
22 The San Francisco Estuary Institute found that 8% of the microplastics entering San  
23 Francisco Bay from wastewater treatment facilities are polystyrene foam. And a recent study  
24 concluded that 71% of the microplastics found in the Los Angeles and San Gabriel Rivers  
25 were polystyrene foam pieces.

1            ~~(h) (g)~~ Polystyrene foam is a notorious pollutant that breaks down into smaller, non-  
2 biodegradable pieces that are often mistaken for fish eggs by seabirds and other marine life.

3            ~~(i) Unlike harder plastics, polystyrene~~ Polystyrene contains a chemical used in the  
4 production process called “styrene” that is ~~metabolized after ingestion and threatens the entire~~  
5 ~~food chain, including humans who consume contaminated marine wildlife.~~

6            ~~(h) Styrene~~ has been linked to cancer as well as reproductive and developmental  
7 disorders by the National Research Council, and that styrene leaches from polystyrene into  
8 food and drink, according to the Styrene Information Research Center, whose membership  
9 consists of approximately 95% of the North American styrene industry. ~~U.S. Food and Drug~~  
10 ~~Administration.~~

11            (j) Styrene is also a chemical known by the State of California to cause cancer, and is  
12 included as a listed chemical under the Safe Drinking Water and Toxic Enforcement Act of  
13 1986 (Proposition 65) by the California Office of Environmental Health Hazard Assessment.

14            ~~(k) (i)~~ The general public typically is not warned or aware of any potential hazard from  
15 styrene, particularly in the immigrant and non-English speaking community.

16            ~~(l) (i)~~ Due to these concerns, more than 100 U.S. cities have enacted ordinances  
17 banning or restricting the sale and/or use of polystyrene foam service ware and/or packaging  
18 materials, and many local businesses and a number of national corporations have  
19 successfully replaced polystyrene foam and other non-biodegradable food service ware and  
20 packaging materials with alternative, cost-competitive products.

21            ~~(m) (k)~~ San Francisco food service providers are already prohibited, under  
22 Environment Code Section 1604, from using polystyrene food containers, and this ordinance  
23 extends such prohibition to the sale of such products.

24            ~~(n) (i)~~ The ordinance also prohibits packaging providers from selling polystyrene foam  
25 packaging materials, including polystyrene foam “packing peanuts.”



- 1            ~~Sec. 1608.~~            ~~Operative Date.~~  
2            Sec. ~~1608~~ ~~1609~~.            Severability.  
3            Sec. ~~1609~~ ~~1610~~.            No Conflict With Federal or State Law.  
4            Sec. ~~1610~~ ~~1611~~.            Undertaking for the General Welfare.

5  
6    **SEC. 1601. TITLE.**

7            This Chapter 16 Ordinance shall be known as the Food Service and Packaging Waste  
8    Reduction Ordinance.

9  
10   **SEC. 1602. DEFINITIONS.**

11            For purposes of this Chapter 16, the following definitions shall apply:

12            ~~(a) "Affordable" means purchasable for not more than 15 percent more than the purchase cost~~  
13    ~~of the non-Biodegradable non-Compostable or non-recyclable alternative(s).~~

14            ~~(b) "ASTM Standard Specification" means meeting the standards of the Standard~~  
15    ~~Specification for Compostable Plastics D6400 or Standard Specification for Biodegradable Plastics~~  
16    ~~D6868, as adopted or subsequently amended by the American Society for Testing and Materials~~  
17    ~~(ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as~~  
18    ~~those standards may be amended.~~

19            "City" means the City and County of San Francisco.

20            ~~(c) "Compostable" means all the materials in the product or package will break down into, or~~  
21    ~~otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely~~  
22    ~~manner in San Francisco's Composting Program. Compostable Disposable Food Service Ware must~~  
23    ~~meet ASTM Standards for compostability and any bio-plastic or plastic-like product must be clearly~~  
24    ~~labeled, preferably with a color symbol, to allow proper identification such that San Francisco's~~  
25    ~~compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from~~

1 ~~non-ASTM Standard Compostable plastic. For the purposes of this ordinance the term biodegradable~~  
2 ~~shall have the same meaning as compostable. This ordinance uses the terms biodegradable and~~  
3 ~~compostable interchangeably and in all cases whether the terms are used separately, in the disjunctive~~  
4 ~~or in the conjunctive they shall always be interpreted and applied consistent with this definition of the~~  
5 ~~term "compostable".~~

6 ~~(d) "City Administrator" means the City Administrator appointed under Section 3.104 of the~~  
7 ~~Charter or his or her designee.~~

8 ~~(e) "City contractors and lessees" means any person or entity that has a contract with~~  
9 ~~the City for public works or improvements to be performed, for a franchise, concession, or~~  
10 ~~lease of property, for grant monies or goods and services or supplies to be purchased at the~~  
11 ~~expense of the City and County, or to be paid out of monies deposited in the Treasury or out of~~  
12 ~~trust monies under the control of or collected by the City and County.~~

13 ~~(f) "City Facility" means any building, structure, or vehicle owned or operated by the~~  
14 ~~City of San Francisco.~~

15 ~~(g) "City Facility Food Provider" means an entity that provides, but does not sell,~~  
16 ~~Prepared Food in City Facilities, including without limitation, San Francisco General Hospital,~~  
17 ~~Laguna Honda Hospital, the San Francisco County Jail, and the San Bruno Jail Complex.~~

18 ~~"Compostable" means material that can be broken down into, or otherwise become part of,~~  
19 ~~usable compost (e.g., soil-conditioning material) in a safe and timely manner and as accepted in San~~  
20 ~~Francisco's compostables collection program. "Compostable" also includes a plastic-like material if~~  
21 ~~the material meets the ASTM Standard Specification for compostability and the product is labeled in~~  
22 ~~accordance with California Public Resources Code Section 42357 et seq. and Department of the~~  
23 ~~Environment regulations for easy identification of Compostable products meeting the ASTM Standard~~  
24 ~~Specification for compostable plastics.~~

25 ~~"Department" means the Department of the Environment.~~

1 "Director" means the Director of the Department of the Environment, or his or her designee.

2 ~~(h) "Disposable Food Service Ware" means all containers, bowls, plates, trays, carton, cups,~~  
3 ~~lids, straws, forks, spoons, knives, napkins, and other items that are designed for one-time use for~~  
4 ~~Prepared Foods, including without limitation, service ware for takeout foods and/or leftovers from~~  
5 ~~partially consumed meals prepared by Food Vendors. The term "Disposable Food Service Ware" does~~  
6 ~~not include items composed entirely of aluminum, or polystyrene foam coolers and ice chests that are~~  
7 ~~intended for reuse.~~

8 "Distribute" means the sale, offer for sale, or other transfer of possession of an item for  
9 compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of  
10 possession of another item for compensation.

11 "Egg Carton" means a carton for raw eggs sold to consumers from a refrigerator case or  
12 similar retail appliance.

13 "Food Service Ware" means all containers, bowls, plates, trays, cups, lids, straws, forks,  
14 spoons, knives, napkins, and other like items that are designed for one-time use for Prepared Foods,  
15 including without limitation, service ware for takeout foods and/or leftovers from partially consumed  
16 meals prepared by Food Vendors. The term "Food Service Ware" does not include items composed  
17 entirely of aluminum, or polystyrene foam coolers and ice chests.

18 ~~(i) "Food Vendor" means any Restaurant or Retail Food Vendor located or operating~~  
19 ~~within the City and County of San Francisco.~~

20 "Meat and Fish Tray" means a tray for raw meat, fish, or poultry sold to consumers from a  
21 refrigerator case or similar retail appliance.

22 "Packing Material" means material used to hold, cushion, or protect items packed in a  
23 container for shipping, transport, or storage.

24 ~~(j) "Person" means an individual, trust, firm, joint stock company, corporation including~~  
25 ~~a government corporation, partnership, or association.~~

1           ~~(k)~~ "Polystyrene Foam" means blown polystyrene and expanded and extruded foams  
2 ~~(sometimes called Styrofoam™)~~ which are thermoplastic petrochemical materials utilizing a  
3 styrene monomer and processed by any number of techniques including, but not limited to,  
4 fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding,  
5 and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally  
6 used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.

7           ~~(l)~~ "Prepared Food" means food or beverages, which are serviced, packaged, cooked,  
8 chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared (collectively  
9 "prepared") within the City *and County of San Francisco* for individual customers or consumers.  
10 ~~For the purpose of this Chapter,~~ Prepared Food includes take-out food, but does not include raw,  
11 butchered meats, fish, and/or poultry sold from a butcher case or similar retail appliance.

12           ~~(m)~~ "Recyclable" means material that can be sorted, cleansed, and reconstituted using  
13 ~~San Francisco's~~ the City's available recycling collection programs for the purpose of using the  
14 altered form in the manufacture of a new product. Recycling does not include burning,  
15 incinerating, converting, or otherwise thermally destroying solid waste.

16           ~~(n)~~ "Restaurant" means any establishment located within the City *and County of San*  
17 *Francisco* that sells Prepared Food for consumption on, near, or off its premises. ~~For purposes~~  
18 ~~of this Chapter,~~ The term includes a Restaurant operating from a temporary facility, cart,  
19 vehicle, or mobile unit.

20           ~~(o)~~ "Retail Food Vendor" means any store, shop, sales outlet, or other establishment,  
21 including a grocery store or a delicatessen, other than a Restaurant, located within the City  
22 ~~and County of San Francisco~~ that sells Prepared Food.

23  
24 / / /  
25 / / /

1 **SEC. 1603. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE WARE**  
2 **PROHIBITED.**

3 (a) No person may sell, offer for sale, or otherwise Distribute within the City (1) any Food  
4 Service Ware that is not either Compostable or Recyclable using the City's then-available collection  
5 programs, or (2) any Food Service Ware made, in whole or in part, from Polystyrene Foam.

6 (b) The Director shall, after a noticed public hearing, adopt a list of suitable alternative  
7 Compostable or Recyclable Food Service Ware products. "Suitable alternative Compostable or  
8 Recyclable Food Service Ware products" means Food Service Ware products that the Director  
9 determines serve the same intended purpose as non-compliant products, meet the standards for what is  
10 Compostable and/or Recyclable set under this Chapter 16, and are reasonably affordable. The  
11 Director shall regularly update the list by regulation.

12 If a product is included on the Director's list, it will be deemed to comply with this  
13 Section 1603. If a product is not included on the Director's list, the person using the product as Food  
14 Service Ware will have the burden of establishing to the Director's satisfaction that the product  
15 complies with this Section.

16  
17 **SEC. 1604 1603. PROHIBITED USE OF NON-COMPLIANT DISPOSABLE FOOD SERVICE**  
18 **WARE PROHIBITED.**

19 (a) Food Vendors may not sell, offer for sale, or otherwise Distribute Prepared Food (1) in  
20 Disposable Food Service Ware made, in whole or in part, from that contains Polystyrene Foam, or  
21 (2) in Food Service Ware that is not Compostable or Recyclable.

22 (b) City Facility Food Providers may not provide Prepared Food to City Facilities (1) in  
23 Disposable Food Service Ware made, in whole or in part, from that contains Polystyrene Foam, or  
24 (2) in Food Service Ware that is not Compostable or Recyclable.

1 (c) City Departments may not purchase, acquire, or use *Disposable* Food Service Ware  
2 for Prepared Food (1) where the Food Service Ware is made, in whole or in part, from that contains  
3 Polystyrene Foam, or (2) where the Food Service Ware is not Compostable or Recyclable.

4 (d) City contractors and lessees may not use *Disposable* Food Service Ware for  
5 Prepared Food that contains Polystyrene Foam in City Facilities and while performing under a City  
6 contract or lease (1) where the Food Service Ware is made, in whole or in part, from Polystyrene  
7 Foam, or (2) where the Food Service Ware is not Compostable or Recyclable.

8 (e) The Director shall, after a noticed public hearing, adopt a list of suitable alternative  
9 Compostable or Recyclable Food Service Ware products. "Suitable alternative Compostable or  
10 Recyclable Food Service Ware products" means Food Service Ware products that the Director  
11 determines serve the same intended purpose as non-compliant products, meet the standards for what is  
12 Compostable and/or Recyclable set under this Chapter 16, and are reasonably affordable. The  
13 Director shall regularly update the list by regulation.

14 If a product is included on the Director's list, it will be deemed to comply with this  
15 Section 1604. If a product is not included on the Director's list, the person using the product as Food  
16 Service Ware will have the burden of establishing to the Director's satisfaction that the product  
17 complies with this Section.

18 (f) It shall not be a violation of this Section 1604 to sell, provide, or purchase Prepared Food  
19 packaged in Food Service Ware otherwise prohibited by subsections (a) through (c), or to use Food  
20 Service Ware otherwise prohibited by subsection (d), if the Prepared Food is packaged outside the City  
21 and is sold or otherwise provided to the consumer in the same Food Service Ware in which it originally  
22 was packaged. Businesses packaging Prepared Food outside the City are encouraged to use Food  
23 Service Ware that is Compostable or Recyclable and is not made, in whole or in part, from Polystyrene  
24 Foam.

1 ~~SEC. 1604. REQUIRED BIODEGRADABLE/COMPOSTABLE OR RECYCLABLE~~  
2 ~~DISPOSABLE FOOD SERVICE WARE.~~

3 ~~(a) All Food Vendors using any Disposable Food Service Ware shall use a suitable Affordable~~  
4 ~~alternative Biodegradable/Compostable or Recyclable product, unless there is no suitable Affordable~~  
5 ~~Biodegradable/Compostable or Recyclable product available as determined by the City Administrator~~  
6 ~~in accordance with this subsection. Not later than 30 days before the operative date of this Chapter,~~  
7 ~~and after a public hearing, the City Administrator shall adopt a list of available suitable Affordable~~  
8 ~~Biodegradable/Compostable or Recyclable alternatives for each product type. The City Administrator~~  
9 ~~shall regularly update the list.~~

10 ~~(b) All City Facility Food Providers and City departments using any Disposable Food Service~~  
11 ~~Ware shall use Biodegradable/Compostable or Recyclable Disposable Food Service Ware unless there~~  
12 ~~is no Affordable Biodegradable or Compostable product available as determined by the City~~  
13 ~~Administrator in accordance with Subsection 1604(a).~~

14 ~~(c) City contractors and lessees using any Disposable Food Service Ware shall use suitable~~  
15 ~~Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while~~  
16 ~~performing under a City contract or lease unless there is no suitable Affordable~~  
17 ~~Biodegradable/Compostable or recyclable product available as determined by the City Administrator~~  
18 ~~in accordance with Subsection 1604(a).~~

19  
20 SEC. 1605. OTHER POLYSTYRENE FOAM PRODUCTS.

21 (a) No person may sell, offer for sale, or otherwise Distribute for compensation within the City:

22 (1) Packing Materials, including shipping boxes and packing peanuts;

23 (2) coolers, ice chests, or similar containers;

24 (3) pool or beach toys; or

25 (4) dock floats, mooring buoys, or anchor or navigation markers;

1 made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a  
2 more durable material.

3 (b) No person may sell, offer for sale, or otherwise Distribute for compensation within the City  
4 Meat and Fish Trays and Egg Cartons made, in whole or in part, from Polystyrene Foam, or that are  
5 not Compostable and/or Recyclable, either as separate items or as part of the sale of raw meat, fish,  
6 poultry, or eggs sold to consumers from a refrigerator case or similar retail appliance.

7 (c) No person may sell, offer for sale, or otherwise Distribute within the City any Packing  
8 Materials made, in whole or in part, from Polystyrene Foam, as prohibited in subsection (a), or that  
9 are not Compostable or Recyclable. For purposes of this Section 1605, Distribution of Packing  
10 Materials shall include using such materials to hold, cushion, or protect items to be packed in a  
11 container for shipping, transport, or storage, for compensation, where the packing takes place within  
12 the City.

3 (d) For purposes of this Section 1605, Distribution of Packing Material shall not include:

14 (1) Receiving shipments within the City that include Polystyrene Foam, or some other  
15 non-Compostable and non-Recyclable product, used as Packing Material;

16 (2) Re-using Packing Materials for shipping, transport, or storage within the same  
17 distribution system, where the Packing Materials are not sent to a consumer or end user;

18 (3) Donating used Packing Materials to another person, where the donor receives  
19 nothing of value for the donated Packing Materials; or.

20 (4) Using Packing Materials donated under subsection (d)(3) for shipping, transport, or  
21 storage, where the person using the Packing Materials receives nothing of value for the donated  
22 Packing Materials.

23  
24 / / /  
25 / / /

1 **SEC. ~~1606 1605~~. IMPLEMENTATION, ~~CITY CONTRACTS AND LEASES~~.**

2 (a) The Director shall create, maintain, and regularly update the product lists referenced in  
3 Sections 1603(b) and 1604(e).

4 (b) (a) The Director ~~City Administrator~~ is authorized to promulgate regulations,  
5 guidelines and forms and to take any and all other actions reasonable and necessary to  
6 implement and enforce this Chapter.

7 (c) The Director may waive the provisions of Sections 1603(a), 1604(a), and 1605(a), (b), and  
8 (c) due to a feasibility-based hardship. The person seeking the waiver must demonstrate to the  
9 Director's satisfaction that no reasonably feasible alternative exists to a specific non-compliant  
10 product.

11 (d) The Director may waive the provisions of Sections 1603(a), 1604(a), and 1605(a), (b), and  
12 (c) due to a financial hardship. The person seeking the exemption must demonstrate to the Director's  
13 satisfaction both (1) that the applicant has a gross income of less than \$500,000 on the applicant's  
14 annual income tax filing for the most recent tax year, and (2) that with respect to each specific  
15 non-compliant product, there is no suitable and reasonably affordable alternative product available.

16 (e) A person seeking a waiver under subsections (c) or (d) of this Section 1606 must submit a  
17 written application on a form approved by the Director. The Director may require the applicant to  
18 submit additional information or documentation to make a determination regarding the waiver  
19 requested. The Director shall review requests for waivers on a case-by-case basis, and may grant the  
20 waiver in whole or in part, with or without conditions, for a period of up to 36 months. An applicant  
21 for renewal of a waiver must apply for a new waiver period no later than 60 days prior to the  
22 expiration of the then-current period to preserve a continuous waiver status. The Director shall review  
23 each application anew and base his or her determination on the most current information available.  
24 The Director's determination shall be final and shall not be subject to appeal.

1           ~~(f) (b) A City officer, employee, or department Any person~~ may seek a waiver from the  
2 requirements of subsections (b), (c), or (d) of Section 1604 of this Chapter by filing a request on a  
3 form approved specified by the Director City Administrator. The Director City Administrator,  
4 consistent with this Chapter, may grant a waiver in whole or in part, with or without conditions, waive  
5 any specific requirement of this Chapter for a period of up to 36 months one year if the officer,  
6 employee, or department person seeking the waiver has demonstrated to the Director's satisfaction  
7 that strict application of the specific requirement would create an undue hardship or practical  
8 difficulty not generally applicable to other persons in similar circumstances, or the waiver is  
9 otherwise justified. ~~The City Administrator's decision to grant or deny a waiver shall be in writing and~~  
10 ~~shall be final.~~

11           ~~(g) In addition to individual waivers provided for under subsections (c), (d), and (f) of this~~  
12 Section 1606, the Director may waive the provisions of Section 1605 with respect to particular  
13 categories of uses of Packing Materials or of Egg Cartons or Meat and Fish Trays made, in whole or in  
14 part, from Polystyrene Foam, or other non-Compostable or non-Recyclable material. The Director  
15 may grant a waiver under this subsection (g) in whole or in part, with or without conditions, for a  
16 period of up to 36 months, upon finding that no suitable and reasonably affordable alternative to use of  
17 the non-compliant product is feasible. The Director's determination shall be final and shall not be  
18 subject to appeal.

19           ~~(e) All City contracts and leases, including without limitation, contracts with City Facility Food~~  
20 ~~Providers, shall contain the following minimum language: "Contractor agrees to comply fully with and~~  
21 ~~be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San~~  
22 ~~Francisco Environment Code Chapter 16, including the remedies provided, and implementing~~  
23 ~~guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a~~  
24 ~~part of this agreement as though fully set forth. This provision is a material term of this agreement. By~~  
25 ~~entering into this agreement, contractor agrees that if it breaches this provision, City will suffer actual~~

1 ~~damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the~~  
2 ~~sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars~~  
3 ~~(\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars~~  
4 ~~(\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the~~  
5 ~~damage that City will incur based on the violation, established in light of the circumstances existing at~~  
6 ~~the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed~~  
7 ~~monetary damages sustained by City because of contractor's failure to comply with this provision."~~  
8

9 **SEC. ~~1607~~ 1606. ENFORCEMENT AND PENALTIES.**

10 (a) The ~~Director City Administrator~~ shall issue a written warning to any person he or she  
11 determines is violating ~~Sections 1603(a), 1604(a), (b), or (d), or 1605(a), (b), or (c) Sections 1603(a)~~  
12 ~~or 1604(a)~~ of this Chapter. If after issuing a written warning of violation from the ~~Director City~~  
13 ~~Administrator~~, the ~~Director City Administrator~~ finds that person continues to violate the  
14 provisions of ~~Sections 1603(a), 1604(a), (b), or (d), or 1605(a), (b), or (c) Sections 1603(a) or~~  
15 ~~1604(a)~~, the ~~Director City Administrator~~ may apply for or impose the various sanctions provided  
16 in this Section.

17 (b) Any person who violates the provisions of ~~Sections 1603(a), 1604(a), (b), or (d), or~~  
18 ~~1605(a), (b), or (c) Sections 1603(a) or 1604(a)~~ of this Chapter shall be guilty of an infraction. If  
19 charged as an infraction, upon conviction thereof, said person shall be punished for the first  
20 offense by a fine of not more than \$100.00 for a first violation; not more than \$200.00 for a  
21 second violation in the same year and not more than ~~\$500.00~~ \$250.00 for each subsequent  
22 violation in the same ~~12-month period~~ year.

23 (c) The ~~Director City Administrator~~ may issue an administrative ~~fine~~ civil liability citation  
24 to any such person violating Sections 1603(a), 1604(a), (b), or (d), or 1605(a), (b), or (c) in  
25 accordance with Administrative Code Chapter 100, which is hereby incorporated by reference. in an

1 amount not exceeding \$100.00 for the first violation, an amount not exceeding \$200.00 for the second  
2 violation in the same year, and an amount not exceeding \$500.00 for each subsequent violation in the  
3 same year. ~~In determining administrative civil penalties, the City Administrator shall consider the  
4 extent of harm caused by the violation, the nature and persistence of the violation, the length of time  
5 over which the violation occurs, the frequency of past violations, any action taken to mitigate the  
6 violation, and the financial burden to the violator.~~

7 Any person to whom the City Administrator issues a written warning of violation or an  
8 administrative civil liability citation may request an administrative hearing to appeal such warning or  
9 determination of liability. ~~Not later than 30 days before the operative date of this Chapter, and after a  
10 public hearing, the City Administrator shall promulgate rules and procedures for requesting and  
11 conducting an administrative hearing under this Chapter. In any administrative hearing under this  
12 Article, all parties involved shall have the right to offer testimonial, documentary, and tangible  
13 evidence bearing on the issues, to see and copy all documents and other information the City relies on  
14 in the proceeding, and to confront and cross-examine any witnesses against them. A decision by the  
15 hearing officer shall be final. Any person assessed a penalty under this subsection may contest such  
16 decision to the Superior Court within 20 days after service of the City's decision.~~

17 (d) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this  
18 Chapter, including without limitation, civil penalties in an amount not exceeding \$100.00 for  
19 the first violation, \$200.00 for the second violation, and \$500.00 ~~\$250.00~~ for each subsequent  
20 violation in any given 12-month period year.

21 (e) The City may not recover both administrative and civil penalties pursuant to  
22 subsections ~~Subsections~~ (c) and (d) ~~of this Section~~ for the same violation. Penalties collected  
23 under subsections ~~Subsections~~ (c) and (d) ~~of this Section~~, which may include recovery of  
24 enforcement costs, shall be used to fund implementation and enforcement of this Chapter.

1 **~~SEC. 1607. REPORT TO THE BOARD OF SUPERVISORS.~~**

2 ~~No later than June 1, 2008, the Director of the Department of the Environment, in consultation~~  
3 ~~with the City Administrator and with input from members of the public, shall submit to the Board of~~  
4 ~~Supervisors a report recommending changes, if any, to this Chapter, including whether the ban~~  
5 ~~imposed by this Chapter should be extended to other products, as supported by the report. If the~~  
6 ~~Director recommends banning additional products, the report must include an estimate of the costs and~~  
7 ~~benefits of compliance with a ban on additional products, including the increased costs to the City as~~  
8 ~~well as to the City's food service industry.~~

9  
10 **~~SEC. 1608. OPERATIVE DATE.~~**

11 ~~This ordinance shall become operative on June 1, 2007.~~

12  
13 **~~SEC. 1608 1609. SEVERABILITY.~~**

14 If any section, subsection, sentence, clause, or phrase of this Chapter 16 is for any  
15 reason held to be invalid or unconstitutional by a decision of any court of competent  
16 jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter.  
17 The Board of Supervisors hereby declares that it would have passed this Chapter and each  
18 and every section, subsection, sentence, clause, or phrase not declared invalid or  
19 unconstitutional without regard to whether any portion of this Chapter would be subsequently  
20 declared invalid or unconstitutional.

21  
22 **~~SEC. 1609 1610. NO CONFLICT WITH FEDERAL OR STATE LAW.~~**

23 ~~This Chapter 16 is intended to be a proper exercise of the City's police power and role as a~~  
24 ~~market participant, to operate only upon its own officers, agents, employees, and facilities, and other~~  
25 ~~persons acting within the City's boundaries, and not to regulate inter-city or interstate commerce.~~

1 Nothing in this *Chapter Ordinance* shall be interpreted or applied so as to create any  
2 requirement, power or duty in conflict with any federal or state law.

3  
4 **SEC. ~~1610~~ 1611. UNDERTAKING FOR THE GENERAL WELFARE.**

5 In undertaking the implementation of this Chapter 16, the City is assuming an  
6 undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its  
7 officer and employees, an obligation for breach of which it is liable in money damages to any  
8 person who claims that such breach proximately caused injury.

9  
10 Section 4. Effective Date; Operative Date. This ordinance shall become effective 30  
11 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor  
12 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,  
13 or the Board of Supervisors overrides the Mayor's veto of the ordinance. This ordinance shall  
14 become operative on January 1, 2017; provided, however, that the application of this  
15 ordinance to Meat and Fish Trays shall become operative on July 1, 2017.

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23 / / /  
24 / / /  
25 / / /

1 Section 5. Scope of Ordinance. In enacting this Chapter 16, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.

7  
8 APPROVED AS TO FORM:  
9 DENNIS J. HERRERA, City Attorney

10 By:

  
11 THOMAS J. OWEN  
12 Deputy City Attorney

13  
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**REVISED LEGISLATIVE DIGEST**

(Amended in Committee, 6/12/2016)

[Environment Code - Food Service and Packaging Waste Reduction]

**Ordinance amending the Environment Code to prohibit the sale of food service ware and other specified products including packing materials that are made from polystyrene foam or that are non-recyclable and non-compostable; setting operative dates; and affirming the Planning Department's determination under the California Environmental Quality Act.**

Existing Law

The Environment Code bars restaurants, retail food vendors, City departments, and the City's contractors and lessees from using food service ware made from polystyrene foam, and requires them to use compostable or recyclable products. "Food service ware" means food containers and utensils designed for one-time use.

Amendments to Current Law

The proposal is an ordinance that would amend the Environment Code to make a number of changes.

The proposal would ban the sale of food service ware that was made from polystyrene foam or that was not either recyclable or compostable. (This ban would be in addition to the existing ban on particular *uses* of such food service ware.) The ordinance would allow the sale of prepared food packaged in non-compliant food service ware if the food was packaged outside the City and sold to the consumer in the same packaging.

The proposal would ban the sale of certain other products that were made from polystyrene foam not wholly encapsulated or encased within a more durable material:

- Packing materials, including shipping boxes and packing peanuts;
- Coolers, ice chests, or similar containers;
- Pool or beach toys; and,
- Dock floats, mooring buoys, or anchor or navigation markers.

The proposal would ban the sale of egg cartons and meats trays that were made from polystyrene foam or that were not either recyclable or compostable.

The proposal would ban the sale of packing materials that were not either recyclable or compostable. It would not be a violation of the ordinance to:

- Receive shipments within the City that included polystyrene foam, or some other non-compostable and non-recyclable product, used as packing material;
- Re-use non-compliant packing materials for shipping, transport, or storage within the same distribution system, where the packing materials were not sent to a consumer or end user;
- Donate used non-compliant packing materials to another person, where the donor received nothing of value for the donated packing materials; or,
- Use donated non-compliant packing materials for shipping, transport, or storage, where the person using the packing materials received nothing of value for the donated packing materials.

The proposal would transfer enforcement of the program from the City Administrator to the Department of the Environment, and make other technical changes.

The proposal would become operative on January 1, 2017, except for the provisions applicable to Meat and Fish Trays, which would become operative on July 1, 2017.

n:\leganas2016\1600255\01112852.doc

1 [Support of Food Service and Packaging Waste Reduction Ordinance File Number: 160383]

2

3 **Resolution urging the Board of Supervisors and the Mayor to adopt File**  
4 **Number 160383, an Ordinance amending the Environment Code to prohibit the sale of**  
5 **food service ware and other specified products including packing materials that are**  
6 **made from polystyrene foam or that are non-recyclable and non-compostable.**

7 WHEREAS, The City and County of San Francisco has a duty to protect the  
8 environment, the economy and the health of its citizens; and,

9 WHEREAS, Polystyrene foam (blown, expanded or extruded polystyrene) is an  
10 environmental pollutant that is commonly used for packaging and as food service ware in the  
11 City and County of San Francisco; and,

12 WHEREAS, Due to the physical properties of polystyrene foam, the U.S.  
13 Environmental Protection Agency (EPA) states "that such materials can have serious impacts  
14 upon human health, wildlife, and aquatic environment, and the economy; and,

15 WHEREAS, Polystyrene foam packaging and food service ware cannot be recycled  
16 through San Francisco's recycling (blue bin) collection program and is otherwise difficult or  
17 impossible to recycle, and is not compostable. Compostable or recyclable packaging and  
18 food service ware are an affordable, safer, more ecologically sound alternative; and,

19 WHEREAS, Disposable food service ware and packaging foam constitute a source of  
20 litter on San Francisco's street, parks, and public places, and the costs of managing litter is  
21 substantial; and,

22 WHEREAS, The Bay Area Stormwater Management Agencies Association and  
23 Caltrans found that between 8 to 15% of plastics in San Francisco storm drains are  
24 polystyrene foam. The San Francisco Estuary Institute found that 8% of the microplastics  
25 entering San Francisco Bay from wastewater treatment facilities are polystyrene foam. And a

1 recent study concluded that 71% of the microplastics found in the Los Angeles and San  
2 Gabriel Rivers were polystyrene foam pieces; and,

3 WHEREAS, A new report by the Ellen MacArthur Foundation, World Economic Forum  
4 and McKinsey & Company finds an increasing rate of plastics entering the oceans, and  
5 predicts that by 2050, without significant action to reduce the flow of plastics, there will be  
6 more plastic by weight in the oceans of the world than fish. A majority of these plastics  
7 entering the oceans are from packaging including food and beverage containers, much of it  
8 made with polystyrene foam; and,

9 WHEREAS, Polystyrene foam is a notorious pollutant that breaks down into smaller,  
10 non-biodegradable pieces that are often mistaken for fish eggs by seabirds and other marine  
11 life. Unlike harder plastics, polystyrene contains a chemical used in the production process  
12 called "styrene" that is metabolized after ingestion and threatens the entire food chain,  
13 including humans who consume contaminated marine wildlife; and,

14 WHEREAS, Styrene has been linked to cancer as well as reproductive and  
15 developmental disorders by the National Research Council, and styrene leaches into food and  
16 drink, according to the U.S. Food and Drug Administration; and,

17 WHEREAS, The general public typically is not warned or aware of any potential hazard  
18 from styrene, particularly in the immigrant and non-English speaking community; and,

19 WHEREAS, Due to these concerns, more than 100 U.S. cities have enacted  
20 ordinances banning or restricting the sale and/or use of polystyrene foam service ware and/or  
21 packaging materials, and many local businesses and a number of national corporations have  
22 successfully replaced polystyrene foam and other non-biodegradable food service ware and  
23 packaging materials with alternative, cost-competitive products; and,

24 WHEREAS, The Department of the Environment has successfully implemented and  
25 achieved nearly 100% compliance from the 5000 food establishments in the city with the 2007

1 Food Service Waste Reduction Ordinance, Chapter 16 of the Environment Code, that  
2 prohibits the use of polystyrene foam and requires disposable food ware be compostable or  
3 recyclable for serving prepared food. The Department has assisted businesses in identifying  
4 the many affordable suitable polystyrene alternatives available; and,

5 WHEREAS, Supervisor London Breed has proposed and Supervisor Aaron Peskin has  
6 co-sponsored a Food Service and Packaging Waste Reduction Ordinance that would expand  
7 the 2007 ordinance to extend the prohibition to the sale or distribution of polystyrene foam and  
8 non-compostable or non-recyclable food ware products. This new ordinance would also  
9 prohibit the selling or distribution of polystyrene foam packaging, including polystyrene foam  
10 "packing peanuts", and prohibit the sale or distribution of polystyrene foam coolers, ice chests  
11 or similar containers, pool or beach toys, dock floats, mooring buoys, or anchor or navigation  
12 markers; and,

13 WHEREAS, Restricting the use of polystyrene foam food service ware and requiring it  
14 to be replaced with less hazardous, compostable, or readily recyclable products, and barring  
15 the sale of polystyrene foam food service ware, packaging products, and other polystyrene  
16 products will further protect the public health and safety of San Francisco's residents, as well  
17 as its natural environment, waterways and wildlife; now, therefore, be it,

18 RESOLVED, That the Commission on the Environment urges the Board of Supervisors  
19 and the Mayor to adopt the Food Service and Packaging Waste Reduction Ordinance (File  
20 Number 160383) prohibiting the sale of food service ware and other specified products  
21 including packing materials that are made from polystyrene foam or that are non-recyclable  
22 and non-compostable; and, be it,

23 FUTHER RESOLVED, That the Commission on the Environment recognizes that the  
24 Food Service and Packaging Waste Reduction Ordinance may help the City and County of  
25 San Francisco meet its goal of Zero Waste by 2020 and fulfill Article 10 of the Environmental

1 Accords, in which the City committed with other cities around the globe to eliminate or restrict  
2 the use of one chemical or environmental hazard each year.

3 I hereby certify that this Resolution was adopted at the Commission on the  
4 Environment's Meeting on May 24, 2016.

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Anthony Valdez, Commission Affairs Manager

Vote: 5-0 Approved  
Ayes: Commissioners Omotalade, Bermejo, Hoyos, Stephenson and Wald  
Noes: None  
Absent: Commissioner Wan



SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

May 27, 2016

Ms. Angela Calvillo, Clerk of the Board  
City Hall Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RE: BOS File No. 160383 [Environment Code - Food Service and Packaging Waste Reduction]

Small Business Commission Recommendation to the Board of Supervisors: **Approval with Four (4) Recommendations**

Dear Ms. Calvillo,

On May 9, 2016, the Small Business Commission voted unanimously (6-0, 1 absent) to recommend that the Board of Supervisors approve BOS File No. 160383 with four (4) changes. The Small Business Commission extends its appreciation to President London Breed, Conor Johnston, and the Department of Environment for engaging the business community and the Office of Small Business during the process of drafting this legislation. A positive consequence of that engagement is that the legislation reflects a balance between meeting the City's Zero Waste goals and protecting the viability of the City's small business community. The legislation provides flexibility to the Department of Environment to consider the diversity of small businesses, through exclusions of certain categories for which no alternative presently exists or accommodations for industries with special needs.

The Small Business Commission recommends:

1. The creation of a multilingual application for a waiver that may be easily accessed and submitted online.
2. The creation of a multilingual application for a depletion permit that may be easily accessed and submitted online. The Small Business Commission noted the potential situation in which a business presently possesses more than a 7-month supply of prohibited food service wares or packaging materials. In such a situation, the business would have excess stock that could not be legally sold after January 1, 2017. A permit would resolve this issue by allowing the business to deplete the excess stock.
3. Consideration of a credit for those who would like to dispose of prohibited material that has not yet been depleted on the date the law goes into effect. The Commission did not elaborate on the details of the credit. The Office of Small Business staff is happy to work with the Department of the Environment to define this.
4. The provision of a list of potential alternative suppliers. The legislation specifies that the Director "shall create, maintain, and regularly update the product lists..." In addition to this, the Small Business Commission requests the provision of a list of suppliers of compliant food service wares and packaging materials.

In closing, the Small Business Commission commends the legislative sponsors and the Department of Environment for a well-thought-out piece of legislation. Thank you for considering the Commission's comments. Please feel free to contact me should you have any questions.

Sincerely,



Regina Dick-Endrizzi  
Director, Office of Small Business

cc: London Breed, Board of Supervisors  
Aaron Peskin, Board of Supervisors  
Norman Yee, Board of Supervisors  
Nicole Elliott, Mayor's Office  
Deborah Rafael, Department of Environment  
Lisa Pagan, Office of Economic and Workforce Development  
Erica Major, Government Audit & Oversight Committee

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

April 26, 2016

File No. 160383

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Ms. Jones:

On April 19, 2016, Supervisor Breed introduced the following legislation:

**File No. 160383**

**Ordinance amending the Environment Code to prohibit the sale of food service ware and other specified products including packing materials that are made from polystyrene foam or that are non-recyclable and non-compostable; setting an operative date of January 1, 2017; and affirming the Planning Department's determination under the California Environmental Quality Act.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Committee Clerk  
Government Audit and Oversight Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

Categorically Exempt under CEQA Guidelines Sections 15307, or Class 7, Actions by Regulatory Agencies for Protection of Natural Resources, and 15308, or Class 8, Actions by Regulatory Agencies for Protection of the Environment.

Joy  
Navarrete

Digitally signed by Joy Navarrete  
DN: cn=Joy Navarrete, o=Planning,  
ou=Environmental Planning,  
email=joy.navarrete@sfgov.org,  
c=US  
Date: 2016.05.06 12:11:50 -07'00'



**SF Environment**

**Our home. Our city. Our planet.**

A Department of the City and County of San Francisco

Edwin M. Lee  
Mayor

Deborah O. Raphael  
Director

MEMORANDUM

TO: Supervisor London Breed, President of Board of Supervisors

FROM: Deborah Raphael, <sup>D.R.</sup> Director

RE: Polystyrene Foam Ban Ordinance Waiver for cold temperature medical shipping

DATE: April 18, 2016

This memorandum confirms that the Department of Environment agrees to provide a waiver for a period of 3 years, from the implementation date of your proposed Polystyrene Foam Ban Ordinance, to allow the continued use of polystyrene foam packaging to ship sensitive medical devices and medicine requiring cold temperatures.

This waiver will be provided in response to the request you received from the local medical community to meet their cold temperature medical shipping needs. We understand that demonstrated feasible packaging alternatives to polystyrene foam have yet to be identified to keep medical devices and medicine at required cold temperatures. The Department acknowledges the unique requirements and challenge to the medical industry to find and demonstrate safer alternatives that meet their stringent temperature sensitive medical shipping needs currently met with the use of polystyrene foam.

The Department will formally grant the waiver after the passage of the ordinance, once procedures have been developed for such waivers. We anticipate requiring yearly status reports, from those using polystyrene foam under this waiver, on progress to identify and test polystyrene foam alternatives for cold temperature medical shipping.

We share your goal of banning the use of polystyrene foam, but will issue this waiver given the critical public health considerations with medical shipping. Thank you for your continued leadership in helping move San Francisco toward zero waste.

160383

# EPS THE RIGHT MATERIAL FOR SAN FRANCISCO

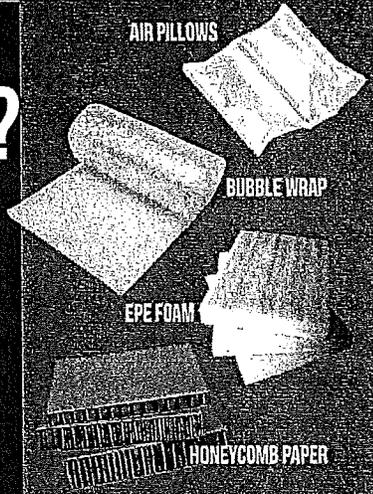
Since 1952, EPS has served as an excellent packaging material and is considered the gold standard for shipping. Here's what you need to know about EPS.



## HOW DO OTHER PACKAGING SOLUTIONS STACK UP?

While many materials do have some benefit for shipping, EPS provides the best material and design for the job. Cushion packaging needs to address the following functions:

- Shock protection
- Scratch protection
- Protection of small projection on articles
- Fill void space



## MOLDED PULP



Life Cycle Analysis	✓
Process Energy	13.2 mil Btu
Recyclability	✓
Biodegradability	✓
Compostability	✓

## GREEN PACKAGING NO LONGER AVAILABLE

Environmentally friendly packaging materials have many hurdles to overcome in order to become a viable alternative. Unfortunately, there are plenty that do not make it, despite claims of being the next big material:



### MICROGREEN POLYMERS INCYCLE

Poor business model led to closure of Microgreen Polymers in 2015, despite some success with InCycle.



### ALGAE/POLYPROPYLENE ALGIX

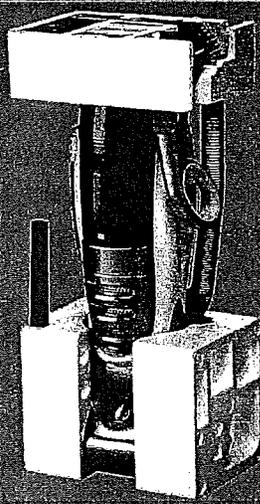
Remained as an alternative packaging material until oil prices fell. Material was abandoned.



### LOOSE FILL PACKAGING NATURPACK

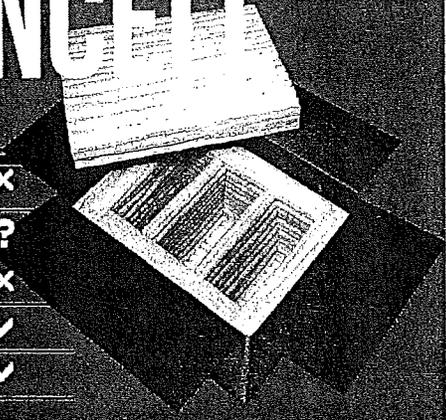
Lost funding after years of attempts at perfecting their design. Company closed permanently.

# EPS



Life Cycle Analysis	✓
Process Energy	3.08 mil Btu
Recyclability	✓
Biodegradability	✗
Compostability	✗

## GREENCELL



Life Cycle Analysis	✗
Process Energy	?
Recyclability	✗
Biodegradability	✓
Compostability	✓

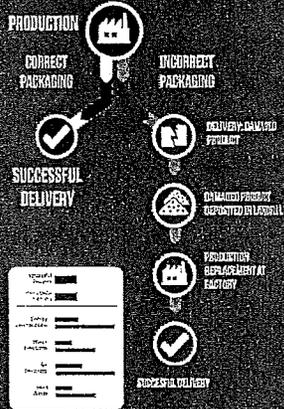
## ECOVATIVE



They announced they were switching to a novel packaging material in 2012 - EcoVative from Ecovative. Four years later, they still have not implemented the mycelium-based material, citing supply and material costs as the reason behind the delay.

Life Cycle Analysis	✗
Process Energy	?
Recyclability	✗
Biodegradability	✓
Compostability	✓

## WHAT FACTORS GO INTO CHOOSING THE CORRECT PACKAGING?



When visualized, the consideration factors for choosing the correct packaging become clear:

- Package Performance
- Environmental Impact
- Recycling Options



1298 Cronson Boulevard  
Suite 201  
Crofton, MD 21114  
phone 800.607.3772  
fax 410.451.8343  
info@epsindustry.org  
www.epsindustry.org

●●● Innovative solutions for a sustainable future

The EPS industry represents more than 150 companies with thousands of employees – each with families, children and grandchildren – who also care about the environment. We urge you to give our collective comments full consideration.

There are gross errors in the data interpretation cited in the ordinance preamble. The citation from the San Francisco Estuary Institute is blatantly incorrect and the percentage of polystyrene foam in the other marine litter studies are over inflated by referencing a percentage of a percentage – with no clarification. The 8% figure in the new Estuary poster is for ‘Foam: styrofoam, cigarette butts and other foam.’ According to the International Coastal Cleanup, cigarette butts account for the largest stream of marine litter so it would be false to assign that 8% to EPS. The other study citing 71% of microplastics is polystyrene *foam* is simply not possible. In a competitive claims scenario, this presentation of false information would be looked upon by the Federal Trade Commission as a misuse of technical data. As a government agency, you have a responsibility to get the information right and to present it in a fair and accurate manner.

This ban will not further the City’s ability to reach its zero waste goal. How will a restriction on material that is intended to LEAVE THE CITY impact the waste stream at all? Consumption will continue at the same rate, material entering the city via retailers, distribution centers and B2C deliveries will generate packaging waste just as before. Therefore, the mechanism of a product ban will not achieve the legislative intent to reduce packaging waste. If waste elimination is the intended goal, it is unclear how this legislation will achieve any reduction by changing the packaging that goes to other cities.

Product bans are not in alignment with zero waste. Material substitution does not guarantee waste elimination. Nor does it ensure the alternative materials will be better for the environment — meaning these potential consequences would be at the expense of other communities. We urge you to set a good example of environmental responsibility and take a deeper look at the science which has been glossed over and has been interpreted at the sole interest of promoting a polystyrene product ban.

We have done our homework with life cycle analysis, invested resources in recycling market development, and demonstrated viable cost saving reuse programs. Walmart, Subaru, Omaha Steaks, Nutri-Systems, the City of Houston, Baltimore and many others support and participate in a positive contribution to environmental stewardship with EPS packaging. Curbside recycling may not be a fit for San Francisco at this time, but more than 50 California cities accept polystyrene foam in their residential blue bin collection. Polystyrene recycling has unique challenges but is being done successfully in many communities. It would be discouraging to see this progress negated by the City of San Francisco, especially based on inaccurate information.

**The most important thing you can do at this time is to challenge your status quo. If you heard anything today that caught your attention, please look into it. Don’t disregard our testimony simply because we represent industry. Yes, we have a vested interest but our industry has spent significant time and resources evaluating our environmental performance and we speak with a clear conscience in our appeal for you to make a fact based decision on this ban proposal. If your true intention is to benefit the environment, this ordinance should be withdrawn.**

EPS Industry Alliance  
160383 - Environment Code - Food Service and Packaging Waste Reduction  
Government Audit and Oversight Committee Meeting, June 16, 2016



775 Waltham Way, Suite 105 • McCarran, NV 89434  
Phone 775.355.7655 • Toll Free 800.444.9290 • Fax 775.355.7615  
www.achfoam.com

Comments submitted by John Cowan ACH Foam Technologies  
RE: 160383 [Environment Code - Food Service and Packaging Waste Reduction]  
Government Audit and Oversight Committee Meeting  
June 16, 2016

**Flawed Legislative Rationale – 3 minutes**

Despite overwhelming evidence to the contrary....the legislative preamble intending to provide supporting rationale for the polystyrene foam ban is based on false and misleading information. The following references—from federal and state agencies—are in stark disagreement with the City’s interpretation. For example, on human health concerns:

- a. Sam Delson, OEHA Deputy Director for External & Legislative Affairs, says “we clearly stated this does not cover polystyrene” in a recent interview on the Prop 65 styrene listing.
- b. According to the U.S. Department of Health & Human Services, National Toxicology Program Dr. Linda Brinbaum states, “in EPS finished products certainly styrene is not an issue”.
- c. USEPA cites the International Agency for Research on Cancer (IARC)’s styrene classification Group 2B: Possibly Carcinogenic to Humans. Polystyrene however, HAS NOT BEEN CLASSIFIED.
- d. In a 2015 edition of the scientific journal “Marine Policy” it clarifies that, “to date, the link between plastic ingestion by ocean animals and human health has not yet been made.” Further, the FDA fully approves polystyrene for food contact which negates any concern that the entire food chain would be threatened. This idea of threatening the food chain with styrene is also negated by the fact that it is a naturally occurring chemical in many food items such as coffee, strawberries and cinnamon.

It is incorrect to name polystyrene as a human health concern and it should be removed from the draft language. Although most likely unintentional, the City research is both incomplete and flawed. Regardless, it is irresponsible to make such false claims without the proper citations and references that are properly attributed to polystyrene – not *styrene*, which we believe is the likely explanation for this error.

In addition, the litter references cited in the preamble do not disclose relevant qualifiers – for example whether the numbers are representative of all litter, large litter components or small litter pieces. Interestingly, there is no mention of the City of San Francisco Streets Litter Re-Audit study completed in 2008 which reports all polystyrene made up only .04% – 1.0% of all small litter pieces. Why does the draft legislation omit this study? As referenced in two scientific reports – one partially funded by the United Nations Environment Programme (UNEP) - these figures are consistent for polystyrene microplastics as well. And, while resin identification of microplastics is well established, the ability to distinguish between general purpose polystyrene (GPS), high impact polystyrene (HIPS), oriented strand polystyrene (OPS), extruded polystyrene (XPS) and expanded polystyrene (EPS) is unlikely. Therefore, these figures are likely attributable to ALL polystyrene, of which EPS is just a small portion.

***We request that the City rejects the polystyrene ban proposal. If the ban ensues, we request the incorrect references to human health concerns and litter statistics be removed.***

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# MOORE

RECYCLING ASSOCIATES INC.

---

*Recycling Implementation Specialists*

Choosing or banning packaging materials based solely on their end of life disposal method does not take into account several other key environmental indicators – such as acidification, eutrophication, process energy, production waste, greenhouse gas emissions, and transportation impacts. All of these factors should be seriously considered before banning any material, because the banned material will be replaced by others that may unknowingly have higher environmental consequences.

It is imperative to understand more about the impacts of all of the various packaging options. Do not rely on outdated information, such as the commonly repeated notion that foam polystyrene cannot be recycled. Contrary to popular belief, foam polystyrene is very recyclable and it is more valuable than cardboard and newspaper—the current value of foam PS is 15 cents per pound (Source: Quotes for buyers) while cardboard is selling for just under 5 cents per pound and newsprint is just over 3 cents (source: *Secondary Fiber Pricing website – June 15, 2016*). And there are plenty of buyers, PlasticsMarkets.org lists 14 buyers of foam PS, 7 of which are located in CA. RecycleMorePlastics.org shows there are 10 foam PS drop-off locations in the Bay Area, 2 of which are within the city of San Francisco.

Other commonly repeated misinformation is that foam PS is more polluting, but lifecycle studies show a different story, for example, the process energy for EPS production is lower than that of paper-based materials, and foam PS also scores lower than paper—and many other materials—in terms of greenhouse gas emissions, acidification, ozone depletion and other life cycle analysis categories. It is essential that this proposed ban take the full environmental impacts into account.

The Director of Clean Water Action California, Miriam Gordon, in her 2011 presentation, *Sustainable Packaging: The Pros & Cons of EPS Alternatives* contends, “Mostly it boils down to LCAs” (Life Cycle Assessments). When it come to delivery of goods there isn’t a one-size fits all answer for our packaging choices.

---

# MOORE

RECYCLING ASSOCIATES INC.  
*Recycling Implementation Specialists*

---

A report prepared for The Oregon Department of Environmental Quality and the US Environmental Protection Agency entitled *Life Cycle Inventory of Packaging Options for Shipment of Retail Mail-Order Softgoods*, shows us the difference between attributes (for example, recycled content) and impacts such as energy use. The report found that:

- a) Materials with high levels of post-consumer content do not always have lower burdens or impacts than competing materials with low levels of post-consumer content.
- b) Recyclability and recycled content are not always good predictors of environmental impacts.  
And most importantly,
- c) Upstream burdens (the manufacturing of a product) are almost always significantly greater than downstream burdens (the disposal of a product).

As San Francisco considers this polystyrene ban proposal, I am asking that you take a deeper look at the available life cycle analysis information on foam polystyrene versus the potential replacement materials before taking any steps to ban EPS packaging. And also consider this – is there confidence local businesses have the information and knowledge to make these complex analyses and that they will make environmentally superior choices?



Foam Fabricators Inc.  
301-9<sup>th</sup> Street, Bldg B  
Modesto, CA 95351  
PH: 209-523-7002  
FAX: 209-523-7554

### *Molded Foam Packaging*

Comments submitted by Renee Furrow, Foam Fabricators, Inc.  
**RE: 160383 [Environment Code - Food Service and Packaging Waste Reduction]  
Government Audit and Oversight Committee Meeting  
June 16, 2016**

#### **Alternative Materials Viability – 3 minutes**

The draft ordinance recommends, “amending the Environment Code to prohibit the sale of food service ware and other specified products including packing materials that are made from polystyrene foam ***or that are non-recyclable and non-compostable.***” This language leaves room for interpretation since polystyrene is the only material specified by name but, by definition many other materials are non-recyclable and/or non-compostable.

These may include options that local businesses would likely use as substitutes for EPS foam upon implementation of a polystyrene packaging ban, in particular for B2C small parcel shipments. With a 34% national recycling rate, polystyrene is only deemed non-recyclable by San Francisco’s self imposed criteria – that it is not accepted by Recology. Applying the same criteria, consider just a few of the packaging materials that may also be eliminated under this proposed language:

- a. Expanded Polypropylene Foam (EPP)
- b. Polyethylene (Dissipative) Foam
- c. Polyurethane Foam & Foam-In-Place Systems
- d. Ethylene Vinyl Acetate Foam (EVA)
- e. Engineered Plastic Film & Stretch Wrap
- f. Bubble Wrap & Bubble Mailers
- g. Poly Mailers
- h. Air Pillows

Expanded polystyrene (EPS) is used in a vast number of applications. Bicycle helmets, automotive parts, air conditioning and refrigeration components, garage door cores, infant and toddler car seats, surf boards, movie sets, produce packaging, wine shippers and traditional transport packaging for electronics, pharmaceuticals, appliances, lighting fixtures and flat-pack furniture. Has the City properly evaluated the availability of substitutions for EPS foam and whether or not they meet or exceed EPS environmental benchmarks? From an environmental perspective, this is a formula for disaster, especially when packaging material choices that do not meet standardized performance expectations can lead to increased – not decreased – environmental impacts.

Some newer packaging materials touting environmental superiority do not even bother to substantiate their claims. Ecovative – the mushroom based packaging – openly admits it has not conducted an LCA and GreenCell provides generic LCA references to starch—not the actual product. Simply having been made from an organic material is not sufficient to support these claims. Environmental improvements cannot and should not be based on assumptions.

Packaging material innovations need to demonstrate long term market viability before they can be relied upon to replace the widespread use of established materials. Consider that Ecovative has been in business for nine (9) years has two production facilities and a few dozen employees. Their production is limited and market growth has been slow? Both Dell Computers and Steelcase announced partnerships with Ecovative that have not panned out. Their economic model is partly if not entirely dependent on grants from eight (8) different sources.

**We request this ordinance be given closer scrutiny and encourage you to vote against it if you cannot justify the environmental superiority of alternative packaging choices.**

RECEIVED VIA EMAIL  
06/14/2016



160383

Foam Fabricators, Inc.  
301-B St.  
Modesto, CA 95351

Monday, May 9th, 2016

The Honorable Supervisor London Breed, The Honorable Supervisor Norman Lee, The Honorable Supervisor Aaron Peskin  
San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

**Re: Objection to Ordinance 160383 – Food Service & Packaging Waste Reduction**

Dear Supervisors Breed, Lee and Peskin,

On behalf of Foam Fabricators Inc. I am writing to express our opposition to the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (No. 295-06) that would prohibit the use of expanded polystyrene transport packaging by San Francisco businesses. We have a facility in Modesto California with approx. 40 employees. That plant has been in Modesto for decades and is a significant employer with a commensurate tax base.

While it may be popular to malign polystyrene as an environmental menace, the supporting information outlined in this ordinance is blatantly false. EPS is clean, safe, lightweight, low cost and recyclable. Every material has some affect on our environment. EPS's affects, when handled properly, are very low and far offset by its service to all of our communities.

The expanded polystyrene industry has invested incredible resources to support EPS recycling; our business is a valuable environmental and economic steward for California. Studies done on existing foam bans show they can negatively impact the economy as businesses and consumers take on the increased cost of alternative products. A ban on EPS transport packaging would most likely result in additional costs due to increased product damage, further jeopardizing the environmental impacts and resources allocated to the manufacture, packaging and distribution of the damaged product. Other studies indicate that in communities with polystyrene bans, litter sources are simply replaced by other materials and do not result in litter reduction.

For these reasons, Foam Fabricators, Inc. objects to the proposed amendment to the San Francisco Food Service Waste Reduction Ordinance and further requests that:

1. Ordinance 160383 be withdrawn; and
2. The City of San Francisco refrain from any and all declarations that polystyrene is a human health concern (as referenced in the Proposed Ordinance).

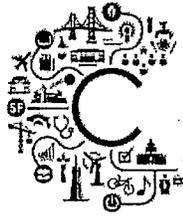
Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Hays', with a long, sweeping underline that extends across the width of the signature area.

Michael Hays  
Foam Fabricators, Inc.  
Vice President

cc: Members of the Board of Supervisors

RECEIVED VIA EMAIL  
6/13/2016  
160383



SAN  
FRANCISCO  
CHAMBER OF  
COMMERCE

June 13, 2016

The Honorable London Breed, President  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

RE: File No. 160383 Ban on Certain Polystyrene Packaging

Dear Supervisor Breed:

The San Francisco Chamber of Commerce, representing over 2,500 local businesses, appreciates the outreach you and the Department of the Environment undertook as you crafted legislation to further limit the use of polystyrene products in San Francisco.

The legislation, with the amendments we understand you will be offering at the June 16 committee hearing, has answered many of the concerns of our business community. Because this legislation follows earlier legislation in 2006 to limit polystyrene food service ware, which had the support of the San Francisco Chamber, we are pleased to add our support to this ordinance, as amended.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Lazarus', with a long horizontal flourish extending to the right.

Jim Lazarus  
Senior Vice President of Public Policy

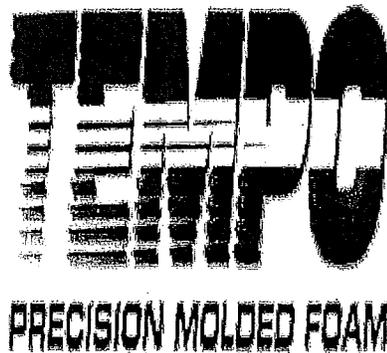
cc: Conor Johnston

---

**From:** Doug Rogers <tempogloss3000@yahoo.com>  
**Sent:** Saturday, June 11, 2016 11:56 AM  
**To:** Major, Erica (BOS)  
**Subject:** Please copy to the Board of Supervisors  
**Attachments:** San Francisco Board of Supervisors.docx

Hello Erica, here is a copy of my letter regarding polystyrene recycling. This is part of Board File No. 160383. Please include a copy for the Board of Supervisors.

Thank you very much.  
Best regards,  
Doug Rogers



**Board File No. 160383**

**Please distribute to the Board of Supervisors**

**The Honorable Supervisor London Breed  
San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689**

Dear Supervisor Breed

Please consider implementing a recycling program for polystyrene.

Tempo collects polystyrene from Tulare County and processes it for reuse. We work with the City of Visalia and Tulare County to keep polystyrene out of the waste stream. Tempo is a small business but devotes considerable resources to collection and reprocessing of polystyrene as "the right thing to do."

People want to recycle polystyrene and will participate if given the opportunity. In our case, even people from Sequoia National Park drop off their packaging when in Visalia for their weekly errands!

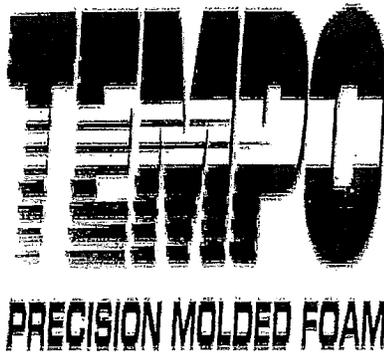
Replacements for polystyrene transport packaging have trade-offs between environmental production impacts, transit protection and litter which are no better overall.

Best regards,

Doug Rogers President

Tempo Plastic Co., plant address 1227 N. Miller Park Court, Visalia, CA 93291

Mailing address: PO Box 431, Goshen, CA 93227, Telephone 559-651-7711



**Board File No. 160383**

**Please distribute to the Board of Supervisors**

**The Honorable Supervisor London Breed  
San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689**

Dear Supervisor Breed

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People want to recycle polystyrene and will participate if given the opportunity. In our case, even people from Sequoia National Park drop off their packaging when in Visalia for their weekly errands!

Replacements for polystyrene transport packaging have trade-offs between environmental production impacts, transit protection and litter which are no better overall.

Best regards,

Doug Rogers President

Tempo Plastic Co., plant address 1227 N. Miller Park Court, Visalia, CA 93291  
Mailing address: PO Box 431, Goshen, CA 93227, Telephone 559-651-7711

London Breed – Supervisor

[London.breed@sfgov.org](mailto:London.breed@sfgov.org)

John Avalos

[John.avalos@sfgov.org](mailto:John.avalos@sfgov.org)

David Campos

[David.campos@sfgov.org](mailto:David.campos@sfgov.org)

Malia Cohen

[Malia.cohen@sfgov.org](mailto:Malia.cohen@sfgov.org)

Jane Kim

[Jane.kim@sfgov.org](mailto:Jane.kim@sfgov.org)

Katy Tang

[Katy.tang@sfgov.org](mailto:Katy.tang@sfgov.org)

Norman Yee

[Norman.yee@sfgov.org](mailto:Norman.yee@sfgov.org)

Aaron Peskin

[Aaron.peskin@sfgov.org](mailto:Aaron.peskin@sfgov.org)

Mark Farrell

[Mark.farrell@sfgov.org](mailto:Mark.farrell@sfgov.org)

Eric Mar

[Eric.l.mar@sfgov.org](mailto:Eric.l.mar@sfgov.org)

Scott Wiener

[Scott.wiener@sfgov.org](mailto:Scott.wiener@sfgov.org)

RECEIVED VIA EMAIL

160383

6/8/2016

www.astrofoam.com

**ASTROFOAM**

Established 1969

**MOLDING COMPANY, INC.**

4117 Calle Tesoro Camarillo, California 93012  
Phone: (805) 482-7276 Fax: (805) 482-6599

Ms London Breed

San Francisco Board of Supervisors

12 May 2016

Dear Ms Breed

**Re: Objection to Ordinance 160383**

I am the CEO of Astrofoam Molding Company. I am writing to express my concern regarding the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (no. 295-06) which would ban the use of expanded polystyrene (EPS) transport packaging by businesses in San Francisco.

Astrofoam is a small family owned molder of expanded polystyrene packaging. We also act as a recycling center, using up to 25% recycled material in our products. We are based in Camarillo, California, employing 17 people, with a revenue tax base of approximately \$2,000,000.

I am aware that EPS has become a focus of environmental concern and that there are common misconceptions about its effect on human health and its impact on the environment. I am particularly concerned that some of the information used to support the proposed ordinance is factually incorrect.

- A ban on EPS would not improve public health. EPS has been cleared for direct contact with food by the FDA.
- A ban on EPS transport packaging would not protect the environment. A recent US EPA report on waste management showed that EPS transport packaging makes up a tiny proportion of the solid waste stream (approximately 0.0004%). There is a common misconception that EPS cannot be recycled. It can be recycled and is done so by EPS manufacturers (including Astrofoam), as well as at specialist recycling facilities. EPS can be economically densified and reused to make a variety of products such as durable plastic lumber for decking and park benches. Indeed there is a strong market for densified EPS, particularly in China.



EPS USES NO CFC'S

"Member of the Association of Foam Packaging Recyclers"



EPS IS RECYCLABLE

- A ban on EPS transit packaging would not reduce litter. This presumably refers to fast food packaging being dropped in the street. EPS food packaging has already been banned in San Francisco.

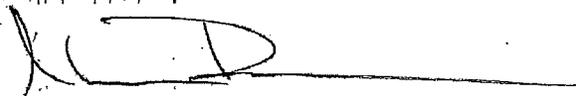
In addition the effect of a ban on EPS on the greater economy would have far reaching consequences for businesses and consumers, raising the cost of packaging materials and vastly increasing the amount of damage to goods in transit. EPS is an economical and extremely effective packaging material and therefore is widely used across the manufacturing spectrum. Whilst alternative (though more expensive) packaging might be an option for some goods, for others such as temperature sensitive pharmaceutical products, EPS is the only viable option.

At a time when the American economy has not fully recovered from the recession, this proposed ban on EPS would seem to be ill conceived and poorly informed.

Astrofoam strongly objects to the proposed amendment to the San Francisco Food Service Waste Reduction Ordinance and respectfully requests the following:

1. Ordinance 160383 be withdrawn.
2. The City of San Francisco refrain from any and all declarations that EPS poses a threat to human health.
3. The City of San Francisco redirects its efforts to improving capacity for recycling EPS and raising public awareness of recycling facilities. This would have a twofold benefit of protecting the environment and contributing to the American economy by allowing businesses to be more competitive, continue to provide employment for Americans and thus expanding the tax base for San Francisco.

Yours sincerely



Steven Bevan

CEO Astrofoam

RECEIVED VIA EMAIL  
6/7/2016  
FILE NO. 160383

**TAK TAKASHIMA U.S.A., Inc.**

12062 Valley View St. Suite #224, Garden Grove, CA. 92845  
Tel: 714-892-5542 Fax: 714-892-6464

5/12/2016

The Honorable Supervisor London Breed  
The Honorable Supervisor Norman Lee  
The Honorable Supervisor Aaron Peskin  
San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

**Re: Objection to Ordinance 160383 – Food Service & Packaging Waste Reduction**

Dear Supervisor London Breed:

On behalf of Takashima U.S.A., Inc., I am writing to express our opposition to the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (No. 295-06) that would prohibit the use of expanded polystyrene transport packaging by San Francisco businesses. We are located in Garden Grove, CA and distribute special rubber coated EPS nationwide.

While it may be popular to malign polystyrene as an environmental menace, the supporting information outlined in this ordinance is blatantly false. Polystyrene foam cannot be recycled in SFC bluebin (otherwise difficult to recycle & not compostable), Polystyrene foam is an environmental pollutant, Styrene has been linked to cancer, reproductive & developmental disorders by National Research Council & leaching according to FDA, and so on.

The expanded polystyrene industry has invested incredible resources to support EPS recycling; our business is a valuable environmental and economic steward for California. Studies done on existing foam bans show they can negatively impact the economy as businesses and consumers take on the increased cost of alternative products. A ban on EPS transport packaging would most likely result in additional costs due to increased product damage, further jeopardizing the environmental impacts and resources allocated to the manufacture, packaging and distribution of the damaged product. Other studies indicate that in communities with polystyrene bans, litter sources are simply replaced by other materials and do not result in litter reduction.

For these reasons, Takashima U.S.A., Inc. objects to the proposed amendment to the San Francisco Food Service Waste Reduction Ordinance and further requests that:

1. Ordinance 160383 be withdrawn; and
2. The City of San Francisco refrain from any and all declarations that polystyrene is a human health concern (as referenced in the Proposed Ordinance).

Sincerely,

A handwritten signature in black ink, appearing to be 'Gengo Kurokoshi', written over a horizontal line.

Gengo Kurokoshi  
Vice President

cc: Members of the Board of Supervisors



RECEIVED VIA EMAIL

06/07/2016

(ALSO SUBMITTED TO

SUPERVISORS MEET

YESKIN)

May 9, 2016

SEE SUBSEQUENT PAGES

The Honorable Supervisor London Breed  
San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Re: Objection to Ordinance 160383 – Food Service & Packaging Waste Reduction

Dear Supervisor Breed:

On behalf of Insulfoam, a division of Carlisle Construction Materials Incorporated, I am writing to express our opposition to the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (No. 295-06) that would prohibit the use of expanded polystyrene transport packaging by San Francisco businesses. We have facilities in:

- Dixon, CA with 55 employees and a revenue tax base of \$18 million
- Chino, California with 40 employees and a revenue tax base of \$17 million

While it may be popular to malign polystyrene as an environmental menace, the supporting information outlined in this ordinance is blatantly false. Polystyrene foam is an environmental pollutant. U.S. EPA citation "such materials can have serious impacts upon human health, wildlife, aquatic environment and the economy".

The expanded polystyrene industry has invested incredible resources to support EPS recycling; our business is a valuable environmental and economic steward for California. Studies done on existing foam bans show they can negatively impact the economy as businesses and consumers take on the increased cost of alternative products. A ban on EPS transport packaging would most likely result in additional costs due to increased product damage, further jeopardizing the environmental impacts and resources allocated to the manufacture, packaging and distribution of the damaged product. Other studies indicate that in communities with polystyrene bans, litter sources are simply replaced by other materials and do not result in litter reduction.

For these reasons, Insulfoam objects to the proposed amendment to the San Francisco Food Service Waste Reduction Ordinance and further requests that:

1. Ordinance 160383 be withdrawn; and
2. The City of San Francisco refrain from any and all declarations that polystyrene is a human health concern (as referenced in the Proposed Ordinance).

Sincerely,

A handwritten signature in black ink, appearing to read 'm. McAuley', with a large, stylized flourish at the end.

Michael J. McAuley  
President  
Insulfoam

cc: Members of the Board of Supervisors



May 9, 2016

The Honorable Supervisor Aaron Peskin  
San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

**Re: Objection to Ordinance 160383 – Food Service & Packaging Waste Reduction**

Dear Supervisor Peskin:

On behalf of Insulfoam, a division of Carlisle Construction Materials Incorporated, I am writing to express our opposition to the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (No. 295-06) that would prohibit the use of expanded polystyrene transport packaging by San Francisco businesses. We have facilities in:

- Dixon, CA with 55 employees and a revenue tax base of \$18 million
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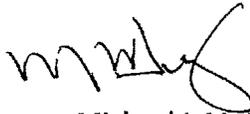
While it may be popular to malign polystyrene as an environmental menace, the supporting information outlined in this ordinance is blatantly false. Styrene has been linked to cancer, reproductive and developmental disorders by National Research Council and leaching according to the FDA. General public is not warned about any potential hazard from styrene, especially non-English speaking Americans. Restricting polystyrene foam will protect public health and safety of SFC residents, natural environment, waterways and wildlife. It will advance the City's zero-waste goal.

The expanded polystyrene industry has invested incredible resources to support EPS recycling; our business is a valuable environmental and economic steward for California. Studies done on existing foam bans show they can negatively impact the economy as businesses and consumers take on the increased cost of alternative products. A ban on EPS transport packaging would most likely result in additional costs due to increased product damage, further jeopardizing the environmental impacts and resources allocated to the manufacture, packaging and distribution of the damaged product. Other studies indicate that in communities with polystyrene bans, litter sources are simply replaced by other materials and do not result in litter reduction.

For these reasons, Insulfoam objects to the proposed amendment to the San Francisco Food Service Waste Reduction Ordinance and further requests that:

1. Ordinance 160383 be withdrawn; and
2. The City of San Francisco refrain from any and all declarations that polystyrene is a human health concern (as referenced in the Proposed Ordinance).

Sincerely,



Michael J. McAuley  
President  
Insulfoam

cc: Members of the Board of Supervisors



May 9, 2016

The Honorable Supervisor Norman Yee  
San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

**Re: Objection to Ordinance 160383 – Food Service & Packaging Waste Reduction**

Dear Supervisor Yee:

On behalf of Insulfoam, a division of Carlisle Construction Materials Incorporated, I am writing to express our opposition to the proposed amendments to the San Francisco Food Service Waste Reduction Ordinance (No. 295-06) that would prohibit the use of expanded polystyrene transport packaging by San Francisco businesses. We have facilities in:

- Dixon, CA with 55 employees and a revenue tax base of \$18 million
- Chino, California with 40 employees and a revenue tax base of \$17 million

While it may be popular to malign polystyrene as an environmental menace, the supporting information outlined in this ordinance is blatantly false. Polystyrene foam cannot be recycled in SFC blue bin (otherwise difficult to recycle and not compostable). Polystyrene foam is a significant source of litter in SFC streets, parks, and public places. The cost to manage polystyrene foam litter is substantial. Bay Area Storm water Management Agencies Association & Caltrans 8-15% of plastics in storm drains are PS foam.

The expanded polystyrene industry has invested incredible resources to support EPS recycling; our business is a valuable environmental and economic steward for California. Studies done on existing foam bans show they can negatively impact the economy as businesses and consumers take on the increased cost of alternative products. A ban on EPS transport packaging would most likely result in additional costs due to increased product damage, further jeopardizing the environmental impacts and resources allocated to the manufacture, packaging and distribution of the damaged product. Other studies indicate that in communities with polystyrene bans, litter sources are simply replaced by other materials and do not result in litter reduction.

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Michael J. McAuley  
President  
Insulfoam

cc: Members of the Board of Supervisors

160383  
RECEIVED VIA EMAIL

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ARNOLD & PORTER LLP

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Sarah Esmail  
Sarah.Esmail@aporter.com  
+1 415.471.3283  
+1 415.471.3400 Fax  
10th Floor  
Three Embarcadero Center  
San Francisco, CA 94111-4024

May 9, 2016

The Honorable Supervisor London Breed  
The Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Re: Proposed Amendment to San Francisco Food Service Waste Reduction Ordinance

Dear Supervisor Breed:

I am writing on behalf of my client, the EPS Industry Alliance ("EPSIA"), concerning the proposed amendment to the Food Service Waste Reduction Ordinance ("Proposed Ordinance"). EPSIA is the leading trade association representing businesses that make and use expanded polystyrene ("EPS"). EPS is a sustainable and recyclable product that is lightweight, shock-absorbing, non-toxic, and durable. EPS is approximately 98% air, which makes it an ideal insulator. Its unique properties make it indispensable for a wide range of products and applications, including protective packaging, cold chain shipments for pharmaceuticals and food, child car seats, and bicycle helmets.

In key part, the Proposed Ordinance would ban local businesses from using EPS packaging to protect the contents of products that they distribute or ship, and would ban San Francisco businesses from selling or distributing EPS packaging. The Proposed Ordinance relies on misinformation to argue that the ban is necessary to promote safety and to reduce litter and waste in San Francisco. In reality, the ban has no rational connection to any of those objectives. Instead, the Proposed Ordinance only makes it *appear* that the city is promoting safety and reducing litter and waste in San Francisco. The only logical outcome of the Proposed Ordinance in San Francisco is to burden local businesses and residents, who will be driven away from EPS to more costly and less reliable alternatives. The Proposed Ordinance should be withdrawn.

**I. EPS is safe.**

The Proposed Ordinance misleadingly states that "styrene has been linked to cancer as well as reproductive and developmental disorders," and that "styrene is

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# ARNOLD & PORTER LLP

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Hon. Supervisor London Breed  
May 9, 2016  
Page 2

metabolized after ingestion [by animals] and threatens the entire food chain.” Styrene is *not* EPS or polystyrene. Polystyrene is a rigid polymer made in part from styrene in a process that fundamentally changes the chemical nature of styrene, including its physical form (from liquid to solid). Polystyrene resin can be expanded into EPS by steam and pressure to form protective packaging and many other products. Thus, EPS is a type of polystyrene. Polystyrene and EPS are both entirely different substances from styrene, which is a clear liquid. Indeed, when California’s Office of Environmental Health Hazard Assessment (“OEHHA”) recently listed “styrene” under Cal. Health & Safety Code §§ 25249.5 *et seq.* (commonly referred to as “Proposition 65”),<sup>1</sup> OEHHA stated in its April 2016 Response to Comments as follows:

OEHHA agrees that styrene is not the same as polystyrene and points out that polystyrene is not the subject of the proposed listing [under Proposition 65].<sup>2</sup>

This echoes the earlier statement made by the U.S. Department of Health and Human Services’ National Institute of Environmental Health Sciences (“NIEHS”), which cautioned that “styrene should not be confused with polystyrene.”<sup>3</sup>

EPS is safe. When the U.S. Department of Health and Human Services’ National Toxicology Program (“NTP”) published its report on styrene in 2011 (which, in turn, prompted OEHHA to list styrene under Proposition 65), Linda Birnbaum, the Director of NTP, stated, “[l]et me put your mind at ease right away about Styrofoam [a trade name for EPS] in finished products, certainly styrene is not an issue.”<sup>4</sup> Dr. Birnbaum indicated that such styrene levels would be “hundreds if not thousands of times lower than have

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<sup>1</sup> OEHHA has listed styrene (not polystyrene or EPS) as a carcinogen under Proposition 65, not as a reproductive or developmental toxicant. We are not aware of any government agency or public health organization having designated styrene, let alone EPS or polystyrene, as a reproductive or developmental toxicant. There is no basis for the claim that “styrene has been linked to reproductive and developmental disorders,” putting aside the fact that styrene is not the same substance as polystyrene.

<sup>2</sup> *Response to Comments Pertaining to the Notice of Intent to List Styrene as Causing Cancer under Proposition 65*, OEHHA, April 2016, Response to Comment 6.

<sup>3</sup> *Q&A regarding 12th Report on Carcinogens*, National Institute of Environmental Health, 2011.

<sup>4</sup> Dr. Birnbaum’s statement was reported by the Associated Press. *See, e.g., Let’s Talk Cancer Risks*, San Jose Mercury News, June 16, 2011.

Hon. Supervisor London Breed  
May 9, 2016  
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occurred in the occupational setting.”<sup>5</sup> Likewise, NIESH stated that “we do not believe that people are at risk from using polystyrene products.”<sup>6</sup> The Proposed Ordinance also argues that levels of styrene may leach into foods from polystyrene food containers specifically. Public health agencies have already studied this and determined that trace levels of styrene that may potentially migrate from food containers are not a safety concern. The federal Food and Drug Administration has long approved the use of polystyrene in food packaging as safe.<sup>7</sup> As OEHHA recognized in its April 2016 Response to Comments, FDA has already considered the potential for “trace amounts” of styrene to migrate from EPS food packaging in continuing to approve polystyrene food packaging as safe.<sup>8</sup> OEHHA notes that “a warning [under Proposition 65] for styrene would not be required for exposures where there is no significant risk of cancer.”<sup>9</sup> Thus, several public health agencies have already established that polystyrene in products -- including food packaging -- poses no cancer risk.<sup>10</sup>

**II. The Proposed Ordinance’s ban on EPS packaging has no rational connection to reducing litter or waste in San Francisco.**

There is no basis to suggest that EPS packaging, let alone EPS packaging used by San Francisco businesses for distribution or shipments or EPS packaging sold in San Francisco, “constitutes a significant source of litter on San Francisco’s street [sic], parks, and public places, and [that] the costs of managing this litter is substantial.” Based on the

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<sup>5</sup> *Id.*

<sup>6</sup> *Q&A regarding 12th Report on Carcinogens*, National Institute of Environmental Health, 2011.

<sup>7</sup> 21 C.F.R. § 177.1640.

<sup>8</sup> *Q&A regarding 12th Report on Carcinogens*, National Institute of Environmental Health, 2011.

<sup>9</sup> *Id.*

<sup>10</sup> The Proposed Ordinance takes out of context a quote from a U.S. Environmental Protection Agency report by suggesting that EPA believes that EPS “can have serious impacts upon human health, wildlife, and aquatic environment, and the economy.” Proposed Ordinance, § 2(c) (citing *Assessing and Monitoring Floatable Debris*, U.S. EPA (2002), at p. 1-2). The provision of the EPA report cited by the Proposed Ordinance does not discuss EPS or polystyrene specifically, but rather “trash and floatable debris” more generally.

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Page 4

City's own street litter study, which notably the Proposed Ordinance does not cite, EPS of all types and from all sources constitutes only a small fraction of the overall litter stream in San Francisco -- less than two percent.<sup>11</sup> EPS transport packaging, which is a target of the Proposed Ordinance, is a subset of the larger polystyrene foam plastics family. Given that the City would target an even smaller subset of EPS packaging -- i.e., EPS packaging sold in San Francisco and EPS packaging used by San Francisco businesses to protect the contents of shipments of products -- there is no rational relationship between the Proposed Ordinance's ban and its stated goals. Furthermore, the vast majority of EPS packaging targeted by the Proposed Ordinance would likely be shipped to addresses outside of San Francisco. The ban would have no meaningful impact on litter in San Francisco, or litter that ends up carried from city streets into storm drains or to the Bay.

Furthermore, there is no meaningful connection between reducing waste in San Francisco and either EPS packaging sold in San Francisco or EPS packaging used by San Francisco businesses for their shipments and distribution. Indeed, a 2004 report by the California Integrated Waste Management Board ("CIWMB") stated that polystyrene makes up "only 0.8 percent (by weight) of the total waste landfilled in California. . . . Even considering volume rather than weight, PS [polystyrene] in the waste stream does not appear to pose significant problems related to landfill capacity."<sup>12</sup> This 2004 report concludes that "CIWMB does not believe that a separate [waste reduction] PS initiative is warranted."<sup>13</sup> This 0.8 percent figure represents EPS of all types and from all sources, of which EPS packaging is only a subset. Again, considering additionally that the City would target an even smaller subset of EPS packaging sold in San Francisco or used by local businesses for shipments, there is no logical connection between the Proposed Ordinance's packaging ban and the city's goal of reducing waste.

Thus, the Proposed Ordinance has no rational relationship to any legislative goal. In order to pass constitutional muster, legislation that regulates conduct must "bear a rational relationship to an independent and legitimate legislative end." *Romer v. Evans*, 517 U.S. 620, 632 (1996). Otherwise, governmental regulation of conduct could be drawn solely "for the purpose of disadvantaging the group burdened by the law." *Id.*

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<sup>11</sup> *Streets Litter Re-Audit 2009*, prepared for The City of San Francisco Environment Department (Sept. 2009).

<sup>12</sup> *Use and Disposal of Polystyrene in California: A Report to the California Legislature*, California Integrated Waste Management Board, at p. 18 (Dec. 2004).

<sup>13</sup> *Id.*

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May 9, 2016  
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The Proposed Ordinance's ban has no rational relationship to its goals. At most, the Proposed Ordinance achieves only the *appearance* that the City is advancing its stated objectives, which is not a legitimate legislative goal. In reality, the Proposed Ordinance will disadvantage local businesses and residents, who will need to seek out more expensive and less reliable alternatives for packing materials.

### III. EPS is recyclable.

In addition, EPS is widely recyclable, contrary to what the Proposed Ordinance suggests. EPS is marked with a "No. 6" recycling identification code. There is a strong market for recycled EPS. Over the past twenty-five years, EPS recycling has continued to grow, and there is a steady demand for recycled EPS for use in a wide variety of rigid plastic applications including circuit boards and building materials and for use in other products such as adhesives and recycled content EPS packaging.

The recyclability of EPS was a key reason why a New York trial court overturned a determination by the Commissioner of the Sanitation Department that it is not environmentally effective or economically feasible to recycle EPS.<sup>14</sup> The Court found that the Commissioner had acted arbitrarily and capriciously in ignoring the facts showing the technical and financial viability of recycling EPS in New York. The fact that San Francisco's blue bin program does not currently accept EPS does not mean that EPS could not ever be recycled curbside. Over 50 California municipalities have curbside EPS recycling programs.

Finally, although the Proposed Ordinance claims that there are feasible alternatives to EPS, the City provides no support for this. Indeed, the City has already indicated that it would provide an initial three-year waiver of the Proposed Ordinance for EPS packaging for cold chain medical shipments, based on the lack of viable alternatives to EPS. In addition to cold chain medical shipments, EPS is essential as a reliable and cost-effective packaging solution to prevent damage to shipments of a wide range of other products, such as electronics, light fixtures, glass items, and flat-pack furniture, to name a few. There is no valid reason to ban local businesses from using EPS packaging to protect the contents of products that they distribute or ship, or to ban San Francisco businesses from selling or distributing EPS packaging.

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<sup>14</sup> *Restaurant Action Alliance NYC v. The City of New York*, Supreme Court of the State of New York, No. 100734/15 (decision and order dated Sept. 21, 2015).

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ARNOLD & PORTER LLP

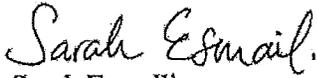
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Hon. Supervisor London Breed  
May 9, 2016  
Page 6

\* \* \*

For all of these reasons, the Proposed Ordinance is legally suspect and should be withdrawn. We appreciate your consideration of these comments and are open to meeting with you and continuing the discussion.

Sincerely,

  
Sarah Esmalli

cc: Thomas J. Owen, Esq., Deputy City Attorney



May 27, 2016

San Francisco Board of Supervisors  
San Francisco City Hall  
1 Dr. Carlton B Goodlet Place  
San Francisco, CA 94102 -4689

Dear President Breed and Supervisors,

On behalf of Save The Bay's thousands of supporters in San Francisco I urge you to expand the city's ban on expanded polystyrene foam (EPS). EPS is one of the most pernicious types of litter found in the Bay and a huge environmental problem – it threatens wildlife, pollutes wetlands, and blights our recreation areas.

Because EPS is so lightweight it blows easily into our waterways where it readily breaks apart into small pieces that are easy for fish, birds, and other wildlife to ingest. This material is a nightmare for the city's waste management service, as well as waterfront cleanup crews, and volunteers, who spend countless hours picking up the tiny pieces. San Francisco's existing ordinance banning EPS food service ware was a major step to reduce that source of litter and a model for other cities in the region, but many other EPS products remain. Unfortunately, the unique lightness and brittleness of EPS mean that this product has a disproportionate impact on the environment compared with other materials.

We thank Supervisor Breed for bringing this issue before the Board and applaud San Francisco's legacy of forward-thinking environmental policies. We urge the city to once again lead the way in preventing Bay pollution by adopting the proposed ordinance. We are happy to assist with ordinance implementation and outreach and look forward to holding up this policy as a model to other cities.

Sincerely,

A handwritten signature in black ink that reads "David Lewis". The signature is written in a cursive, flowing style.

David Lewis, Executive Director



File no. 160363

April 28, 2016

The Honorable London Breed  
Board of Supervisors, City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

**RE: Proposed Ordinance – Food Service and Packaging Waste Reduction – OPPOSE**

Dear Supervisor Breed:

The American Chemistry Council (ACC) and its Plastics Foodservice Packaging Group (PFFG) – a national trade association whose membership includes the leading monomer producers, resin suppliers and manufacturers of plastic (take-out) foodservice packaging – appreciate the opportunity to comment on your proposed ordinance regarding polystyrene packaging. While we share the mutual goals of increasing the amount of material diverted from landfill disposal and reducing materials that may be inadvertently littered in the environment, we respectfully oppose the ordinance as drafted. In summary, we are opposed because:

- The draft ordinance contains several “findings” that are taken out of context and not supported by scientific fact;
- The proposal falsely assumes that banning polystyrene packaging material will result in substitute materials being either recycled or composted at a higher rate; and
- The ordinance overlooks the many environmental, safety and health benefits associated with polystyrene packaging.

#### **FINDINGS**

The proposed ordinance contains many “findings” that allege significant health impacts may be associated with “styrene” and the use of polystyrene packaging. ACC requests that this language be deleted. It is critical to note that polystyrene is not the same material as styrene, and suggesting that consumers may incur negative health impacts from using polystyrene products is not supported by scientific fact.

Styrene is a liquid, and polystyrene is an inert solid plastic. They are fundamentally unlike and display distinctly different properties. Styrene is a raw material used to create high-performance plastics, car tires, carpet backing, and reinforced fiberglass composites, such as those used in bathtubs, automobile body panels and wind turbines. Once these products are manufactured, they are inert.

Polystyrene is approved by the US Food and Drug Administration (FDA) for food contact applications, and the food safety benefits of plastic foodservice packaging, including polystyrene, are undisputed. Its inherent insulation properties maintain food temperatures and help keep food fresh, hot or cold and ready-to-eat. Polystyrene is also used in a variety of other everyday consumer products, such as cushioning for shipping delicate electronics, energy saving insulation, kitchen appliances, smoke detectors and toys.

California’s Office of Environmental Health Hazard Assessment (OEHHA) recently stated:

*“OEHHA agrees that styrene is not the same as polystyrene....In its regulations of food packaging and food contact materials – including styrene and polystyrene – FDA considers that these materials may contain*



*substances or unreacted monomers that can migrate in trace amounts to foods and beverages. FDA reviews safety data and sets regulatory specifications for these materials, including styrene and polystyrene, and requires sufficient scientific information to demonstrate that the intended uses of these materials are safe. Food contact materials meeting FDA's standards are considered safe for use."*<sup>1</sup>

Other scientific experts and bodies have also commented on the safety of polystyrene products, including:

#### **U.S. National Toxicology Program (NTP)<sup>2</sup>**

Dr. Linda Birnbaum, Ph.D., Director, U.S. National Toxicology Program was quoted widely in Associated Press reports in June 2011: "Let me put your mind at ease right away about polystyrene foam\*" ... [the levels of styrene from polystyrene containers] "are hundreds if not thousands of times lower than have occurred in the occupational setting...In finished products, certainly styrene is not an issue." *Source: news reports of Associated Press story, June 2011*

John Bucher, associate director of the National Toxicology Program, was quoted in Associated Press reports in August 2011: "The risks, in my estimation, from polystyrene are not very great," he said. "It's not worth being concerned about."

*Source: news reports of Associated Press story, August 2011*

#### **U.S. National Institutes of Environmental Health Sciences (NIEHS)**

NIEHS in June 2011 noted: "Styrene should not be confused with polystyrene (foam)\*. Although styrene, a liquid, is used to make polystyrene, which is a solid plastic, we do not believe that people are at risk from using polystyrene products."

*Source: NIEHS web site*

#### **Otis Brawley, Chief Medical Officer, American Cancer Society**

Bloomberg News in June 2011 reported that Brawley said, "Consumers don't need to worry about polystyrene cups and food containers..." Quote: "I see no problems with polystyrene foam\* cups."

*Source: Bloomberg News, June 2011*

In addition, styrene is naturally present in many foods, such as cinnamon, beef, coffee beans, peanuts, wheat, oats, strawberries and peaches. Its chemical structure is similar to cinnamic aldehyde, the chemical component that creates cinnamon's flavor. In light of this information, any language in the draft ordinance alleging potential health impacts associated with polystyrene packaging should be deleted.

#### **GENERAL COMMENTS**

All packaging leaves an environmental footprint regardless of the material type. It takes energy and raw materials to produce, transport, and recover or dispose of any material. So it is important to measure all of these impacts throughout the entire lifecycle of a product. Consider the following:

- Polystyrene cups weigh anywhere from two to five times less than comparable paper packaging products, which means fewer air emissions when transporting products.<sup>3</sup>
- A polystyrene hot beverage cup requires about 50% LESS energy to produce than a similar plastic-coated paperboard cup with a corrugated cup sleeve, and creates significantly fewer greenhouse gas emissions than a similar coated paper-based cup with its corrugated sleeve.<sup>4</sup>

While we certainly share your concerns over potential litter impacts, focusing on a single material type does not reduce litter. Nor do we believe that restricting all polystyrene packaging will have a measureable impact on achieving the city's zero waste goals. The City of San Francisco banned polystyrene containers, but according to a 2008 litter audit

<sup>1</sup> See [http://oehha.ca.gov/prop65/CRNR\\_notices/admin\\_listing/intent\\_to\\_list/pdf\\_zip/042216styreneNOILresponsecoms.pdf](http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/pdf_zip/042216styreneNOILresponsecoms.pdf).

<sup>2</sup> See <https://plasticfoodservicefacts.com/main/Safety/National-Toxicology-Program>.

<sup>3</sup> Life Cycle Inventory of Foam Polystyrene, Paper-Based, and PLA Foodservice Products, prepared by Franklin Associates, a Division of ERG, February, 2011.

<sup>4</sup> Ibid

conducted for the city, paper cup litter increased after the ban was enacted.<sup>5</sup> Bans result in litter substitution, not elimination. The amount of polystyrene foam foodservice that makes up litter is very small – measured at 1.5 percent of the overall litter stream in detailed litter surveys conducted in the U.S. and Canada.<sup>6</sup>

Additionally, the U.S. Environmental Protection Agency states that ALL polystyrene packaging is less than 1.0% by weight and volume.<sup>7</sup>

As plastics recycling in general continues to grow, access to foam foodservice packaging recycling also has grown.

- A 2012 study found that 31 percent of the U.S. population has access to foam foodservice packaging recycling.<sup>8</sup>
- A 2013 study found that a total of one half the populations of the *50 largest California cities* have access to foam foodservice packaging recycling. In contrast, only two percent of this population has access to paper foodservice packaging recycling.<sup>9</sup>
- The same study found that 16 percent of the population of the *50 largest U.S. cities* has access to foam foodservice packaging recycling, while six percent has access to paper foodservice packaging recycling.<sup>10</sup>

Finally, the effectiveness of expanded polystyrene (EPS) transport packaging has been proven in numerous packaging applications used by a wide variety of industries, consumer product manufacturers and catalogue and shipping companies. Lightweight EPS is ideal for these packaging applications due to its physical properties, in particular its cushioning characteristics, dimensional stability and its thermal and moisture resistance. Custom-molded EPS interior packaging has been highly effective in protecting sensitive electronic components, consumer goods and office equipment; its moldability allows interior packaging components to hold products snugly in place. Because EPS can be molded into virtually any shape or size, it is well suited to automated production lines.

Prior to finalizing this proposal, ACC urges you to take into account these unique attributes of EPS and assess whether potential alternative packaging is readily available, provides comparable performance results, is cost-effective, and can compete from an environmental life-cycle perspective. Forcing companies into alternative packaging that may not meet these criteria does not make public policy sense.

ACC appreciates the opportunity to submit these comments. While we oppose the ordinance as drafted, we would encourage you to consider working with the polystyrene industry, retailers, recyclers and others on recycling policies that can help increase the amount of this material that is diverted from disposal.

Should you or your staff have any questions or comments, please feel free to contact me at 916-448-2581; [tim\\_shestek@americanchemistry.com](mailto:tim_shestek@americanchemistry.com).

Sincerely,



Tim Shestek  
Senior Director, State Affairs

<sup>5</sup> The City of San Francisco Streets Litter Re-Audit 2008, Prepared for the City of San Francisco Environment Department, July 4, 2008.

<sup>6</sup> The Contribution of Polystyrene Foam Food Service Products to Litter, Environmental Resources Planning, Gaithersburg, MD, May 2012.

<sup>7</sup> Advancing Sustainable Materials Management: Facts and Figures 2013, Assessing Trends in Material Generation, Recycling and Disposal in the United States, June 2015, US EPA, Office of Resource Conservation and Recovery (5306P), EPA530-R-15-002.

<sup>8</sup> See <http://www.moorerecycling.com/UpdatedREACHReportMay2013.pdf>.

<sup>9</sup> See <https://plasticfoodservicefacts.com/Pages/Access-to-Recycling-Expanded-Polystyrene-Food-Service-Items.pdf>.

<sup>10</sup> *Id.*



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

File 160383  
BOS-11, COB, GAO  
Leg Dep.  
CPAGE

2016 APR 29 AM 10:31

BY: JHB

The Dow Chemical Company  
Trademark Department  
9330 Zionsville Road  
Indianapolis, Indiana 46268  
United States of America

April 26, 2016

Board of Supervisors  
City of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, California 94102-4689

Attention: Angela Calvillo, Clerk of the Board

**RE: Correct Use of the Trademark Brand STYROFOAM®**

Dear Sir/Madam:

We have recently become aware of the proposed Ordinance Amending the Environment Code – Food Service and Packaging Waste Reduction, File No. 160383. We note that The Dow Chemical Company’s **STYROFOAM®** trademark has been used incorrectly in the proposed Ordinance in reference to expanded polystyrene packaging and food service containers.

Our **STYROFOAM®** trademark is used incorrectly on page 1, “Section 2. Findings. . . . (b) Polystyrene foam, aka ‘Styrofoam’, is an environmental pollutant that is commonly used for packaging and as food service ware in the City and County of San Francisco.” **STYROFOAM®** is not used for packaging products or food service ware. Our **STYROFOAM®** trademark is also used incorrectly on page 7, in the definition for “ ‘Polystyrene Foam’ means blown polystyrene and expanded and extruded foams (sometimes called Styrofoam™) . . . ” **STYROFOAM®** is extruded polystyrene, not expanded polystyrene. (See Enclosure.)

You may or may not be aware that The Dow Chemical Company has developed and sold the **STYROFOAM®** brand of insulation for more than 50 years. Dow is the owner of numerous registrations for the trademark **STYROFOAM®** throughout the world. The trademark **STYROFOAM®** is used on Dow’s plastic foam insulation and construction products for use in residential, commercial and industrial buildings, and on floral and craft products. It may not be used to describe other products, such as polystyrene packaging, food service ware or as a generic description for foam products. It also may not be used to describe other types of foam that are used for insulation and construction materials.

**STYROFOAM®** brand extruded polystyrene is **not used** to produce packing materials, foam cups, trays or other food containers. These expanded polystyrene foam products should be referred to with the generic terms “polystyrene foam” or “foam,” rather than referring to our branded trademark name. Dow has worked over the years to produce an exceptional product and developed substantial good will and brand equity in the brand **STYROFOAM®**. This fame, good will, and brand recognition is important to Dow and it is equally important that we do not permit use of our trademarks by others in a manner that would cause harm to our brands.

The mention of **STYROFOAM®** in conjunction with expanded polystyrene packaging and food service containers is incorrect and misleading. It should reference “polystyrene foam” to be accurate. We trust that both accuracy and intellectual property are appreciated by the members of the Board of Supervisors of the City of San Francisco.

Board of Supervisors  
April 26, 2016  
Page Two

We respectfully request that all references to our trademark **STYROFOAM®** be removed from the proposed Ordinance and those references be replaced with a generic "polystyrene" term.

I thank you in advance for your cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. Joe Miller", with a long horizontal flourish extending to the right.

C. Joe Miller  
General Trademark Counsel  
The Dow Chemical Company  
9330 Zionsville Road  
Indianapolis, IN 46268 USA

Enclosure

®Trademark of The Dow Chemical Company

1 [Environment Code - Food Service and Packaging Waste Reduction]

2

3 **Ordinance amending the Environment Code to prohibit the sale of food service ware**  
4 **and other specified products including packing materials that are made from**  
5 **polystyrene foam or that are non-recyclable and non-compostable; setting an operative**  
6 **date of January 1, 2017; and affirming the Planning Department's determination under**  
7 **the California Environmental Quality Act.**

8 **NOTE: Unchanged Code text and uncodified text are in plain Arial font.**  
9 **Additions to Codes are in *single-underline italics Times New Roman font.***  
10 **Deletions to Codes are in ~~italics Times New Roman font.~~**  
11 **Board amendment additions are in double-underlined Arial font.**  
12 **Board amendment deletions are in ~~strikethrough Arial font.~~**  
13 **Asterisks (\* \* \* \*) indicate the omission of unchanged Code**  
14 **subsections or parts of tables.**

12

13 Be it ordained by the People of the City and County of San Francisco:

14

15 Section 1. The Planning Department has determined that the actions contemplated in  
16 this ordinance comply with the California Environmental Quality Act (California Public  
17 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the  
18 Board of Supervisors in File No. \_\_\_\_ and is incorporated herein by reference. The Board  
19 affirms this determination.

20

21 Section 2. Findings.

22 (a) The City and County of San Francisco has a duty to protect the natural  
23 environment, the economy, and the health of its citizens.

24 (b) Polystyrene foam, aka "Styrofoam", is an environmental pollutant that is commonly  
25 used for packaging and as food service ware in the City and County of San Francisco.

1           "Distribute" means the sale, offer for sale, or other transfer of possession of an item for  
2           compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of  
3           possession of another item for compensation.

4           "Egg Carton" means a carton for raw eggs sold to consumers from a refrigerator case or  
5           similar retail appliance.

6           "Food Service Ware" means all containers, bowls, plates, trays, cups, lids, straws, forks,  
7           spoons, knives, napkins, and other like items that are designed for one-time use for Prepared Foods,  
8           including without limitation, service ware for takeout foods and/or leftovers from partially consumed  
9           meals prepared by Food Vendors. The term "Food Service Ware" does not include items composed  
10           entirely of aluminum, or polystyrene foam coolers and ice chests.

11           (+) "Food Vendor" means any Restaurant or Retail Food Vendor located or operating  
12           within the City and County of San Francisco.

13           "Meat and Fish Tray" means a tray for raw meat, fish, or poultry sold to consumers from a  
14           refrigerator case or similar retail appliance.

15           "Packing Material" means material used to hold, cushion, or protect items packed in a  
16           container for shipping, transport, or storage.

17           (+) "Person" means an individual, trust, firm, joint stock company, corporation including  
18           a government corporation, partnership, or association.

19           (+) "Polystyrene Foam" means blown polystyrene and expanded and extruded foams  
20           (sometimes called Styrofoam™) which are thermoplastic petrochemical materials utilizing a  
21           styrene monomer and processed by any number of techniques including, but not limited to,  
22           fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding,  
23           and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally  
24           used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.

25

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

April 26, 2016

File No. 160383

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Ms. Jones:

On April 19, 2016, Supervisor Breed introduced the following legislation:

**File No. 160383**

**Ordinance amending the Environment Code to prohibit the sale of food service ware and other specified products including packing materials that are made from polystyrene foam or that are non-recyclable and non-compostable; setting an operative date of January 1, 2017; and affirming the Planning Department's determination under the California Environmental Quality Act.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Committee Clerk  
Government Audit and Oversight Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Regina Dick-Endrizzi, Director  
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight  
Committee, Board of Supervisors

DATE: April 26, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Government Audit and Oversight Committee

The Board of Supervisors' Government Audit and Oversight Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 160383

**Ordinance amending the Environment Code to prohibit the sale of food service ware and other specified products including packing materials that are made from polystyrene foam or that are non-recyclable and non-compostable; setting an operative date of January 1, 2017; and affirming the Planning Department's determination under the California Environmental Quality Act.**

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_

No Comment  
 Recommendation Attached

\_\_\_\_\_  
Chairperson, Small Business Commission

C:  
Menaka Mahajan, Small Business Commission

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: John Rahaim, Director, Planning Department  
Phil Ginsburg, General Manager, Recreation and Parks Department  
Deborah Raphael, Director, Department of the Environment  
Barbara A. Garcia, Director, Department of Public Health  
Mohammed Nuru, Director, Public Works  
Joanne Hayes-White, Chief, Fire Department

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: April 26, 2016

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by the Supervisor Breed on April 19, 2016:

**File No. 160383**

**Ordinance amending the Environment Code to prohibit the sale of food service ware and other specified products including packing materials that are made from polystyrene foam or that are non-recyclable and non-compostable; setting an operative date of January 1, 2017; and affirming the Planning Department's determination under the California Environmental Quality Act.**

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:

Scott Sanchez, Planning Department  
Sarah Jones, Planning Department  
AnMarie Rodgers, Planning Department  
Aaron Starr, Planning Department  
Joy Navarrete, Planning Department  
Jeanie Poling, Planning Department  
Sarah Madland, Recreation and Parks Department  
Margaret McArthur, Recreation and Parks Department  
Guillermo Rodriguez, Department of the Environment  
Anthony Valdez, Department of the Environment  
Mei Ling Hui, Department of the Environment  
Greg Wagner, Department of Public Health  
Colleen Chawla, Department of Public Health  
Frank Lee, Public Works  
Fuad Sweiss, Public Works  
Kelly Alves, Fire Department

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

Sponsor(s):

Breed, *PESEN*

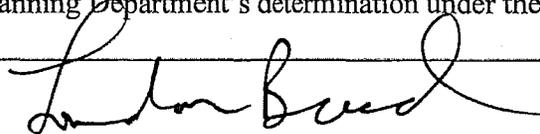
Subject:

Environment Code - Food Service and Packaging Waste Reduction

The text is listed below or attached:

Ordinance amending the Environment Code to prohibit the sale of food service ware and other specified products including packing materials that are made from polystyrene foam or that are non-recyclable and non-compostable; setting an operative date of January 1, 2017; and affirming the Planning Department's determination under the California Environmental Quality Act.

Signature of Sponsoring Supervisor:



or Clerk's Use Only:

