

ORDINANCE NO. 1533

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF SAN CLEMENTE, CALIFORNIA,  
PROHIBITING THE USE OF EXPANDED  
POLYSTYRENE DISPOSABLE FOOD SERVICE  
WARE

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

WHEREAS, a deterioration in the quality of the City's ocean waters and beaches threatens the public health, safety and welfare and negatively affects tourism and the local economy which depends on tourist trade; and

WHEREAS, it is the City's desire to reduce the amount of beach litter and marine pollution and to protect wildlife, both of which increase the quality of life for the City of San Clemente's residents and visitors; and

WHEREAS, numerous studies have documented the prevalence of Expanded Polystyrene (EPS) debris in the environment, including in storm drains and on beaches; and

WHEREAS, EPS material easily breaks down into smaller pieces and is so light that it floats in water and is easily carried by the wind, even when it has been disposed of properly; and

WHEREAS, marine animals and birds may confuse EPS for a source of food and the ingestion of EPS can result in reduced appetite and nutrient absorption and possible death by starvation of birds and marine animals; and

WHEREAS, there are alternatives to EPS disposable food service ware available in San Clemente from existing packaging suppliers; and

WHEREAS, there is no meaningful recycling of EPS food service products used for food service ware; and

WHEREAS, prohibiting the use of EPS at food service establishments is an action item identified in the City's Sustainability Action Plan.

NOW, THEREFORE, the City Council of the City of San Clemente, California, hereby ordains as follows:

**Section 1:** Chapter 8.30, entitled "Prohibition on Use of Expanded Polystyrene Food Service Ware", is hereby added to the San Clemente Municipal Code to read in its entirety as follows:

**Chapter 8.30 PROHIBITION ON USE OF EXPANDED POLYSTYRENE FOOD SERVICE WARE**

**8.30.010 Purpose**  
**8.30.020 Definitions**  
**8.30.030 Prohibition of Expanded Polystyrene Food Service Ware**  
**8.30.040 Exceptions**  
**8.30.050 Enforcement**  
**8.30.060 Effective Date**  
**8.30.070 No Conflict with Federal and State Law**

**8.30.010 Purpose**

The purpose of this Chapter is to establish standards and procedures for environmental waste and litter reduction measures, promote environmentally sustainable practices throughout the City, and support the City’s Sustainability Action Plan by prohibiting the use of expanded polystyrene food service ware by Food Vendors within the City of San Clemente and in City Facilities, city-managed concessions, city-sponsored or co-sponsored events, city permitted events and all franchisees, contractors and vendors doing business with the City.

**8.30.020 Definitions**

A. “City Facilities” means any building, structure, or vehicle owned or operated by the City of San Clemente, its agents, agencies, departments, and franchisees.

B. “Customer” means any person obtaining Prepared Food from a Restaurant or Retail Food Vendor.

C. “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.

D. “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.

E. “Food Vendor” means any establishment located or operating within the City of San Clemente which provides prepared and ready-to-consume food or beverages for public consumption, including but not limited to any store, supermarket, delicatessen, Restaurant, Retail Food Vendor, sales outlet, shop, cafeteria, catering truck or vehicle, sidewalk or other outdoor vendor, or caterer.

F. "Polystyrene" 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, foam molding, and extrusion-blow molding (extruded foam polystyrene).

G. "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.

H. "Restaurant" means any establishment located within the City of San Clemente that sells prepared food for consumption on, near, or off its premises by Customers. "Restaurant," for purposes of this Chapter, includes mobile food preparation units as defined in chapter 5.52 of the San Clemente Municipal Code.

I. "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 San Clemente that provides Prepared Food.

#### **8.30.030 Prohibition of Expanded Polystyrene Food Service Ware**

A. Except as provided by Section 8.30.040, Food Vendors are prohibited from providing Prepared Food in Disposable Food Service Ware made of EPS.

B. Except as provided by Section 8.30.040, all City Facilities, City-managed concessions, City-sponsored or co-sponsored events, City permitted events and all franchisees, contractors, and vendors doing business with the City are prohibited from using Disposable Food Service Ware made of EPS within the City of San Clemente.

#### **8.30.040 Exceptions**

A. Foods prepared or packaged outside the City of San Clemente are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of San Clemente are encouraged to follow the provisions of this Chapter.

B. EPS coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

C. The City Manager or his/her designee may exempt a Retail Food Vendor or Restaurant from the requirements of this Chapter for a one-year period, upon written request by an applicant that the conditions of the Chapter would cause an Undue Hardship. The City Manager or his/her designee shall prepare a written decision to grant or deny a one-year exemption, which decision shall be final.

D. An "Undue Hardship" may consist of:

1. Situations unique to the applicant where there are no reasonable alternatives to EPS food service ware and compliance with the Chapter would cause a severe economic hardship to that applicant; or

2. Situations where no reasonably feasible available alternative exists to a specific and necessary EPS product.

E. A Retail Food Vendor or Restaurant granted an exemption must reapply in writing prior to the end of the one-year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended.

F. An exemption application shall include all information necessary for the making of a decision on the application, including but not limited to documentation showing the factual support for the claimed exemption. The applicant may be required to provide additional information to permit the determination of facts regarding the exemption application.

G. An exemption application may be approved in whole or in part, with or without conditions.

H. The City Manager or his/her designee may also determine to exempt from the requirements of this Chapter the procurement of supplies or services in the event of a proclaimed emergency or when otherwise deemed necessary by the City Manager for the immediate preservation of the public health, safety, or general welfare.

**8.30.050 Enforcement**

A. Any violation of this Chapter shall be enforced through the Administrative Citation Program set forth in Chapter 1.20 of the City of San Clemente Municipal Code.

B. Each and every day that Disposable Food Service Ware made of EPS is provided shall constitute a separate violation of this Chapter.

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

**8.30.060 Effective Date**

A. This Chapter will become effective on July 1, 2011.

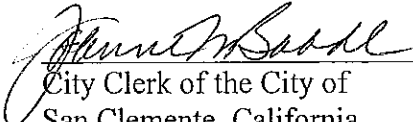
**8.30.070 No Conflict With Federal or State Law.**


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

**Section 2:** The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

APPROVED, ADOPTED and SIGNED this 4th day of January 2011.

ATTEST:

  
City Clerk of the City of  
San Clemente, California

  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA            )  
COUNTY OF ORANGE            ) ss.  
CITY OF SAN CLEMENTE         )

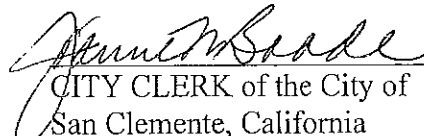
I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1533 having been regularly introduced at the meeting of December 21, 2010, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 4th day of January, 2011, and said ordinance was adopted by the following vote:

AYES:                                 BAKER, BROWN, DAHL, EVERT, MAYOR DONCHAK

NOES:                                 NONE

ABSENT:                             NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 11<sup>TH</sup> day of JAN., 2011.

  
CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:

/s/ Jeff Oderman  
CITY ATTORNEY

