



Memorandum

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Reviewed by WMM Date 2/8/08
General Manager

DATE: February 8, 2008
TO: General Manager
FROM: Public Education and Recycling Manager
SUBJECT: Report on Draft Model Environmentally Acceptable Food Packaging Ordinance

Attached is a draft model Environmentally Acceptable Food Packaging Ordinance. This policy is a product of a sub-committee of the District's Litter Abatement Task Force which directed that a draft policy be developed for Board consideration. The sub-committee did receive and include input from a local community group and the California Restaurant Association in this policy. The sub-committee reviewed policies from the City and County of Santa Cruz, the City of Capitola, and the City of Santa Monica prior to drafting this policy.

The impact of this policy, if adopted by local jurisdictions, is that it would prohibit the use of polystyrene foam food packaging for prepared food items. The justification for such a ban includes:

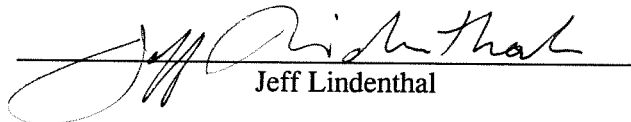
- Polystyrene is not recyclable in local recycling programs and the California Integrated Waste Management Board (CIWMB) reports that "no meaningful recycling of polystyrene exists in California".
- Fast food packaging and polystyrene are major contributors to roadside and marine litter.
- Polystyrene does not degrade in the environment and as litter it can break into many smaller pieces posing a threat to a wide range of marine life.

Over the next month staff will continue to seek input on this policy from local stakeholders including restaurants, the hospitality association, and community groups with an interest in the policy. This Ordinance has also been scheduled as an agenda item for the next County Integrated Waste Management Task Force meeting to be held on February 21, 2008. Several newspaper articles and letters to the editor of the Monterey County Herald have been written on this topic, three of which are attached.

Staff will consider input from the community over the next month and return to the Board with a final draft policy for your consideration at the March 21st meeting.

STRATEGIC PLANNING IMPACT

A6a: Program focus on public awareness, increased diversion of organics and commercial wastes, proper management of hazardous and prohibited materials, litter abatement, and sustainability.


Jeff Lindenthal

Attachment

DRAFT MODEL ORDINANCE

ENVIRONMENTALLY ACCEPTABLE FOOD PACKAGING

FINDINGS AND INTENT

The "Jurisdiction" finds and declares that:

- (a) The "Jurisdiction" has a duty to protect its natural environment, its economy, and the health of its citizens.
- (b) The "Jurisdiction" borders the Monterey Bay National Marine Sanctuary. This federal preserve supports one of the most diverse and delicate ecosystems in the world. This sanctuary provides habitat for at least 33 mammals, 94 species of seabirds, 345 species of fish, and contains the largest kelp forest in the nation.
- (c) Eliminating the use of polystyrene foam and other non-compostable, non-biodegradable, and non-recyclable food packaging items will maximize the operating life of landfills and will lessen the economic and environmental costs of managing waste.
- (d) Discarded food and beverage packaging constitutes a significant and growing portion of the "Jurisdiction's" waste stream. Laws, policies and regulations pertaining to disposable food service ware are a vital component in the "Jurisdiction's" efforts to reduce the amount of disposed waste.
- (e) Eliminating all non-biodegradable, non-returnable, and non-recyclable food packaging material from all establishments within the "Jurisdiction" will protect the "Jurisdiction's" environment from contamination and degradation.
- (f) Take-out food packaging that is biodegradable, compostable, and recyclable is the most responsible and sustainable choice for the tourist economy, its citizenry and its environment. When products are recycled, natural resources are spared, less energy is used for the production of new products, and premium landfill space is preserved. When biodegradable products are turned into compost they can reduce water use and lessen the need for fertilizer.
- (g) Biodegradable take-out packaging such as cups, plates, clamshell containers, and cutlery are now made from paper, sugarcane stalk, corn bi-products, and potato starch. As these products degrade, they pose less of a danger to the environment and are not a permanent blight on the landscape. These products are available locally.
- (h) Disposable food service ware made from expanded polystyrene foam is not biodegradable, returnable, or recyclable. Polystyrene foam breaks into smaller pieces and because it is lightweight, may be picked up by the wind even when it has been disposed of properly.
- (i) As litter, polystyrene foam is highly durable, persisting longer than any other type of litter. There is a prevalence of polystyrene foam packaging littering City parks and public places, streets and roads, waterways, storm drains and beaches. This litter ultimately floats, or is blown, into the Monterey Bay. This litter creates a financial cost to City residents and an environmental cost to natural resources.
- (j) Marine animals and birds often confuse polystyrene foam with pieces of food, and when ingested, it can impact their digestive tracts, often leading to death.
- (k) Polystyrene foam is manufactured from petroleum, a non-renewable resource.
- (l) There is scientific evidence that styrene leaches from polystyrene foam containers into food and drink. The Environmental Protection Agency (EPA) has found that there are short- and long-term adverse health effects associated with exposure to styrene.
- (m) It is not economically feasible at this time, to recycle polystyrene foam in the "Jurisdiction".

(n) Prohibiting the use of polystyrene foam take-out food packaging and replacing it with biodegradable, compostable or recyclable food service products will further protect the Monterey Bay National Marine Sanctuary, "Jurisdiction" residents and visitors, and will support the "Jurisdiction's" goal of reducing waste and litter for a cleaner environment for generations to come.

DEFINITIONS

Unless otherwise expressly stated, whenever used in this chapter the following terms shall have the meanings set forth below:

- (a) "Affordable" means that a biodegradable, compostable or recyclable product may cost up to 15 percent more than the purchase cost of the non-biodegradable, non-compostable or non-recyclable alternative(s).
- (b) "ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.
- (c) "Biodegradable" means the ability of organic matter to break down from a complex to a more simple form through the action of bacteria or to undergo this process.
- (d) "Jurisdiction Facility" means any building, structure or vehicle owned and operated by the "Jurisdiction", its agents, agencies, and departments.
- (e) "Jurisdiction Contractor" means any person or entity that has a contract with the "Jurisdiction" for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be purchased at the expense of the "Jurisdiction".
- (f) "Compostable" means all the materials in the product or package will break down, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic.
- (g) "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. This does not include single-use disposable items such as straws, cups lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.
- (h) "Food Provider" means any vendor located or providing food within the "Jurisdiction" which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, super market, delicatessen, catering truck or vehicle, or any other person who provides prepared food; and any organization, group or individual which regularly provides food as a part of its services.
- (i) "Person" means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.
- (j) "Polystyrene Foam" 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 clear or solid polystyrene which is known as "oriented polystyrene".

(k) "Prepared Food" means food or beverage prepared for consumption on the food provider's premises, using any cooking or food preparation technique. This does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation.

(l) "Recyclable" means any material that is accepted by the "Jurisdiction" recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs. Recyclable plastics comprise those plastics coded with the recycling symbols #1 through #5.

(m) "Retail Food Establishment" shall include but not limited to, any place where food is prepared to include any fixed or mobile restaurant, drive-in, coffee shop, public food market, produce stand, or similar place which food or drink is prepared for sale or for service on the premises or elsewhere.

(n) "Special Events Promoter" means an applicant for any special events permit issued by the City or any City employee(s) responsible for any City-organized special event.

PROHIBITED DISPOSABLE FOOD SERVICE WARE

- a) Food providers within the "Jurisdiction" may not provide prepared food in any disposable food service ware that contains polystyrene foam.
- b) Disposable food service ware that contains polystyrene foam is prohibited from use in all "Jurisdiction" facilities.
- c) "Jurisdiction" contractors in the performance of City contracts and special events promoters may not provide prepared food in disposable food service ware that contains polystyrene foam.
- d) It shall also be a policy goal of the "Jurisdiction" that business establishments located outside the "Jurisdiction" shall not package any non-food product in any package which utilizes polystyrene foam both block polystyrene or packaging peanuts; or purchase, obtain, keep, distribute or sell for home or personal use, or give, or otherwise provide to customers any packaging which utilizes polystyrene foam. The "Jurisdiction" shall promote and encourage, on a voluntary basis, the elimination of all polystyrene foam packaging.

REQUIRED BIODEGRADABLE, COMPOSTABLE, OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE

- a) All food providers within the City of Santa Cruz utilizing disposable food service ware shall use biodegradable, compostable or recyclable products, unless there is no affordable alternative available as determined by the Director of Public Works (see definition of "Affordable" and Section _____ Exemptions). Food providers may charge a "take-out fee" to cover the difference in cost.
- b) All "Jurisdiction" facilities utilizing disposable food service ware shall use products that are biodegradable, compostable or recyclable.
- c) "Jurisdiction" contractors, and special events promoters utilizing disposable food service ware shall use biodegradable, compostable, or recyclable products while performing under a "Jurisdiction" contract or permit.

EXEMPTIONS FOR BIODEGRADABLE, COMPOSTABLE OR RECYCLABLE FOOD SERVICE WARE

- a) There are no exemptions that allow for the use of polystyrene foam disposable food service ware.
- b) The Director of Public Works, or the Director's designee, may exempt a food provider from the requirement set forth in section _____ of this ordinance for a one-year period upon the food provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Director of Public Works or the Director's designee shall put the decision to grant or deny a one-year exemption in writing, and the Director's or Director's designee decision shall be final.
- c) An exemption application shall include all information necessary for the Director of Public Works or the Director's designee to make a decision, including but not limited to documentation showing factual

support for the claimed exemption. The Director or the Director's designee may require the applicant to provide additional information.

- d) The Director of Public Works or Director's designee may approve the exemption application in whole or in part, with or without conditions.
- e) Foods prepared or packaged outside the "Jurisdiction" and sold inside the "Jurisdiction" are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the "Jurisdiction" are encouraged to follow the provisions of this Chapter.
- f) Until such time that the "Jurisdiction" provides food providers with a municipal food scrap collection program, a blanket exemption is hereby granted allowing the use of plastic cutlery and lids.
- g) Polystyrene Foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

ENFORCEMENT AND NOTICE OF VIOLATION

- a) Violations of this ordinance may be enforced in accordance with Chapter _____ of this Code.
- b) The Director of Public Works, or the Director's designee, shall be responsible for enforcing this Chapter and shall have authority to issue citations for violations. The Director, or the Director's designee, is authorized to establish regulations or administrative procedures to obtain compliance with this chapter.
- c) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.
- d) The "Jurisdiction" City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter.
- e) The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.
- f) The "Jurisdiction" in accordance with applicable law, may inspect any vendor or food provider's premises to verify compliance.

PENALTIES AND FINES FOR VIOLATIONS

Violations of this ordinance shall be enforced as follows:

1. For the first violation, the Director of Public Works or the Director's designee shall issue a written warning to the food provider specifying that a violation of this chapter has occurred and which further notified the food provider of the appropriate penalties to be assessed in the event of future violations. The food provider will have 30 days to comply.
2. The following penalties will apply for subsequent violations of this Chapter:
 - a) A fine not exceeding one hundred dollars (\$100.) for the first violation 30 days after the first warning. The Director of Public Works or the Director's designee may allow the violator in lieu of payment of the fine, to submit receipts demonstrating the purchase after the citation date, of at least \$100 worth of biodegradable, compostable, or recyclable products appropriate as an alternative disposable food service ware for the items which led to the violation.
 - b) A fine not exceeding two hundred dollars (\$200.) for the second violation 60 days after the first warning.
 - c) A fine not exceeding five hundred dollars (\$500.) for the third violation 90 days after the first warning and for each additional 30 day period during which the food provider is not in compliance.
3. Food providers who violate this Chapter in connection with commercial or non-commercial special events authorized by Chapters _____ shall be assessed fines as follows:
 - a) A fine not to exceed \$200 for an event of 1 to 200 Persons
 - b) A fine not to exceed \$400 for an event of 201 to 400 Persons
 - c) A fine not to exceed \$600 for an event of 401 to 600 Persons
 - d) A fine not to exceed \$1,000 for an event of 600 or more Persons.

6.48.045 EFFECTIVE DATE

This ordinance shall take effect and be in force six months from the date of adoption.

Styrofoam 'to-go' boxes may go away if lawmakers follow green promotion

Monterey Herald

02/04/2008

By LAITH AGHA

It's not recyclable, it doesn't biodegrade and it's only useful for the few minutes of transporting take-out from restaurant to house or desk.

That's why the Monterey Regional Waste Management District is promoting a ban on the use of polystyrene products by the local food industry.

To do so, the Waste Management District is trying to get county and city leaders on board with the idea. Members of the agency's litter abatement task force recently presented the idea during the Monterey County Mayors Association meeting, a monthly roundup of the county's 12 mayors.

Stormy weather deterred many of the Salinas Valley mayors from attending the meeting on the Peninsula, said Jeff Lindenthal, the Waste Management District's public education and recycling manager. But the audience, which included all the Peninsula mayors and Greenfield mayor John Huerta, was receptive to the idea, Lindenthal said.

"They listened and there was a good discussion," said Lindenthal.

Polystyrene foam is more commonly called Styrofoam, the trademark name of the product made by Dow Chemical Co. The agency wants to do away with the substance to further improve the Peninsula's trash situation, Lindenthal said.

A ban would not pertain to other uses of polystyrene foam, such as packaging, he said. Within food services, it would not eliminate polystyrene foam used for by grocery stores for raw meat.

Eliminating food containers from circulation could benefit the local environment, Lindenthal said, since polystyrene is not biodegradable and foam products easily break into smaller pieces that can appear like food to wildlife — both on land and in the ocean.

"When you see those kinds of cups and containers, you have to have the realization that they never break down," said Carmel Mayor Sue McCloud. "When it fragments (into smaller pieces), it can be ingested by animals, which obviously is not good for their systems."

McCloud appears to be in position to have significant influence on the procedure. Not only is she Carmel's top policy maker, she is the waste district's vice chairwoman and is part of the litter abatement task force.

Beach cleanup efforts conducted within the last year by the Surfrider Foundation demonstrate that polystyrene makes up a significant portion of litter. A cleanup last February at Marina State Beach netted 329 pieces of polystyrene and plastic. About six weeks later, 425 pieces were picked up at the same location.

"And that's in two hours of work," said Ximena Waissbluth of the foundation.

A draft of the proposed ban is expected to be presented to the waste district's board in February, McCloud said. After that, it could be presented to the mayors and to the county Board of Supervisors, she said.

"When we have a draft ordinance that we're content with, we'll take it to the (Monterey County Mayors Council) and try to sell it to them and urge them to take it to their councils," McCloud said.

Steve Johnson, general manager of the Salinas Valley Solid Waste Authority, could not be reached for comment. Lindenthal said the proposed polystyrene ban will be discussed later this month at the integrated waste management task force meeting between officials from the Salinas Valley and Monterey Regional agencies.

"It will also be introduced to the cities on the other side of the county," Lindenthal said of his agency's draft policy. "But ultimately it will be up to each city to decide if this is something they want to do."

Banning polystyrene is not a new idea. Portland, Ore., hasn't allowed it since 1990. San Francisco, Oakland, Berkeley and Santa Monica have outlawed its use, while Santa Cruz County is a step ahead of its Monterey Bay brethren to the south.

Capitola enacted a ban last year. The Santa Cruz City Council voted to ban it last week, while the county supervisors there are in the process of approving a countywide ban, said Patrick Matthews, manager of the county's recycling and solid wastes services.

Carmel has actually had a ban in place since 1989, when it became the second California city — after Berkeley — to prohibit the use of polystyrene in the food service industry, McCloud said, but enforcement of the ordinance has been shoddy.

Monterey followed suit a month after Carmel, but enforcement has also been an issue, said Angela Brantley, Monterey's solid waste program manager.

The polystyrene clamshell is the most prevalent take-out container targeted by the ban. Drink cups, such as those used for coffee or Jamba Juice smoothies, would also disappear if the ban comes to fruition, Lindenthal said.

Increased cost is a concern for the food service industry, as is functionality of the alternative containers.

"These alternatives are expensive," said Amalia Chamorro, local director of affairs for the California Restaurant Association. "We recognize there are definitely more alternatives than even a year ago. We want to be part of the solution to address the problem of litter and be pro-active."

Some local restaurants have already opted for alternatives.

"We made the switch over quite a while back," said Cindy Walter, owner of Passionfish restaurant in Pacific Grove.

Walter said her restaurant used to send off to-go orders in containers made of recyclable paper, but has recently made the switch to compostable containers made of sugar cane. The to-go utensils are made of potato starch, she said.

"There is a fraction of a cost more," Walter said. "But I have to say, for me personally, it's more about the environmental bottom line."

CONTAINER CONTEST

County takes a look at ban on plastic grocery bags

By RACHEL TOMPA

Herald Staff Writer

02/04/2008



State and local government officials are tackling the decades-old dilemma — paper or plastic?

Several San Francisco Bay Area cities have banned or are poised to ban plastic bags in major grocery stores. Could Monterey County be next? "The plastic bags are awful, and they kill the marine life, and they're littering everywhere," said Monterey City Councilwoman Libby Downey.

Downey made a proposal to the council in June to consider banning major grocery stores from using plastic bags, but she backed off because of litigation already brewing over the issue.

San Francisco enacted a ban in November, becoming the first U.S. city to ban plastic bags in grocery stores. Oakland and Fairfax passed similar laws but were stymied by lawsuits filed by plastic bag manufacturers. The manufacturers claim the cities violated the state Environmental Quality Act because they had not reviewed the environmental impacts of a plastic bag ban.

The bans apply to large grocery stores and pharmacies, although the cut-off for the affected stores varies between cities. For example, the city of Oakland's bag ban ordinance applies to retailers with gross annual sales of \$1 million.

Now, Downey says she wants to see how the lawsuit over Oakland's plastic bag ban is resolved. "I'm still interested in it," she said.

Downey said the Monterey Regional Waste Management District is working on a model ordinance against plastic bags. She represents Monterey on the waste district board. If the board likes the idea, individual cities and the county would have to approve their own ordinances, she said.

On a related front, the Santa Cruz City Council last week banned restaurants from using Styrofoam or other polystyrene packaging for takeout containers. Styrofoam also poses a threat to marine life, Downey said.

The regional waste district and the city of Monterey are drafting a model ordinance to outlaw the use of Styrofoam containers in restaurants, said city Solid Waste Program Manager Angela Brantley.

The Monterey City Council likely will vote on the Styrofoam ban by May, and the future of plastic bags in the city after that, Brantley said. "Monterey is trying to get greener and greener," Downey said. And the city is not alone.

Other Northern California cities, including Berkeley, Santa Cruz and San Jose, are considering plastic bag bans. Last week, Los Angeles County announced a plan to require grocery stores to reduce the number of plastic bags they use by 65 percent over the next five years. The county would ban plastic bags altogether if the 65 percent goal isn't met.

Georgia Phillips, who was shopping at the Safeway store in North Monterey this week, said banning plastic bags for groceries might not go over well in Monterey. "Paper is more environmentally safe, but I think banning plastic bags entirely is dumb," Phillips said. "Some people might have a problem with it. People are set in their ways."

Several other shoppers said they didn't care if plastic bags were banned.

Californians use about 19 billion plastic bags a year, said Bryan Early, spokesman for Californians Against Waste. Only 2 to 4 percent of the bags are recycled, he said, and that small amount includes bags that are made into non-recyclable goods.

Plastic bag manufacturers contend the production of paper bags uses more resources than making plastic bags, Early said. But studies commissioned by the government of South Africa show the opposite, he said. South Africa banned plastic bags in 2003. "The point is not to go with paper, but to go with reusable bags," Early said. "The goal is a reduction of production of bags in general."

Whole Foods Market announced last week that it will no longer use plastic bags in any of its stores, effective April 22, Earth Day.

Amber Whiteside, spokeswoman for the natural foods supermarket company, said the company expects to save on using 100 million plastic bags by the end of 2008.

The Whole Foods Market store in Monterey stopped using plastic bags Jan. 1. Eliminating their use is especially important in an area with such rich marine resources, Whiteside said. The bags are so light they often are carried on the wind or in runoff from landfills and wind up in the ocean. "Plastic bags, in particular, are harmful to sea life. That was Monterey's motivation as an individual store to stop using them," Whiteside said.

Marina to consider Styrofoam ordinance

By VICTOR CALDERON

February 5, 2008

The Salinas Californian

The Marina City Council tonight will consider whether to draw up an ordinance that would ban Styrofoam packaging in restaurants.

Mayor Ila Mettee-McCutchon will lead a discussion of her proposal to eliminate plastic foam food and beverage containers, and the council will then determine if it wants to study the matter further.

No action or vote will be taken tonight, though public comment from residents, especially restaurant owners, is welcome, Mettee-McCutchon said Monday.

Supporters say such a ban on Styrofoam, also known as polystyrene foam, is necessary because the material is not biodegradable and can break down into smaller pieces that can be harmful to wildlife when old cups and food boxes wind up in the ocean or elsewhere in the environment. "It becomes a litter problem and can pose health risks for birds and fish," said Jeff Lindenthal, public education and recycling manager for the Monterey Regional Waste Management District.

The Marina mayor's proposal comes as the waste management district is drafting what officials call a countywide "model ordinance" calling for a ban on polystyrene foam food cartons. The ordinance would have to be adopted by individual cities and the county Board of Supervisors to become law in any jurisdiction.

Carmel and Monterey have had polystyrene bans in place since 1989, officials said. Monterey's ban only covers city facilities and not restaurants, said Angela Brantley, the city's solid waste program manager.

To the north, Santa Cruz and Capitola have similar bans, Lindenthal said.

In Marina, no businesses had voiced opposition to the proposal as of Monday, Mettee-McCutchon said. Polystyrene is primarily used by smaller, locally owned restaurants for take-out containers.

At Francisco's Restaurant on Reservation Road, owner Francisco Almaraz said he uses Styrofoam containers for take-out orders. Such orders make up about 10 percent of his business, he said, but he supports efforts to reduce waste. "If people start to recycle more, that's the point I think would make (the proposed Styrofoam ban) work," Almaraz said.

Alternatives to using Styrofoam are paper, cardboard or clear, environmentally friendly plastics, Lindenthal said.

Mettee-McCutchon said she would like to see biodegradable packaging offered at bulk prices for restaurant owners. "Maybe this is possible without burdening businesses," she said.