

ORDINANCE NO. 5388-N.S.

POLYSTYRENE FOAM, DEGRADABLE, AND RECYCLABLE FOOD PACKAGING
ORDINANCE.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. FINDINGS AND PURPOSES

The Council finds as follows:

A. Solid waste that is non-degradable or non-recyclable poses an acute problem for any environmentally and financially responsible program of solid waste management. Such waste covers the City's streets, parks, public places, and open spaces. It enters the marine and natural environment and is ingested by aquatic wildlife, frequently causing death. There is resultant damage to the ecological balance.

B. Products which are degradable or recyclable offer environmentally sound alternatives or non-degradable and non-recyclable products currently used. By decaying into their constituent substances, degradable products, compared to their non-degradable equivalents, are less of a danger to the natural environment, and less of a permanent blight on the urban landscape. Recycling of products reduces costly waste of natural resources and energy used in production of new products as well as costly disposal of waste in landfills.

C. Polystyrene foam is a petroleum processing by-product. Oil is a non-renewable resource, which can only be obtained by increasingly hazardous methods such as off-shore drilling, which poses significant dangers to the environment. Alternative products which are degradable or recyclable pose far less overall hazards than continued and expanded reliance on oil-based products.

D. Evidence indicates that all blowing agents currently used or proposed in connection with the manufacture of polystyrene foam pose dangers to the environment. Beyond the generally acknowledged dangers of Chlorofluorocarbons (CFCs) to the ozone layer, which are addressed in another City of Berkeley ordinance, other blowing agents also create dangers. For example, the blowing agent pentane creates hazardous earth-level smog and has already been restricted in some regions for air quality reasons.

E. Takeout food packaging constitutes the single greatest source of litter in Berkeley and is a significant contributor to the total amount of waste entering the City's waste stream.

the total amount of waste entering the City's waste stream.

F. It is in the interest of the health, safety, and welfare of all who live, work and do business in the City that the amount of litter on the public streets, parks, public places, and open spaces be reduced.

G. The City of Berkeley has the duty to responsibly dispose of its solid waste, yet existing landfill sites are rapidly approaching capacity, and additional sites are increasingly unavailable.

H. Reduction of the amount of non-degradable waste entering the waste stream and encouraging the use of recyclable containers further this goal.

I. This Ordinance is consistent with the City of Berkeley's 1986 Solid Waste Management Plan, the County of Alameda Solid Waste Management Plan, and the legislative intent and findings of the State of California Solid Waste Management and Resource Recovery Act of 1972 (Government Code Section 66700 et seq.).

Section 2. DEFINITIONS

A. "Polystyrene Foam" means any styrene or vinyl chloride polymer which is blown into a foam-like material.

B. "Polystyrene Foam Food Packaging" means any food packaging which contains any polystyrene foam.

C. "Customer" means anyone purchasing food or beverages from a restaurant or retail food vendor.

D. "Person", "Anyone" means any natural person, firm, corporation, partnership, or other organization or group however organized.

E. "Supplier" means anyone selling, or otherwise supplying food packaging to a restaurant or retail food vendor.

F. "Food Vendor" means any restaurant or retail food vendor.

G. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed. "Prepared Food" does not include any raw uncooked meat product or fruits or vegetables which are not chopped, squeezed, or mixed.

H. "Restaurant" means any establishment located within the City of Berkeley, selling prepared food to be eaten on or about its premises by customers. Restaurant includes a sidewalk food vendor.

I. "Takeout Food" means prepared foods or beverages requiring no further preparation to be consumed and which are generally purchased in order to be consumed off the retail food vendor's premises.

J. "Retail Food Vendor" means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the City of Berkeley, which sells takeout food.

K. "Food Packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on a restaurant's or retail food vendor's premises.

L. "Degradable Food Packaging" means food packaging which substantially reduces to its constituent substances through degradation processes initiated by natural organisms whose end products are substantially, but not necessarily entirely, carbon dioxide and water; and plastic items designed to degrade when exposed to ultraviolet light. Degradable food packaging does not include cellulose-based items which have a synthetic or plastic coating comprising more than 5% of the total volume of the item.

M. "Recyclable Food Packaging" means any food packaging including glass, cans, cardboard, paper, mixed paper, or other items which can be recycled, salvaged, composted, processed, or marketed by any means other than landfilling or burning, whether as fuel or otherwise, so that they are returned to use by society.

Section 3. PROHIBITED FOOD PACKAGING (POLYSTYRENE FOAM)

A. Restaurants

1. Except as provided in Sections 7 and 8, no Restaurant shall provide Prepared Food to its Customers in any Polystyrene Foam Food Packaging, nor shall any Restaurant purchase, obtain or keep any Polystyrene Foam Food Packaging for such purpose.

2. As to any Food Packaging obtained after the effective date of this Ordinance, each Restaurant shall obtain from each of its Suppliers a written statement signed by the Supplier, or by a responsible agent of the Supplier, stating that the Supplier will supply no Polystyrene Foam Food Packaging to that Vendor, that the Supplier will note on each invoice for Food Packaging supplied to that Vendor that the packaging covered by the invoice is not Polystyrene Foam and the identity of the packaging's manufacturer.

3. All contracts between a Restaurant and a Supplier

entered into after the effective date of this Ordinance shall include provisions that the Supplier will supply no Polystyrene Foam Food Packaging; that the Supplier will state on each invoice for Food Packaging supplied that the packaging is not Polystyrene Foam and the identity of the packaging's manufacturer; and that failure to comply with such provisions shall constitute a material breach of the contract.

4. Restaurants shall retain each Supplier's written statement for one year from the date of receipt of any Food Packaging from that Supplier.

B. Retail Food Vendors

1. Except as provided in Sections 7 and 8, no Retail Food Vendor shall sell Takeout Food in any Polystyrene Foam Takeout Food Packaging, nor shall any Retail Food Vendor purchase, obtain or keep any Polystyrene Foam Packaging for this purpose.

2. All Retail Food Vendors shall segregate, in their warehouses or other storage areas, Food Packaging used in their Takeout Food operations from other food packaging. Takeout Food Packaging containers or boxes shall be labelled as such and shall indicate that they contain Food Packaging which is not Polystyrene Foam.

3. As to any Takeout Food Packaging purchased after the effective date of this Ordinance, each Retail Food Vendor shall comply with the requirements of Section 3(A)(2) and (4) of this Ordinance.

4. All contracts for the purchase of Takeout Food Packaging entered into after the effective date of this Ordinance shall comply with the provisions of Section 3(A)(3).

Section 4. DEGRADABLE AND RECYCLABLE FOOD PACKAGING

A. Restaurants

1. At least 50% by volume of each Restaurant's Food Packaging, in which Prepared Food is provided to Customers, or which is kept, purchased, or obtained for this purpose, shall be Degradable or Recyclable

2. Each Restaurant shall maintain written records evidencing its compliance with this section.

B. Retail Food Vendors

1. At least 50% by volume of each Retail Food Vendor's packaging, in which Takeout Food is provided to Customers, or which is kept, purchased, or obtained for this purpose,

shall be Degradable or Recyclable.

2. Each Retail Food Vendor shall maintain written records evidencing its compliance with this section.

Section 5. REGULATIONS APPLICABLE TO ALL FOOD VENDORS

A. It shall be unlawful for any Supplier to make any misstatement of material fact to any Food Vendor or to the City Manager or his or her agents regarding the Degradable or Recyclable nature of, or the use or non-use of Polystyrene Foam in the manufacture of any Food Packaging supplied to any Food Vendor.

B. Food Vendors shall state that they are in compliance with this Ordinance on their annual business license renewal forms.

Section 6. INSPECTION OF DOCUMENTS

All statements and documents required by this Ordinance shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for Anyone having custody of such documents to fail or refuse to produce such documents upon request by the City Manager or his or her designated representative.

Section 7. EXEMPTIONS

The City Manager or his or her authorized representative may exempt an item or type of Food Packaging from the requirements of this Ordinance, upon a showing that the item or type has no acceptable non-Polystyrene Foam equivalent and that imposing the requirements on that item or type would cause undue hardship. Said documentation shall include a list of Suppliers contacted to determine if non-Polystyrene Foam substitutes are available.

Section 8. EXISTING CONTRACTS EXEMPTED

Food Packaging required to be purchased under a contract entered into prior to September 22, 1987 is exempt from the provisions of this Ordinance.

Section 9. CITY OF BERKELEY: PURCHASES PROHIBITED

The City of Berkeley shall not purchase any Polystyrene Foam Food Packaging, nor shall any City-sponsored event utilize such packaging. At least 50% by volume of the Food Packaging which the City, or any City-sponsored event, utilizes shall be Recyclable or Degradable

Section 10. SEPARATE FOOD PACKAGING WASTE RECEPTACLES

Each Restaurant and Retail Food Vendor shall establish separate waste receptacles for each type of Recyclable Food Packaging

waste, generated on premises, including, but not limited to, glass, cans, cardboard, newspapers, and mixed paper.

Section 11. CITY MANAGER'S POWERS

The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Ordinance, including, but not limited to, inspecting any Vendor's premises to verify compliance.

Section 12. LIABILITY AND ENFORCEMENT

A. Anyone violating or failing to comply with any of the requirements of this Ordinance shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code.

B. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Ordinance.

C. The remedies and penalties provided in this section are cumulative and not exclusive.

Section 13. SEVERABILITY

If any part or provision of this Ordinance or the application thereof to any Person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.

Section 14. ORDINANCE VOIDED BY SUPERSEDING LAWS AND REGULATIONS

The provisions of this Ordinance with respect to Polystyrene Foam, shall be void upon the enactment or adoption of any law or regulation restricting the use of plastic foams.

Section 15. EFFECTIVE DATE

The provisions of this Ordinance shall become effective on January 1, 1990.

Section 16. POSTING

Copies of this Ordinance are hereby ordered published by posting with the vote thereon for two (2) days at ten (10) prominent places in the City of Berkeley as designated by Chapter 1.08 of the Berkeley Municipal Code.

At a regular meeting of the Council of the City of Berkeley, held on the twenty-seventh day of September, 1988, this Bill was passed to print and ordered published by posting by the following vote.

Ayes Councilmembers Chandler, Dean, Jelinek, Shirek, Skinner, Wainwright, Weekes and President Hancock.

Noes None.

Abstain Councilmember Goldfarb

Absent None.

ATTEST: EDYTHE CAMPBELL
City Clerk and Clerk of the Council

In effect: January 1, 1990

At a regular meeting of the Council of the City of Berkeley, held on the eleventh day of October, 1988, this Ordinance was finally adopted by the following vote:

Ayes: Councilmembers Chandler, Dean, Jelinek, Shirek, Skinner, Wainwright, Weekes and President Hancock.

Noes. None.

Abstain: Councilmember Goldfarb.

Absent: None.

ATTEST: MARIE McKECHNIE
City Clerk and Clerk of the Council

Approved this 11th day of October, 1988

LONI HANCOCK
Mayor and President of the Council

This is to certify that the foregoing is a true and correct copy of Ordinance No. 5888-N.S., and the same was finally adopted on October 11, 1988, and that it was duly and regularly posted as provided by law.

ATTEST: Marie McKechnie
City Clerk and Clerk of the Council