

REGULAR

NUMBER: 293

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
ADDING CHAPTER 8 OF TITLE III OF THE MILPITAS MUNICIPAL CODE
RELATING TO THE PROHIBITION OF EXPANDED POLYSTYRENE (EPS)
FOAM FOOD SERVICE WARE

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of May 16, 2017, upon motion by Councilmember Nuñez and was adopted (second reading) by the City Council at its meeting of August 15, 2017, upon motion by Councilmember Nuñez. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

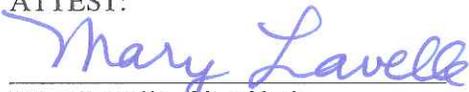
AYES: (5) Mayor Tran, Vice Mayor Grilli, Councilmembers Nuñez, Barbadillo,
and Phan

NOES: (0) None

ABSENT: (0) None

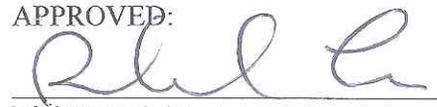
ABSTAIN: (0) None

ATTEST:



Mary Lavelle, City Clerk

APPROVED:



Rich Tran, Mayor

APPROVED AS TO FORM:



Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, plastic debris and, in particular, expanded polystyrene foam (“EPS”) is a distinctive litter concern because it is lightweight, floats, breaks down into small pieces, and readily travels from land to inland waterways and out to the ocean where it can be mistaken for food by birds and other marine wildlife; and

WHEREAS, the Bay Area Stormwater Management Agencies Association (BASMAA) found in its May 2014 study *San Francisco Bay Area Stormwater Trash Generation Rates* that EPS disposable food service ware comprises 6% by volume of trash observed in storm drains; and

WHEREAS, the Santa Clara Valley Urban Runoff Pollution Prevention Program found in its September 2016 study *Storm Drain Trash Monitoring and Characterization Project – Technical Report* that “...there was a 74% decrease in the volume of EPS food service ware observed in the 53 sites in common between this Project and the BASMAA Trash Generation Rates Study (BASMAA 2014). This large decrease coincides with ordinances that have been adopted throughout most of the Santa Clara Valley.”; and

WHEREAS, EPS disposable food service ware is currently used by some food vendors in Milpitas; and

WHEREAS, the proposed prohibition of EPS disposable food service ware would require food vendors to use alternative food service ware that will result in a reduction of EPS litter, reduce the risk of harm to aquatic wildlife, and improve water quality in the Milpitas creeks and the Southern San Francisco Bay; and

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

The City Council hereby finds that the Ordinance is exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to a Class 7 categorical exemption (State CEQA Guidelines, § 15307), which consists of actions by a regulatory agency for protection of the natural resources, and also a Class 8 categorical exemption (State CEQA Guidelines, § 15308), which consists of actions by a regulatory agency for protection of the environment. The City Council hereby determines that the prohibition of EPS foam food service ware qualifies for Class 7 and Class 8 exemptions because it involves a reduction in EPS litter and risk of harm to aquatic wildlife, and an improvement in water quality in the Milpitas creeks and the Southern San Francisco Bay. Thus, the Ordinance is exempt from CEQA pursuant to State CEQA Guidelines, section 15307 and 15308. Each exemption is separately and independently sufficient to exempt the entire ordinance from CEQA. To the extent that the Class 7 and Class 8 categorical exemptions apply to the Ordinance, the City Council hereby finds and determines that none of the exceptions to the categorical exemptions outlined in State CEQA Guidelines section 15300.2 applies.

SECTION 3. AMENDMENT OF MUIPITAS MUNICIPAL CODE

Chapter 8 of Title III of the Milpitas Municipal Code is hereby added with the text below to read as follows:

Chapter 8

PROHIBITION OF EXPANDED POLYSTYRENE (EPS) FOAM FOOD SERVICE WARE

Sections:

III-8-1	Findings and Purpose
III-8-2	Definitions
III-8-3	Polystyrene Foam Disposal Food Service Ware Prohibition
III-8-4	Temporary Exemptions to Polystyrene Foam Disposal Food Service Ware Prohibition
III-8-5	Enforcement

Section 1 Findings and Purpose

III-8-1.00

The City Council finds and determines that the regulation of expanded polystyrene (EPS) foam food service ware is necessary to protect the public health, safety and welfare based on the following reasons:

- A. Plastic debris and, in particular, expanded polystyrene foam ("EPS") is a distinctive litter concern because it is lightweight, floats, breaks down into small pieces, and readily travels from land to inland waterways and out to the ocean where it can be mistaken for food by birds and other marine wildlife;
- B. The Bay Area Stormwater Management Agencies Association (BASMAA) found in its May 2014 study San Francisco Bay Area Stormwater Trash Generation Rates that EPS disposable food service ware comprises 6% by volume of trash observed in storm drains; and
- C. The Santa Clara Valley Urban Runoff Pollution Prevention Program found in its September 2016 study Storm Drain Trash Monitoring and Characterization Project – Technical Report states "...there was a 74% decrease in the volume of EPS food service ware observed in the 53 sites in common between this Project and the BASMAA Trash Generation Rates Study (BASMAA 2014). This large decrease coincides with ordinances that have been adopted throughout most of the Santa Clara Valley."; and
- D. EPS disposable food service ware is currently used by some food vendors in Milpitas; and
- E. The proposed prohibition of EPS disposable food service ware would require food vendors to use alternative food service ware that will result in a reduction of EPS litter, reduce the risk of harm to aquatic wildlife, and improve water quality in the Milpitas creeks and the Southern San Francisco Bay.

This City Council does, accordingly, find and declare that it should restrict the provision of EPS foam food service ware.

Section 2 Definitions

III-8-2.00

The definitions set forth in this Section shall govern the application and interpretation of this Chapter.

- A. "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving prepared food and includes, but is not limited to, plates, trays, cups, bowls, and hinged or lidded containers (clamshells). Disposable food service ware does not include straws, utensils, drink lids, or ice chests.
- B. "Food vendor" means any establishment located in the City of Milpitas that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand.
- C. "Polystyrene foam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). "Polystyrene foam" is commonly made into disposable food service ware products. "Polystyrene foam" does not include clear or solid polystyrene (oriented polystyrene).
- D. "Prepared food" means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. "Prepared food" does not include (1) any raw, uncooked meat products, fruits, or vegetables, unless it is intended for consumption without further preparation; or (2) prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.

Section 3 Polystyrene Foam Disposal Food Service Ware Prohibition

III-8-3.00

No food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after July 1, 2018.

Section 4 Temporary Exemptions to Polystyrene Foam Disposal Food Service Ware Prohibition

III-8-4.00

- A. A food vendor may seek a grace period from the prohibition under Section III-8-3.00 due to a "unique packaging hardship" under Subsection B of this Section, or the grace period for "unused inventory" under Subsection C of this Section.

- B. The food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a “unique packaging hardship” exemption.
- C. The food vendor must demonstrate that before December 31, 2017, it purchased the polystyrene foam food service ware, which cannot be returned to the distributor, and, despite the food vendor’s best efforts, will remain in inventory on July 1, 2018, to qualify for an “unused inventory” grace period.
- D. Food vendors may submit a written application for grace period on a form provided by the Engineering Department. The City Engineer or his or her designee may require the applicant to submit additional information or documentation to make a determination regarding the grace period request. A request for grace period under Subsection B shall be reviewed upon a case-by-case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. A food vendor must apply for a new grace period under Subsection B no later than sixty (60) days prior to the expiration of the then-current grace period to preserve a continuous exemption status. A request for grace period under Subsection C shall be reviewed upon a case-by-case basis, and may be granted in whole or in part, with or without conditions, for a period of up to three (3) months or to October 1, 2018, whichever comes first. The determination of the City Engineer or designee shall be final and is not subject to appeal.

Section 5 Enforcement

III-8-5.00

In addition to any other remedy available at law, the City may enforce any violation of this Chapter pursuant to Section I-1-4.09 of the Milpitas Municipal Code or by administrative citation pursuant to Title I, Chapter 21 of the Milpitas Municipal Code.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

SECTION 6. NOTICE OF EXEMPTION

The City Council hereby directs staff to prepare and file a Notice of Exemption with the Santa Clara County Office of the County Clerk-Recorder within five (5) working days of the adoption of this Ordinance.