



Memorandum

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

6

Reviewed by Wmm Date 3/12/08
General Manager

DATE: March 13, 2008
TO: General Manager
FROM: Public Education and Recycling Manager
SUBJECT: Environmentally Acceptable Food Packaging - Model Ordinance

RECOMMENDATION: That the Board support the Model Environmentally Acceptable Food Packaging Ordinance and forward it to the District member agencies for their consideration.

BACKGROUND

Attached is the Model Environmentally Acceptable Food Packaging (EAFP) Model Ordinance. This policy is a product of a sub-committee of the District's Litter Abatement Task Force (Angela Brantley from Monterey and myself) which directed that a model policy be developed for Board consideration. The sub-committee did meet with and receive input from a variety of stakeholders in the development of this policy including: American Chemistry Council's Plastics Foodservice Packaging Group, Armanasco Public Relations, California Grocers Association, California Restaurant Association, Surfrider Foundation – local chapter, and Sustainable Pacific Grove. In addition, the California Integrated Waste Management Board's 2003 Plastics White Paper and 2004 Use and Disposal of Polystyrene, a Report to the California Legislature, were reviewed in detail.

The sub-committee also reviewed approved policies from the City and County of Santa Cruz, the City of Capitola, and the City of Santa Monica while drafting this policy. In addition, outreach was conducted to a range of local restaurant and hospitality officials to inform them of the scope of this policy.

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

- Fast food packaging and polystyrene have been well documented as 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 while creating an expensive clean-up problem.
- Polystyrene is not recyclable in local recycling programs.
- Substituting environmentally friendly alternatives to EPS packaging is a requirement of the Monterey County Green Business program.

THE PLASTIC PROBLEM

According to the CIWMB, plastics are the fastest-growing segment of the waste stream. While the use of plastic for packaging and consumer products continues to increase, plastic recycling is stalled at approximately 5 percent, much lower than the recycling rate for materials such as paper, glass and metal. Most of the current plastic recycling in California is attributable to beverage containers.

Polystyrene is not collected for recycling in the Central Coast region because the material is light, bulky and inefficient to transport, and because there are no regional manufacturers using this material as a feedstock. When polystyrene can be recycled, such as into molded packaging blocks, recycled content can be as high as 25%, but is typically much lower. By comparison, paper, glass and aluminum can all be used to create 100% recycled content products.

When it comes to “producer responsibility”, or the plastics industry taking a leadership role in developing a plastics recycling infrastructure, the CIWMB has stated that the industry “is not adequately addressing plastics shortcomings on its own. Currently, there is no comprehensive policy to effectively manage plastics and plastics waste in California.”

BUSINESSES AND MATERIAL TYPES COVERED BY THE POLICY

The model ordinance specifically addresses fast food and take-out packaging for prepared foods and applies to all food providers utilizing disposal food service ware. It does not include packaging for “unprepared” foods such as egg containers and meat trays utilized by the grocery industry. The policy also does not include EPS used in block form to package a wide range of consumer goods such as electronics and appliances. The Model Ordinance does state that it is a “policy goal” to encourage the elimination of EPS packaging for non-food items on a voluntary basis.

ALTERNATIVE PACKAGING OPTIONS

The recommended alternatives to EPS packaging for prepared food items include: recyclable, biodegradable, or compostable products. To use a Styrofoam “clamshell” package as an example, the preferred alternative would be a recyclable PET plastic clamshell, a clamshell product made from paper, or a clamshell product certified “compostable”. The District is now evaluating a compost program expansion to allow food waste and compostable packaging waste to be added as raw materials to our green waste composting process and this policy will help ease the transition to future expanded organics diversion.

FINANCIAL IMPLICATIONS WITH ADOPTION OF MODEL ORDINANCE

At a time when the price of oil exceeds \$100 a barrel, the cost competitiveness of alternatives to plastic packaging have never been better. That said, we have found alternative products that cost more, and some that cost less. To use a Styrofoam plate as an example, Costco sells a case of 500 at a cost of \$32.39 or \$.065 each. Costco also sells a case of 1000 paper plates for \$29.55, or \$.03 each. A case of 1000 12 ounce Styrofoam coffee cups sells for \$34.76 or \$.035 each. A local vendor of alternative products sells a case of 1000 compostable paper cups for \$107 (including delivery) or \$.107 each.

The Model Ordinance does provide a six month phase-in period to allow restaurants to use up their existing supply of EPS packaging. The policy also allows for a one year exemption if a business owner can demonstrate that the biodegradable, recyclable or compostable products specified in this ordinance would create an undue hardship.

BUSINESS OUTREACH

Lewis Leader has conducted outreach on the Model Ordinance to inform and gather feedback from local restaurant and hospitality industry officials. Lewis found that most business owners are concerned about the impact their packaging choices can have on the environment and want to choose environmentally acceptable products. Not all business owners favor a mandatory ban. However, many simply will not and do not use EPS packaging for take-out foods. Some business owners have already implemented a ban on EPS fast food packaging including the Hyatt Monterey. Support for a local ban on EPS has also come from the Monterey Bay Aquarium. One restaurant owner who eliminated EPS packaging,

Cindy Walter of Passionfish in Pacific Grove, has become the first certified “Green Business” restaurant in Monterey County. This week she had the distinction of being named “Woman of the Year” for the 27th Assembly District by Assemblyman John Laird. This is a good example of the positive public relations impact restaurants can garner by “going green”.

ENVIRONMENTAL STEWARDSHIP

The Monterey Bay National Marine Sanctuary is a federally protected marine area encompassing one of the globe’s most diverse marine ecosystems. The Sanctuary was established for the purpose of resource protection, research, education, and public use of this national treasure. Protecting this 5,322 square-mile area is the responsibility of everyone, particularly those of us who live and work in the Central Coast region.

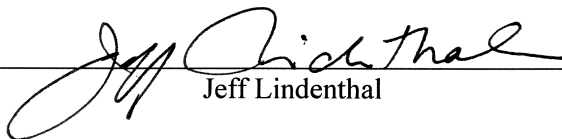
We have seen first-hand the impact of polystyrene plastic litter in our fields, on our roadways and highways, in storm drains, the ocean and on our beaches. Banning polystyrene take-out packaging locally will help to address marine pollution by requiring the use of environmentally preferable alternatives while helping to educate business owners and citizens on the positive impact their packaging choices can make.

While packaging bans are narrowly focused and local in scope, according to the CIWMB they have limited ability to address the “global applications and ramifications of plastics.” The Environmentally Acceptable Food Packaging Ordinance is a policy intended to help create a local solution to polystyrene plastic pollution while taking a leadership role in the stewardship of the Monterey Bay region.

If approved, District staff will work with City of Monterey staff to host a “town hall” style meeting with the hospitality industry to help inform them of the model ordinance, and assist with outreach and education on the ordinance to other cities and industry groups.

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

The Monterey Bay National Marine Sanctuary is a federally protected area encompassing one of the globe's most diverse marine ecosystems. The Sanctuary was established for the purpose of resource protection, research, education, and public use of this national treasure. Protecting this 5,322 square-mile area is the responsibility of everyone, particularly those who live and work in the Central Coast region, not only those who make their homes close to the bay, but also those who live throughout Monterey County. This is one of the environmentally richest, most beautiful and productive areas in the world.

Polystyrene is a plastic resin that is used to make up a wide range of consumer goods and packaging, and in its "foamed" or "expanded" state is frequently used to produce takeout containers for food. However, unlike many other types of packaging, littered polystyrene foam remains permanently in the environment where it breaks into tiny pieces that disperse widely and pose a severe threat to wildlife. Polystyrene foam means and includes expanded polystyrene (EPS), which is not collected for recycling in the Central Coast region because it is not economically viable. There are presently no manufacturers in the region using this material as a feedstock.

We have seen first-hand the impact of polystyrene foam plastic litter in our storm drains, in our fields, on our roadways and highways, in our rivers, in the ocean and on our beaches. Banning polystyrene foam take-out packaging locally will help to address marine pollution by requiring the use of environmentally preferable alternatives while helping to educate business owners and citizens on the positive impact their packaging choices can make.

FINDINGS AND INTENT

The city/county finds and declares that:

- (a) The city/county has a responsibility to protect its natural environment, its economy, and the health of its citizens. Solid waste that is non-degradable or non-recyclable poses an acute problem for any environmentally and financially responsible solid waste management program.
- (b) The city/county borders or is in close proximity to the Monterey Bay National Marine Sanctuary, a federal preserve that 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. The nearby region also encompasses some of the richest farmland in the world as it stretches deep into the Salinas Valley. Agricultural-business interests and tourism constitute the mainstays of the economy of Monterey County. The impact of an environmentally damaged Monterey Bay or the pollution of our rivers would be felt throughout the area.
- (c) Food and beverage packaging constitutes a significant and growing portion of the waste in the city/county. Laws, policies and regulations pertaining to disposable food service-ware are a vital component in the city/county's efforts to reduce the amount of disposed waste.
- (d) Food service-ware made from polystyrene foam is not biodegradable, returnable, or practically recyclable. Polystyrene foam breaks into smaller pieces and, because it is lightweight, may be picked up by the wind even when it has been placed in a waste receptacle.
- (e) A prevalence of polystyrene foam packaging, which is highly durable and persists longer than any other type of refuse, litters parks and public places, streets and roads, waterways, storm drains and beaches. This litter ultimately floats or is blown into the Monterey Bay, creating a financial cost and adversely impacting our environment. Polystyrene foam that ends up in rivers that wend miles away from Monterey Bay, in the Salinas Valley, also finds its way into Monterey Bay.

- (f) Mistaking it for food, marine animals and birds often ingest polystyrene foam, which can damage their digestive tracts, often leading to death.
- (g) Polystyrene foam is manufactured from petroleum, a non-renewable resource.
- (h) Scientific evidence indicates 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.
- (i) It is not economically feasible at this time to recycle polystyrene foam in or near the city/county.
- (j) When products are recycled, natural resources are conserved, less energy is used for the production of new products, and valuable landfill space is preserved. When biodegradable products are turned into compost they can reduce water use and reduce the need for fertilizer. Take-out food packaging that is biodegradable, compostable, or recyclable is the most responsible and sustainable choice for the tourist economy, the citizenry and the environment.
- (k) Biodegradable takeout packaging (such as cups, plates, clamshell containers and cutlery) made from paper, sugarcane, corn bi-products and potato starch is available locally. As these products degrade, they do not harm the environment and are not a permanent blight on the landscape.
- (l) Eliminating the use of polystyrene foam and other non-biodegradable, non-compostable, non-returnable and non-recyclable food packaging material from all establishments within the city/county will help protect the local environment, including the Monterey Bay National Marine Sanctuary and the vast Salinas Valley, from contamination and degradation, helping to safeguard this area as a tourist destination and a major grower of agricultural products. It will also support the city/county's goal of reducing waste and protecting the environment for generations to come.
- (m) Taking the aforementioned action also will be cost-effective, helping to maximize the operating life of landfills and reducing the economic and environmental expense of managing waste and litter.

PROHIBITED DISPOSABLE FOOD SERVICE WARE

- (a) Food providers within the city/county 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 city/county facilities.
- (c) City/county contractors in the performance of city/county 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 city/county that business establishments located outside the city/county 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 city/county shall promote and encourage, on a voluntary basis, the elimination of all polystyrene foam packaging (How can we propose this, particularly the first long sentence immediately above? Also see (e) under "Exemptions for Biodegradable . . .")

REQUIRED BIODEGRADABLE, COMPOSTABLE, OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE

- (a) All food providers within the city/county utilizing disposable food service ware shall use biodegradable, compostable or recyclable products, unless there is no affordable alternative available as determined by the designated official (see definition of “Affordable” and Section _____ Exemptions). Food providers may charge a “take-out fee” to cover the difference in cost.
- (b) All city/county facilities utilizing disposable food service ware shall use products that are biodegradable, compostable or recyclable.
- (c) City/county contractors, and special events promoters utilizing disposable food service ware shall use biodegradable, compostable, or recyclable products while performing under a city/county 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 city/county may exempt a food provider from the requirement set forth in section _____ of this ordinance for a non-renewable, 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 city/county officer shall put the decision to grant or deny a one-year exemption in writing, and his or her decision shall be final.
- c) An exemption application shall include all information necessary for the city/county officer to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The officer may require the applicant to provide additional information.
- d) The city/county officer may approve the exemption application in whole or in part, with or without conditions.
- e) Foods prepared or packaged outside the city/county and sold inside the city/county are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the city/county are encouraged to follow the provisions of this Chapter as it is a policy goal of this city/county to eliminate the use of polystyrene foam for packaging unprepared food.

ENFORCEMENT AND NOTICE OF VIOLATION

- a) Violations of this ordinance may be enforced in accordance with Chapter _____ of this Code.
- b) The city/county officer shall be responsible for enforcing this Chapter and shall have authority to issue citations for violations.
- c) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.
- d) The city/county 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 city/county in accordance with applicable law, may inspect any vendor or food provider’s premises to verify compliance.

- g) Food vendors shall state that they are in compliance with this ordinance on their annual business license renewal forms.

PENALTIES AND FINES FOR VIOLATIONS

Violations of this ordinance shall be enforced as follows:

1. For the first violation, city/county official 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 ordinance:
 - a) A fine not exceeding one hundred dollars (\$100.) for the first violation 30 days after the first warning. The city/county official 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 ordinance 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.

EFFECTIVE DATE

This ordinance shall take effect with a six-month voluntary period to allow vendors to use up any remaining stock of prohibited product. The first of the month following the six-month voluntary period this ordinance shall be mandatory.

APPENDIX

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.
- (d) "City/county Facility" means any building, structure or vehicle owned and operated by the city/county, its agents, agencies, and departments.

- (e) “City/county Contractor” means any person or entity that has a contract with the city/county for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be donated or to be purchased at the expense of the city/county.
- (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 plastic straws, cup lids, or utensils
- (h) “Food Provider” means any vendor located or providing food within the city/county which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, supermarket, 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 that 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).
- (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, poultry, fish or eggs unless provided for consumption without further food preparation. It is a policy goal of this city/county to encourage supermarkets and other vendors to eliminate the use of polystyrene foam for packaging unprepared food.
- (l) “Recyclable” means any material that is accepted by the city/county or special district 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 is 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/county-organized special event.