



POLICY AND PROCEDURE

Subject: Prohibition on Use of Expanded Polystyrene (EPS)	Index: Health, Safety & Welfare
	Number: 402-1
Effective Date: April 5, 2011	Prepared By: Public Works/Engineering
Supersedes: April 20, 2004	Approved By: <i>Gi. Nanchak</i>

1.0 PURPOSE:

The purpose of this policy is to provide further clarification on what shall constitute an "Undue Hardship" as noted in San Clemente Municipal Code (SCMC) Chapter 8.30 regarding the prohibition on use of Expanded Polystyrene (EPS) within the City of San Clemente. This policy also specifies where monetary fines collected from violations of SCMC Chapter 8.30 are to be deposited. Finally, this policy retains provisions from the prior policy (dated April 20, 2004) concerning enforcement of violations when EPS is found in use at City facilities, or City-sponsored or cosponsored events. These original enforcement options shall be in addition to the enforcement provision of SCMC 8.30 and at the discretion of the City Council.

2.0 ORGANIZATIONS AFFECTED:

- City of San Clemente.
- All organizations (including non-profits) that co-sponsor events with the City of San Clemente.
- Individuals, groups and organizations that rent, lease or otherwise utilize City-owned property or facilities.
- Food vendors, restaurants, and retail food vendors as defined in SCMC 8.30.

3.0 REFERENCE:

San Clemente Municipal Code (SCMC) Chapter 8.30, "Prohibition on Use of Expanded Polystyrene Food Service Ware," Ordinance No. 1533.

4.0 POLICY:

- 4.1 In recognition of its duty to protect the public health, safety and welfare and to preserve the natural environment for present and future generations, the City of San Clemente adopted Resolution No. 04-27 on April 20, 2004, prohibiting the use of EPS food service ware within City facilities and at City-sponsored or cosponsored events.

- 4.2 On January 4, 2011, the City adopted Ordinance No. 1533 to expand the prohibition on the use of EPS food service ware to include all food service establishments within the City of San Clemente, beginning on July 1, 2011.
- 4.3 Per City Council direction, this policy provides a definition of what shall constitute an "Undue Hardship" as referred to in SCMC Chapter 8.30.
- 4.4 An undue hardship exemption to the requirements of SCMC Chapter 8.30 shall not be provided when it concerns use of EPS at City facilities or City-sponsored or cosponsored events.
- 4.5 SCMC Chapter 8.30 provides enforcement for violations, including when EPS is used at food service establishments within the City as well as at City facilities and City-sponsored or cosponsored events. This policy also retains provisions from the prior policy (dated April 20, 2004) concerning enforcement of violations when EPS is found in use at City facilities, or City-sponsored or cosponsored events. These original enforcement options shall be in addition to the mandatory enforcement provision of SCMC 8.30 and at the discretion of the City Council.

5.0 DEFINITIONS:

"City" shall mean the City of San Clemente.

"City facilities" refers to any building, structure, or vehicle owned or operated by the City of San Clemente, its agents, agencies, departments and franchisees.

"Disposable food service ware" means all containers, trays, cartons, cups, and other items that are designed for one-time use and on, or in, which any restaurant or retail food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at restaurants or retail food vendors such as plates, cups, bowls, lids, trays, and hinged or lidded containers. This does not include single-use disposable straws or utensils.

"Expanded Polystyrene (EPS)" means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam. EPS is sometimes called "Styrofoam"; a Dow Chemical Co. trademarked form of polystyrene foam insulation.

"Food service products" means all containers, bowls, plates, trays, cartons, and cups which are not intended for reuse, on or in which any foods or beverages are placed or packaged.

"Prepared food" means food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the food vendor's premises and within the City of San Clemente with the intent of consumption on or off the premises as the balance of an unfinished meal or as "takeout food." For the purposes of this ordinance, "Prepared Food" does not include raw, butchered, ground, chopped, or sliced meats, fish, and/or poultry sold from a butcher case or similar retail appliance for subsequent preparation.

“Undue hardship” shall mean the following situations:

- a. Where there is no reasonable alternative to a specific and necessary EPS food service ware product.

“Reasonable alternative” means non-EPS food service ware that is commercially available and substantially similar to the EPS food service ware it is intended to replace. For example, a 15-ounce commercially available paper cup would be considered a reasonable alternative to a 16-ounce EPS cup.

The applicant requesting an undue hardship exemption must submit a list of suppliers contacted and statements signed by said suppliers listing the EPS food service ware item that is intended to be replaced with a non-EPS alternative, clearly indicating that the item does not have a non-EPS equivalent or substitute.

- b. Where compliance with SCMC Chapter 8.30 would cause a severe economic hardship.

The difference in unit cost between the EPS food service ware item that is intended to be replaced and the non-EPS alternative shall not by itself be considered an undue hardship. The applicant requesting an undue hardship exemption must submit evidence to demonstrate that a situation unique to the applicant and not generally applicable to businesses in similar circumstances exists that would render the applicant’s business non-viable.

- c. Where the applicant was required to purchase EPS food service ware items under a contract entered into prior to the adoption of Ordinance No. 1533 (January 4, 2011), and: 1) said contract does not expire and cannot be amended/terminated without financial penalty before July 1, 2011; or 2) the contract supplier of food service ware is unable to supply a reasonable alternative.

The applicant requesting an undue hardship must submit a signed statement indicating that he is required to purchase EPS food service ware pursuant to a contract entered into prior to January 4, 2011, and that the contract food service ware supplier is unable to supply a reasonable non-EPS alternative. The contract supplier must also provide a signed statement listing the EPS food service ware item that is intended to be replaced with a non-EPS alternative, clearly indicating that the item does not have a non-EPS equivalent or substitute. The applicant shall also provide a copy of the contract in question, and shall indicate the expiration date of said contract and any requirements for amendment or termination.

- d. Where the existence of a franchise or other contractual obligation commits the applicant to use a corporate logo or other products which are not available in non-EPS form.

The applicant requesting an undue hardship must submit a signed statement indicating that he is required to use a corporate logo or other products which are not available in non-EPS form. The applicant shall also provide a copy of the agreement/contract that binds the applicant to use such corporate logo or products.

In all applications for undue hardship as provided above, the applicant must include information on steps the applicant, and its franchisor if applicable, will take during the one-year temporary exemption period (if exemption is granted) to find and use non-EPS food service ware alternatives.

6.0 PROCEDURE:

6.1 Collection/Deposit of Monetary Fines for Violations of SCMC Chapter 8.30

Any monetary fines collected from violations of SCMC Chapter 8.30 shall be deposited directly into the Solid Waste Fund. This fine revenue will become part of the Solid Waste Fund balance and may be used for any activity consistent with the purpose of the Solid Waste Fund and as approved during the City's annual budget process or other City Council appropriation approvals.

6.2 City Supplies

The City of San Clemente shall not purchase or acquire disposable food service ware which is produced in full or in part with EPS. Prohibited products include but are not limited to, EPS food containers, bowls, plates, trays, cartons, and cups which are not intended for reuse, on or in which any foods or beverages are placed or packaged.

6.3 Rental Agreements, Leases and License Agreements for Usage of City-Owned Property and Facilities

Rental agreements, leases and license agreements for usage of any City-owned property or facility shall require that contracting parties assume responsibility for preventing the utilization and/or distribution of EPS food service ware by any attendee or vendor utilizing the City property or facility during the term of the rental agreement, lease or license agreement. Rental agreements shall indicate that the violating contractor's security deposit will be forfeited if the Beaches, Parks and Recreation Director, or his/her designee, determines that the contractor knowingly allowed such products to be utilized in violation of the rental agreement. Concession and license agreements shall indicate that if it is determined by the Beaches, Parks and Recreation Director, or his/her designee, that the lessee(s) allowed such products to be utilized in violation of the lease or license agreement, that said violation(s) shall be brought to the attention of the City Council in the form of an agenda report. This information may be utilized by Council in determining whether to continue or terminate the concession or license agreement.

6.4 Special Events Sponsored or Co-Sponsored by the City of San Clemente

The use or distribution of EPS food service ware at special events that are sponsored or co-sponsored by the City of San Clemente shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event vendors, and any other party (including non-profit organizations) who have an agreement

with one or more of the co-sponsors of the event to sell goods or beverages at the event or otherwise provide an event-related service. The prohibition on the use of EPS food service ware will not be enforced upon individuals who are attending the function solely as a visitor or spectator. Written agreements with any vendor, including non-profit organizations, to sell food or beverages at an event that is sponsored or co-sponsored by the City of San Clemente, shall specifically prohibit the usage and distribution of EPS food service ware. If it is determined by the Beaches, Parks and Recreation Director, or his/her designee, that the sponsor(s) of the special event allowed such products to be utilized in violation of the rental agreement, this fact shall be brought to the attention of the City Council in the form of an agenda report. This information may be utilized by Council in determining whether or not to co-sponsor the event in the future.

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