

Ordinance No. 5371
Ordinance of the Council of the City of Palo Alto Amending Chapter 5.30
("Expanded Polystyrene and Non-Recyclable Food Service Containers") to
Title 5 ("Health and Sanitation") of the Palo Alto Municipal Code

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and purpose. The Council finds and declares as follows:

(a) The City of Palo Alto is charged with eliminating litter which passes through the storm drain system to no adverse impact by 2022 as part of the Municipal Regional Stormwater Permit.

(b) The City is charged with achieving Zero Waste by 2021 and Plastic Foam is not reliably recyclable.

(c) Palo Alto's watersheds reside at the edge of the San Francisco Bay which is part of the Pacific flyway and which protects habitat for two endangered species—the California clapper rail and saltmarsh harvest mouse.

(d) The City of Palo Alto desires to protect the natural environment, the health of its citizens, and the economy. This includes exercising environmental stewardship by reducing the amount of Plastic Foam litter released into the City's watershed and beyond.

(e) On February 11, 2009, the San Francisco Bay Regional Water Quality Control Board identified two Palo Alto creeks, San Francisquito Creek and Matadero Creek, as having water quality that is impaired by trash as defined by the Clean Water Act. The staff report recommending that the creeks be listed identifies polystyrene, a predominant source of Plastic Foam, as being one of the types of trash responsible for the impairment.

(f) Plastic foam litter was the largest component by count of litter found in Adobe and Matadero Creeks during the 2014 National River and Coastal Clean-up Day events.

(g) Plastic foam litter constitutes six percent of the litter collected in storm drains in four Bay Area counties and 149 storm drain inlets based on a study performed by the Bay Area Stormwater Management Agencies Association.

(h) Plastic foam litter presents unique management issues because it is lightweight, floats, resists biodegradation, and easily breaks into smaller pieces. Because it is not easily contained, it is often conveyed through storm drains to local creeks, the San Francisco Bay and the Pacific Ocean. These small pieces, similar in size to plankton, are ingested by marine wildlife, leading to reduced appetite and nutrient absorption and possible death by starvation. According to a United Nations Environment Global Program of Action study, at least 162 marine species including most seabirds are reported to have eaten plastics and other litter.

(i) Recycling Plastic Foam is problematic and not cost-effective. Ongoing logistical and quality control challenges related to the minimal recycling market for Plastic Foam makes maintaining a recycling program for peanuts and blocks financial and operationally infeasible. All Plastic Foam materials must now be disposed of in a landfill.

(j) The retail sale or distribution of Plastic Foam undermines the goals of the City of Palo Alto's ordinance prohibiting the distribution of Plastic Foam foodware at Food Service Establishments and City-sponsored events.

(k) Both of the major chemicals used to produce Plastic Foam, benzene (a known human carcinogen) and styrene (a possible carcinogen and neurotoxin), are suspected by the EPA and FDA to leach from polystyrene food containers, posing a threat to the environment and human health.

(l) Plastic Foam used at Food Service Establishments is a one-time use product that degrades extremely slowly in nature.

(m) There are many suitable reusable, compostable or recyclable alternatives to Plastic Foam foodware, ice chests and packaging materials.

(n) The City of Palo Alto provides an organics collection and composting program to residents and Food Service Establishments which can accept paper and compostable foodware for municipal composting.

(o) Non-recyclable materials pose a challenge to any environmentally and fiscally responsible solid waste management program. Regulation of Plastic Foam is necessary to encourage a recyclable waste stream and to reduce the disposal of solid waste and the economic and environmental costs of waste management.

(p) It is the intent of the Council to reduce the negative impacts of Plastic Foam and encourage the use of recyclable or compostable alternatives through the implementation of this Ordinance.

SECTION 2. Chapter 5.30 (Expanded Polystyrene and Non-Recyclable Food Service Containers) of the Palo Alto Municipal Code is hereby amended to read as follows:

Chapter 5.30

PLASTIC FOAM AND NON-RECYCLABLE FOOD SERVICE CONTAINERS AND PACKAGING ITEMS

Sections:

- 5.30.010 Definitions
- 5.30.020 Prohibitions on the Use of Plastic Foam and Non-Recyclable Plastic
- 5.30.030 Exemptions
- 5.30.040 Operative Dates

- 5.30.050 Severability
- 5.30.060 Enforcement and Penalties
- 5.30.070 Construction

5.30.010 Definitions.

- (a) “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 and any amendments or successor standards thereto.
- (b) “City Facilities” refers to any building, structure or vehicle owned or operated by the City of Palo Alto, its agents, departments and franchises;
- (c) “Disposable Food Service Container” means single-use disposable product used by Food Service Establishments for serving or transporting prepared and ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, lids, trays and hinged or lidded containers. This does not include single-use disposable straws, utensils, or hot cup lids;
- (d) “Food Service Establishment” means any establishment, located or providing food within the City of Palo Alto, which provides prepared and ready to consume food or beverages, for public consumption including but not limited to any Retail Service Establishment, eating and drinking service (as defined in Title 18), takeout service (as defined in Title 18), supermarket, delicatessen, restaurant, food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, cart or other sidewalk or outdoor vendor or caterer which provides Prepared Food;
- (e) “Non-Recyclable Plastic” means all plastics that do not meet the definition of Recyclable Plastic;
- (f) “Plastic Foam” shall mean blown expanded and extruded plastic foams made from polystyrene or other resins which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding and extrusion-blown molding (extruded foam plastic). Expanded polystyrene and other plastic foam resins are generally used to make disposable cups, bowls, plates, trays, egg cartons, clamshell containers, ice chests, shipping boxes and packing materials.
- (g) “Plastic Foam Products” shall mean disposable Plastic Foam ice chests, cups, bowls, plates, clamshells, shipping boxes containers, egg cartons, packaging peanuts, packing blocks or other packaging materials that are not wholly encapsulated or encased by a more durable material. Additional Plastic Foam Products may be added by administrative regulation promulgated by the Director of Public Works or his/her designee;

- (h) “Prepared Food” means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique, including but not limited to cooking, chopping, slicing, mixing, freezing, squeezing, or brewing, and which requires no further preparation to be consumed. Prepared food includes uncooked fruits or vegetables, “take-out” food, or food prepared to be consumed off the Food Service Establishment premises. Prepared Food does not include any uncooked meat, fish or poultry;
- (i) “Recyclable Plastics” include any plastic which can be accepted for recycling or composting by the City’s municipal recycling program. For purposes of this Chapter, Recyclable Plastic does not include any expanded Plastic Foam labeled with recycling symbol #6, or any other Plastic Foam made with other plastic resins;
- (j) “Retail Service Establishment” shall have the same meaning as Retail Service as defined in Title 18 of this Code.

5.30.020 Prohibition on the Use of Plastic Foam Products and Non-Recyclable Plastic.

- (a) Except as provided by section 5.30.030, Food Service Establishments are prohibited from providing prepared food in Disposable Food Service Containers made from Plastic Foam or other Non-Recyclable Plastic;
- (b) Except as provided by section 5.30.030, Retail Service Establishments are prohibited from selling, leasing or otherwise providing Plastic Foam Products;
- (c) Except as provided by section 5.30.030, all City facilities and vendors at City sponsored events or City owned facilities are prohibited from using Disposable Food Service Containers, packaging or other products made from Plastic Foam or Non-Recyclable Plastic;
- (d) Nothing in this Ordinance shall be interpreted to restrict the use or sale of any form of fiber or paper disposable food service container, or the use of any form of biodegradable or plastic food service container meeting ASTM Standards or other products authorized by Administrative Regulation.

5.30.030 Exemptions

- (a) The following exemptions shall apply:
 - (i) Foods prepared or packaged outside the City of Palo Alto are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Palo Alto are encouraged to follow the provisions of this Chapter.
 - (ii) The Director of Public Works, or his/her designee, may exempt a Food Service Establishment, Retail Service Establishment or City facility/vendor

from the requirements of this Ordinance for a period of up to one year, if the applicant for such exemption can demonstrate that the conditions of this Ordinance would cause an undue hardship. An “undue hardship” includes, but is not limited to situations unique to the applicant where there are no reasonable alternatives to Plastic Foam Products or Non-recyclable Plastic Disposable Food Service Containers and compliance with this Ordinance would cause significant economic hardship to that applicant, or cause them to be deprived of a legally protected right.

(iii) A Food Service Establishment, Retail Service Establishment or City facility/vendor seeking an exemption application shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The Director may require the applicant to provide additional information to permit the Director to determine facts regarding the exemption application.

(iv) Emergency Supplies and Service Procurement. City facilities, Food Service Establishments, Retail Service Establishments, City contractors and vendors doing business with the City shall be exempt from the provisions of this chapter, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

5.30.040 Operative Dates.

All Food Service Establishment, Retail Service Establishments and City facilities and vendors must comply with the requirements of this Ordinance by March 1, 2016.

5.35.050 Severability.

If any provision or clause of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this chapter, and clauses of this chapter are declared to be severable.

5.35.060 Enforcement and Penalties

- (a) The Director of Public Works or his/her designee shall have primary responsibility for enforcement of this chapter. The Director of Public Works or his or her 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 Food Provider to verify compliance.
- (b) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction as set forth in Chapter 1.08 of the Palo Alto Municipal Code.

SECTION 4. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED: December 7, 2015

PASSED: January 11, 2016

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Senior Assistant City Attorney

City Manager

Director of Public Works