# ORDINANCE NO. 1188

## AN ORDINANCE OF THE CITY OF SAUSALITO AMENDING CHAPTER 11.20 OF THE SAUSALITO MUNICIPAL CODE REGARDING ENVIRONMENTALLY ACCEPTABLE PACKAGING MATERIAL

**WHEREAS,** the litter problem resulting from polystyrene is becoming increasingly difficult to manage, contaminates creeks and the ocean, and has costly negative implications for tourism, wildlife, aesthetics and most recently, public storm drain systems; and

**WHEREAS,** polystyrene, a petroleum based product that is frequently used for food service purposes, enters various water bodies from both direct as well as indirect sources (such as storm conveyance systems), and negatively impacts the overall quality of stream and ocean waters and adjacent beach areas; and

**WHEREAS,** polystyrene does not effectively biodegrade (decay into constituent substances) in the environment, but merely breaks down into smaller particles that litter streets, parks, public places, open spaces, creeks, beaches, and the ocean: and

**WHEREAS,** polystyrene waste poses a risk to fish and wildlife, as fish and marine and land wildlife perish as a result of ingesting polystyrene products; and

**WHEREAS,** polystyrene contributes to urban blight as litter, especially due to the fact that its lightweight nature causes it to float in water and be transported by wind even when disposed of properly and that does not decompose; and

**WHEREAS,** polystyrene products, when used for food service purposes, have a useful life that can be measured in minutes or hours, yet are not biodegradable nor reusable and take from several decades to hundreds of years to deteriorate in the environment or a landfill; and

**WHEREAS,** there is currently no effective means of recycling of disposable polystyrene food service products, due in part to contamination from food residue, and

**WHEREAS,** alternative products, which are bio-degradable, reusable and/or recyclable are readily available at reasonable cost; and

**WHEREAS**, Chapter 11.20 of the Sausalito Municipal Code adopted in 1990 currently provides for the voluntary reduction of food packaging which utilizes polystyrene foam and/or the establishment of recycling programs for polystyrene foam material; and

**WHEREAS**, it is in the interest of the health, safety, and welfare of all who live, work and do business in the City that, to the extent feasible, the amount of litter on public streets, parks, public places, and open spaces be reduced and that litter than does reach the natural environment be biodegradable. Existing landfill sites are rapidly approaching capacity, and

additional sites are increasingly unavailable. Reduction of non-degradable wastes entering the waste stream and encouraging the use of recyclable packaging further these goals; and

**WHEREAS,** the City Council desires to exercise environmental stewardship by reducing the amount of expandable polystyrene debris that enters the storm drains, watersheds, and the coastal environment by adopting more stringent regulations to reduce the amount of expandable polystyrene that enters our waste stream.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SAUSALITO HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1. Amendment.** Chapter 11.20 of the Sausalito Municipal Code is hereby amended in its entirety by adding a new Chapter 11.20 to read as set forth in Exhibit A which is attached hereto.

**SECTION 2. Severability.** This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

**SECTION 3. Effective Date.** This Ordinance shall go into effect thirty (30) days after the date of its adoption pursuant to California Government Code Section 36937.

**SECTION 4. Certification.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Sausalito City Council on the 16th day of October 2007, and was adopted at a regular meeting of the Sausalito City Council on the 13th day of November, 2007 by the following vote:

| | | |
|---|---|---|
| AYES: | COUNCILMEMBERS: | Albritton, Leone, Weiner, Vice Mayor Belser, Mayor Kelly |
| NOES: | COUNCILMEMBERS: | none |
| ABSENT: | COUNCILMEMBERS: | none |
| ABSTAIN: | COUNCILMEMBERS: | none |

Mayor

Attest:

Deputy City Clerk

**EXHIBIT A**

Chapter 11 20

Environmentally Acceptable Packaging Materials

Sections:


11.20 010 Findings and Intent
11.20.020 Definitions
11.20.030 Establishment of Food Packaging Goals
11.20.040 Review of Attainment of Packaging Goals
11.20.050 Food Packaging Prohibitions
11.20.060 Exemptions
11.20.070 Enforcement
11.20.080 Pre-Exemption


11.20.010 Finding and Intent. The city council finds and declares that:

A Solid waste that is not recyclable, reusable or biodegradable poses problem for environmentally and financially responsible solid waste management programs.

B Discarded packaging from foods and beverages constitutes a significant and growing portion of the waste in the Marin County waste stream.

C. Plastic packaging is rapidly replacing other packaging material, and most plastic packaging used for foods and beverages is not recyclable, reusable, biodegradable, or returnable.

D. Disposable plastic containers, bags, wrappers and other packaging used for take-out foods are largely not biodegradable and as waste do not decompose over time in the natural environment and the use of these containers and wrappers has become increasingly prevalent.

E. Plastic litter, including polystyrene foam, poses a potential threat to wildlife. It enters the marine and natural environment and is ingested by, or entangles aquatic wildlife, frequently causing death and damages the ecological balance

F. Products which are biodegradable, reusable or recyclable offer environmentally sound alternatives to nonbiodegradable, nonreusable and nonrecyclable products currently used. By decaying into their constituent substances, biodegradable products are less of a danger to the natural environment, and less of a permanent blight on the landscape.

G. Polystyrene foam litter, in particular, is highly durable, buoyant and nonbiodegradable and therefore persists and detracts from the appearance of the area longer than many other types of litter.

H. Recycling and reuse of products reduces the costly waste of natural resources and energy used in production of new products as well as costly disposal of waste in landfills.

I. Although the waste stream within Marin County is large and diverse, steps at the local level, no matter how small, can significantly support waste management programs in lieu of landfilling.

J. The provisions of this chapter are consistent with and help implement the County Solid Waste Management Plan, and the legislative findings and intent of AB939

K. Intention of this ordinance:

1. The purpose of this law is to eliminate the use of nonbiodegradable, nonreusable, nonreturnable, and nonrecyclable packaging originating at establishments and events within the city of Sausalito to the maximum extent practicable to promote public health, conserve energy and resources, reduce solid waste and litter, and protect wildlife and the environment.

2. The provisions of this chapter will serve the public interest by reducing both nonbiodegradable litter and the quantity of nonbiodegradable waste in the landfills serving Sausalito. Maximizing the operating life of landfill facilities promotes the public interest.

11.20 020 Definitions. Unless otherwise expressly stated whenever used in this chapter, the following terms shall have the meanings set forth below:

A. "Biodegradable food packaging" means food packaging made of cellulose-based or other substances that are capable of being readily attacked, decomposed, assimilated, and otherwise completely oxidized or broken down by bacteria or other natural biological organisms into carbonaceous soil material or water and carbon dioxide. "Biodegradable food packaging" does not include; cellulose-based items which have a synthetic or plastic coating comprising more than five percent of the total volume of the item.

B. "City" or "City of Sausalito" means all that territory within the incorporated area of the city of Sausalito, County of Marin, state of California.

C. "Food Packaging" Means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are made from polystyrene foam and which are furnished with any foods or beverages sold in any retail food establishment, or in which any foods or beverages are placed or packaged on a retail food establishment's premises.

D "Polystyrene foam" means 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).

E "Recyclable food packaging" means any food packaging including glass, cans, cardboard, paper, mixed paper, plastic or other items which can be recycled, salvaged, composted, processed, or marketed by any means other than landfilling or burning as fuel..

F "Retail food establishment" shall mean all sales outlets, stores, shops, vehicles or other places of business located within the City of Sausalito which operate primarily to sell or convey foods or beverages directly to the ultimate consumer, which foods or beverages are predominantly contained, wrapped, or held in or on packaging. "Retail food establishment" shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked preserved, bottled, packaged, handled, stored, manufactured, and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant; drive-in; coffee shop; cafeteria; short-order café; delicatessen; luncheonette, grill, sandwich shop; soda fountain; bed and breakfast inn, tavern, bar; cocktail lounge; nightclub, roadside stand; take-out prepared food place; industrial feeding establishment; catering kitchen; mobile food preparation unit, commissary, grocery store, public food market; produce stand, food stand; or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other establishment or operation where food is processed, prepared, stored, served or provided for the public for charge.

G " Non-Profit Food Provider" means a recognized tax exempt organization which provides food or beverages as a part of its services or as a fundraising mechanism.

H "Returnable food packaging" means food or beverage containers or packages, such as, but not limited to, soft drink bottles and milk containers that are capable of being returned to the distributor, such as but not limited to, dairies and soft drink bottlers, for reuse as the same food or beverage container at least once.

I "Prepared Food" means food or beverages which are served on the Retail Food Establishment's premises and are prepared on the Retail Food Establishment's premises or within the City of Sausalito by packaging, cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared Food does not include any uncooked meat, fish or eggs unless provided for consumption without further food preparation. Prepared food may be eaten either on or off the premises.

11 20 030 Establishment of Packaging Goals

A Use of polystyrene foam in packaging materials. The City of Sausalito shall encourage, the elimination of all packaging which utilizes polystyrene foam throughout the City.

B. Use of Recyclable, Reusable and Biodegradable Packaging Materials

The City of Sausalito shall encourage the reduction of the use and sale of nonbiodegradable, nonrecyclable nonresuable and nonreturnable food and beverage packaging throughout the City.

11.20.040 Food Packaging Prohibitions Effective September 1, 2008

A. No Retail Food Establishment or Non-Profit Food Provider shall provide Prepared Food to its customers in any Food Packaging that utilized Polystyrene Foam unless an exemption is granted in accordance with the provisions of Section 11.20.050.

B. The City of Sausalito shall prohibit the use of Polystyrene Foam Food Packaging at all City facilities. The City of Sausalito shall not purchase or acquire Polystyrene Food Packaging with the exception of any purchases completed before the date of this Ordinance.

C. The use or distribution of Polystyrene Foam Food Packaging at special events sponsored or co-sponsored by the City of Sausalito or which otherwise receive a Special Events permit in accordance with Chapter 17.32 shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event Retail Food Establishments and any other party (including non-profit organizations) who enter into an agreement with one or more of the co-sponsors of the event to sell Prepared Food at the event or otherwise provide an event related service.

D. All facility rental agreements for any City-owned property or facility and Special Event permits shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of Polystyrene Foam Food Packaging at the associated function. The Facility rental agreement shall indicate that the violating contractor's security deposit will be forfeited if the City Manager, or their designee, determines that Polystyrene Foam Food Packaging was utilized in violation of the rental agreement.

11.20.050 Exemptions

A. Food items packaged outside the boundaries of the City of Sausalito are exempt from the provisions of this chapter.

B. The City Manager or their designee at their discretion may exempt a retail food establishment from the requirements of the provisions of this chapter for a one-year period, renewable annually, upon a reasonable showing by the applicant that the conditions of this

chapter would cause undue hardship. The phrase "undue hardship" may be construed to include, but not be limited to:

1. Situations where there are no acceptable alternatives to polystyrene foam food packaging for reasons which are unique to the retail food establishment and/or the consumer of the food or beverage, or

2. Situations where compliance with the requirements of this chapter would deprive a person of a legally protected right, or

3. Food Packaging required to be purchased under a contract entered into one year prior to the effective date of this chapter is exempt from the provisions of this chapter. The exemption will apply up to one year from the effective date of this chapter.

C. Coolers and ice chests made of Polystyrene Foam are exempt from the provisions of this chapter.

D. Food packaging items containing Polystyrene Foam that are required by law.

11.20.60 Liability and Enforcement

A. The City Manager or their designee will have primary responsibility for the enforcement of this chapter. The City Manager or their designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, entering the premises of any Retail Food Establishment to verify compliance.

B. Anyone violating or failing to comply with any of the requirement of this chapter will be guilty of an infraction.

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

11.20.070 Violations – Penalties

A. If the City Manager or their designee determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the Retail Food Establishment that a violation has occurred.

B. If the Food Vendor has subsequent violations of this chapter, the following penalties will apply:

1. A fine not exceeding one hundred dollars ($100.00) for the first violation after the warning notice is given.

2. A fine not exceeding two hundred dollars ($200.00) for the second violation after the warning notice is given.

3. A fine not exceeding five hundred dollars ($500.00) for the third and any future violations after the warning notice is given.

11.20.080 Severability The provisions of this chapter are declared to be severable and if any provision, sentence, clause section or part of this chapter is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this chapter or their application to persons and circumstances.