

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Karen Kinser, Senior Civil Engineer

VIA: Director of Public Works/City Engineer via City Manager

SUBJECT: Addition of Chapter 8.18 “Reusable Food Service Ware” to Municipal Code

DATE: October 2, 2014

City Council Goals:

To develop plans and pursue opportunities to protect natural resources. (#8)

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

Purpose:

To obtain Council’s approval for adopting a new Chapter to the Brisbane Municipal Code that will generally ban the use of polystyrene food service ware by food service businesses. The requested action is consistent with the community’s values of being environmentally progressive and making decisions that are propelled by stewardship of the environment.

Recommendation:

Motion to introduce Ordinance No. 590, waiving first reading, adding Chapter 8.18 “Reusable Food Service Ware” to the Municipal Code.

Background:

Polystyrene, aka “Styrofoam”, Food Service Ware Background

Polystyrene containers have historically been used as food service ware for their ability to retain food temperatures. They are almost always discarded after a single use into the garbage and landfills in California. Polystyrene is a petroleum based, lightweight plastic material that is a problematic environmental pollutant. Polystyrene containers can adversely affect marine life if they find their way into waterways and water bodies. In comparison, reusable, recyclable and/or compostable food service ware reduces litter and conserves natural resources.

San Mateo County Polystyrene Ordinances

San Mateo County has adopted a polystyrene ordinance that took effect in July of 2011 in the unincorporated areas of the county. Many of the local agencies within the county have adopted an ordinance that mirrors the county ordinance, and four local agencies have adopted stand-alone ordinances. Adoption of an ordinance that models the County's ordinance allows for education, outreach and enforcement by the County Environmental Health Department in the course of its work.

In February of 2013, Waymond Wong, Supervisor with the San Mateo County Environmental Health Services Department, made a presentation to the Open Space and Ecology Committee regarding San Mateo County's Polystyrene Ban ordinance. The Committee voted unanimously to recommend that the City Council adopt the County's Polystyrene ban ordinance.

Discussion:

Proposed Ordinance

The proposed ordinance would:

Prohibit the use of Polystyrene-based Disposable Food Service Ware by all Food Vendors;

Exempt prepackaged food and polystyrene coolers and ice chests intended for reuse.

Provide a provision for request for exemption due to "undue hardship" for a period of up to one year; and

Provide for fines in the amounts specified in the ordinance

A benefit to working with the County and other cities is that retailers in San Mateo County have a uniform standard to follow. The County is offering to perform the education, outreach and enforcement of the Model Ordinance. Staff believes that the possibility of a uniform ordinance, outreach, implementation and enforcement (if needed) will be very compelling to retailers in Brisbane. Furthermore, the Open Space and Ecology Committee did review the San Mateo County ordinance and recommends that the Council adopt the same. The benefits of a multi-agency standard ordinance, and County-funded outreach, implementation and enforcement outweigh any benefits to the City pursuing an ordinance on its own.

Outreach

The Open Space and Ecology Committee, working with the Chamber of Commerce, later sent a letter to all 33 food vendors having business licenses in the City of Brisbane, inviting them to comment on the proposed polystyrene ban either in writing or through attendance at their June 19, 2014 meeting. The Committee received six letter responses indicating no current use of polystyrene, no concern with its ban and no financial hardship created as a result of the ordinance. No comments were received at their meeting. Most if not all of the food service vendors in Brisbane have already moved away from the use of polystyrene as a food service ware product.

Environmental Analysis

Staff has found that per CEQA Guidelines Section 15308, Actions by regulatory Agencies for Protection of the Environment, the proposed ordinance is Categorically Exempt. The proposed ordinance represents an action taken for the protection of the environment by the City of Brisbane and is categorically exempt from CEQA review pursuant to Section 15308 of the CEQA Guidelines.

Fiscal Impact:

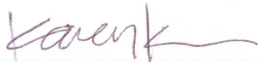
Adopting this ordinance will not have a material impact on the City's budget since San Mateo County will provide enforcement of the ordinance requirements.

Measure of Success

An apparent reduction of polystyrene food service ware within the city, its waterways, and the surrounding bay and environment. This measure will also add another jurisdictional wide trash load reduction measure that the city can use for credit in achieving its Municipal Regional Permit mandated reductions.

Attachments:

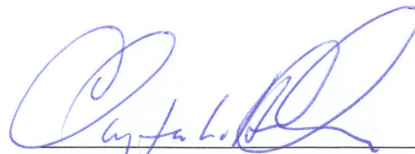
- A. Ordinance No. 590
- B. San Mateo County Ordinance No. 04542



Senior Civil Engineer



Director of Public Works/City Engineer



City Manager

ORDINANCE NO. 590

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING CHAPTER 8.18 (REUSABLE FOOD SERVICE WARE) OF
TITLE 8 (HEALTH AND SAFETY)
TO THE MUNICIPAL CODE**

The City Council of the City of Brisbane does hereby ordain as follows:

SECTION 1. MUNICIPAL CODE AMENDMENT. Chapter 8.18 of the Municipal Code, entitled “Reusable Food Service Ware,” is hereby added as follows:

CHAPTER 8.18

REUSABLE FOOD SERVICE WARE

Sections:

8.18.010	Findings and Purpose
8.18.020	Definitions
8.18.030	Polystyrene-based disposable food service ware
8.18.040	Enforcement
8.18.050	Exemptions
8.18.060	Request for an exemption
8.18.070	Violation
8.18.080	Administrative fine
8.18.090	Severability
8.18.100	Environmental review
8.18.110	Effective date

§ 8.18.010 Findings and Purpose

The City Council of the City of Brisbane finds that:

- A. Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors. Polystyrene, often referred to by the trademark ‘Styrofoam’, has also become a problematic environmental pollutant, given its non-biodegradable and nearly non-reusable nature.
- B. Effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using compostable materials made from renewable sources such as paper, cardboard, corn starch, potato starch and/or sugarcane.
- C. The City of Brisbane has a substantial interest in protecting its residents and the environment from negative impacts from polystyrene-based disposable food service ware.
- D. On March 1, 2011, the San Mateo County board of supervisors adopted San Mateo County Ordinance Code, Title 4; Chapter 4.107 entitled “Prohibition on the use of polystyrene based disposable food service ware by food vendors”.

- E. The City Council does, accordingly, find and declare that it should restrict the use by food vendors of polystyrene-based disposable food service ware as set forth in this ordinance.

§ 8.18.020 Definitions

When used in this chapter, the following words shall have the meanings ascribed to them in this section:

- A. "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers (clamshells). This does not include straws, utensils, or cup lids, nor does it include disposable packaging for unprepared foods.
- B. "Food vendor" means any vendor, business, organization, entity, group or individual, including a licensed retail food establishment, that provides prepared food at a retail level.
- C. "Polystyrene-based" means and includes expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene (EPS)), and clear or solid polystyrene known as oriented polystyrene.
- D. "Prepackaged food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source.
- E. "Prepared food" means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared. Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.

§ 8.18.030 Prohibited use polystyrene-based disposable food service ware

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

§ 8.18.040 Enforcement

The County of San Mateo's Environmental Health Division, its officers, employees, and agents are hereby authorized to enforce, on behalf of the City of Brisbane, this chapter and any amendments thereto, within the jurisdictional boundaries of the City of Brisbane as set forth in Section 4.107.080 of the County of San Mateo Ordinance Code. Such enforcement authority includes, but is not limited to, the authority to hold hearings and issue and collect administrative fines for violations of this chapter within the geographical limits of the City of Brisbane.

§ 8.18.050 Exemptions

- A. Prepackaged food is exempt from the provisions of this chapter.
- B. Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this chapter.

§ 8.18.060 Request for an exemption

Any food vendor may seek an exemption from the requirements of this chapter upon demonstrating that strict application of the requirements would cause undue hardship.

- A. An "undue hardship" shall be found in:
 - 1. Situations unique to the food vendor where a suitable alternative does not exist for a specific application; and/or
 - 2. Situations where no reasonably feasible available alternative exists to a specific and necessary container prohibited by this section.
- B. The application process for exemption shall be as follows:
 - 1. The food vendor seeking an exemption shall submit a written exemption request to the Director of the San Mateo County Environmental Health Division.
 - 2. A written exemption request shall include all information and documentation necessary for the Director of the San Mateo County Environmental Health Division to make a finding that imposition of this chapter would cause an undue hardship as defined above (section 8.18.060 A).
 - 3. The Director of the San Mateo County Environmental Health Division may require the applicant to provide additional information in order to make a determination regarding the exemption application.
 - 4. Exemption decisions are effective immediately and are final and not subject to appeal.
 - 5. The Director of the San Mateo County Environmental Health Division or his/her designee may grant an exemption for a period of up to one year upon a finding that the food vendor seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship as defined above (section 8.18.060 A).
- C. If a food vendor granted an exemption wishes to have the exemption extended, it must re-apply for the exemption prior to the expiration of the one year exemption period and demonstrate continued undue hardship. Extensions may be granted for intervals not to exceed one year.

§ 8.18.070 Violation

Any violation of this chapter is unlawful.

§ 8.18.080 Administrative fine

- A. Grounds for fine. A fine may be imposed upon findings made by the Director of the San Mateo County Environmental Health Division, or his or her designee, that any food vendor has used polystyrene-based disposable food service ware..
- B. Amount of fine. Upon finding of violation the food vendor shall be subject to an administrative fine as follows:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation;
 - 2. A fine not exceeding two hundred dollars (\$200) for a second violation;
 - 3. A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations;

4. Each day that a food vendor uses polystyrene-based disposable food service ware when providing prepared food shall constitute a separate violation.
- C. Fine Procedures. Notice of the fine shall be served on the food vendor by certified mail. The notice shall contain an advisement of the right to request a hearing before the Director of the San Mateo County Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be that either that (1) the food vendor did not use polystyrene-based disposable food service ware when providing prepared food or (2) the food vendor would have been granted an exemption under 8.18.060 if the food vendor had applied for such exemption. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the San Mateo County Environmental Health Division shall be based upon a finding that one of the above listed grounds for a contest have been met and shall be a final administrative order, with no administrative right of appeal.
 - D. Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the San Mateo County Environmental Health Division or his or her designee after the hearing, the fine shall be referred to a collection agency within or external to the County.

§ 8.18.090 Severability

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

§ 8.18.100 Environmental review

In accordance with the California Environmental Quality Act section 15308, the City of Brisbane has filed a Categorical Exemption. Section 15308 covers Actions by regulatory Agencies for Protection of the Environment. The proposed ordinance represents an action taken for the protection of the environment by banning the use of polystyrene products and is categorically exempt from CEQA review pursuant to Section 15308 of the CEQA Guidelines.

§ 8.18.110 Effective date

The above and foregoing Ordinance shall be in full force and effect ninety (90) days after its passage and adoption.

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the ___ day of _____, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

W. Clarke Conway, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:



Teresa L. Stricker, Deputy City Attorney

ORDINANCE NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

* * * * *

**AN ORDINANCE PROHIBITING FOOD VENDORS FROM USING POLYSTYRENE
BASED DISPOSABLE FOOD SERVICE WARE**

The Board of Supervisors of the County of San Mateo, State of California,
ORDAINS as follows

SECTION 1. Chapter 4.107, comprising of sections 4.107.010 through 4.107.080, is hereby added to Title 4 of the San Mateo County Ordinance Code and shall read as follows:

**Chapter 4.107 PROHIBITION ON THE USE OF POLYSTYRENE BASED
DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS**

4.107.010 Findings and purpose.

The Board of Supervisors finds and determines that:

- (a) Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors operating in the County. Polystyrene, often referred to by the trademark Styrofoam, has also become a problematic environmental pollutant given its non-biodegradable, and nearly non-reusable nature.
- (b) Polystyrene-based, single-use food service ware constitutes a substantial portion of the litter within the County of San Mateo.
- (c) Effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using

compostable materials made from renewable resources such as paper, cardboard, corn starch, potato starch, and/or sugarcane.

- (d) This Board does, accordingly, find and declare that it should restrict the use by food vendors of polystyrene-based disposable food service ware.

4.107.020 Definitions.

For purposes of this chapter, the following terms have the following meanings:

- (a) "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers (clamshells). This does not include straws, utensils, or cup lids nor does it include disposable packaging for unprepared foods.
- (b) "Food vendor" means any vendor, business, organization, entity, group or individual, including a licensed retail food establishment that provides prepared food at a retail level.
- (c) "Polystyrene-based" means and includes expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including , but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene (EPS)), and clear or solid polystyrene known as oriented polystyrene.
- (d) "Prepackaged food" means any properly labeled processed food, prepackaged to

prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source.

- (e) "Prepared food" means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared. Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.

4.107.030 Prohibited use polystyrene-based disposable food service ware.

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

4.107.040 Exemptions.

- (a) Prepackaged food is exempt from the provisions of this chapter.
- (b) Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this chapter.
- (c) Food vendors at the San Francisco International Airport are exempt from the provisions of this chapter.

4.107.050 Request For An Exemption.

Any food vendor may seek an exemption from the requirements of this chapter upon demonstrating that strict application of the requirements would cause undue hardship.

- (a) An "undue hardship" shall be found in:
 - (1) Situations unique to the food vendor where a suitable alternative does not exist for a specific application; and/or

- (2) Situations where no reasonably feasible available alternative exists to a specific and necessary container prohibited by this section.
- (b) The application process for exemption shall be as follows:
- (1) The food vendor seeking an exemption shall submit a written exemption request to the Environmental Health Division.
 - (2) A written exemption request shall include all information and documentation necessary for the Director of the Environmental Health Division to make a finding that imposition of this chapter would cause an undue hardship as defined in Section 4.107.050(a).
 - (3) The Director of the Environmental Health Division may require the applicant to provide additional information in order to make a determination regarding the exemption application.
 - (4) Exemption decisions are effective immediately and are final and not subject to appeal.
 - (5) The Director of the Environmental Health Division or his/her designee may grant an exemption for a period of up to one year upon a finding that the food vendor seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship as defined in 4.107.050 (a).
- (c) If a food vendor granted an exemption wishes to have the exemption extended, it must re-apply for the exemption prior to the expiration of the one year exemption period and demonstrate continued undue hardship. Extensions may be granted for intervals not to exceed one year.

4.107.060 Administrative fine.

- (a) Grounds for Fine. A fine may be imposed upon findings made by the Director of the Environmental Health Division, or his or her designee, that any food vendor has used polystyrene-based disposable food service ware.
- (b) Amount of Fine. Upon findings made under subsection (a), the food vendor shall be subject to an administrative fine as follows:
 - (1) A fine not exceeding one hundred dollars (\$100) for a first violation;
 - (2) A fine not exceeding two hundred dollars (\$200) for a second violation;
 - (3) A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations;
 - (4) Each day that a food vendor uses polystyrene-based disposable food service ware when providing prepared food shall constitute a separate violation.
- (c) Fine Procedures. Notice of the fine shall be served on the food vendor by certified mail. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be that either that (1) the food vendor did not use polystyrene-based disposable food service ware when providing prepared food or (2) the food vendor would have been granted an exemption under 4.107.060 if the food vendor had applied for such exemption. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that one of the above listed grounds for a contest have been met and shall be a final administrative order, with no administrative right of appeal.
- (d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing

on the notice of the fine or of the notice of determination of the Director of the Environmental Health Division or his or her designee after the hearing, the fine shall be referred to a collection agency within or external to the County.

4.107.070 Severability.

If any provision of this chapter or the application of such provision to any person or in any circumstances shall be held invalid, the remainder of this chapter, or the application of such provision to person or in circumstances other than those as to which it is held invalid, shall not be affected thereby.

4.107.080 Enforcement of this chapter when adopted.

The Environmental Health Division is hereby directed to enforce Chapter 4.107 of Title 4 within an incorporated area of the County of San Mateo if the governing board of that incorporated area does each of the following:

- (a) Adopts, and makes part of its municipal code:
 - (1) Chapter 4.107 of Title 4 in its entirety by reference; or
 - (2) An ordinance that contains each of the provisions of Chapter 4.107 of Title 4;
- (b) Authorizes, by ordinance or resolution, the Environmental Health Division to enforce the municipal code adopted pursuant to subsection (a) of this section, such authorization to include, without limitation, the authority to hold hearings and issue administrative fines within the incorporated area of the public entity.

SECTION 2. This Ordinance shall be effective as of January 1, 2011.

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