

ORDINANCE NO. 10-2010

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
FREMONT AMENDING THE FREMONT MUNICIPAL CODE BY
ADDING A NEW ARTICLE 10, TITLE IV, CHAPTER 2 (SOLID WASTE,
RECYCLABLES, AND YARD WASTE MANAGEMENT) TO PROHIBIT
THE USE OF EXPANDED POLYSTYRENE DISPOSABLE FOOD
SERVICE WARE AND TO REQUIRE THE USE OF RECYCLABLE OR
COMPOSTABLE FOOD SERVICE WARE WITHIN CITY
LIMITS**

THE CITY COUNCIL OF THE CITY OF FREMONT DOES ORDAIN AS FOLLOWS:

SECTION 1. LEGISLATIVE FINDINGS AND DECLARATIONS.

The City of Fremont has a duty to protect the natural environment, the economy, and the health of its citizens.

Expanded polystyrene plastic litters city storm drains, streets, creeks, parks, and other public places. Expanded polystyrene in the environment results in a significant negative impact to wildlife, and causes the cost of managing this litter to increase significantly.

Banning expanded polystyrene food service ware in the City of Fremont will help address pollution by requiring the use of compostable or recyclable alternatives while helping educate businesses owners and citizens on the positive impact their packaging choices can make.

The California Integrated Waste Management Board (CIWMB) estimates that Californians use 165,000 tons of expanded polystyrene each year for packaging and food service purposes alone, and currently there is no economically feasible means of recycling this product in the City of Fremont.

Benzene (a known human carcinogen) and Styrene (a possible carcinogen and neurotoxin), are suspected by the EPA and FDA to leach from expanded polystyrene food containers, posing a threat to the environment and human health.

Due to these concerns a number of California cities have banned expanded polystyrene food service ware, and many local businesses and several national corporations have successfully replaced expanded polystyrene or non-compostable food service ware.

The City's goal is to replace expanded polystyrene with alternative products that are compostable or recyclable.

SECTION 2. FMC TITLE IV, CHAPTER 2, ARTICLE 10 ADDED.

Fremont Municipal Code Title IV, Sanitation and Health, Chapter 2, Solid Waste Recyclables and Yard Waste Management, is amended to add Article 10, sections 4-210100 through 4-210109, to read as follows:

ARTICLE 10. EXPANDED POLYSTYRENE DISPOSABLE FOOD SERVICE WARE PROHIBITED; RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE REQUIRED

Sec. 4-210100. Definitions.

ASTM-Standard means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.

City Facility Users means all persons, society, associations or organizations or special events promoter that requires a permit to use a City Facility as defined in Title III, Chapter 7, Article 2, sections 3-7200 through 3-7204 parks and recreation areas; or that requires a special events permit for events which require city services, involves city owned property such as streets and plazas, closure of public right of way or impairs emergency vehicle access, and parades, as defined in special events and parades, Title III, Chapter 7, Article 1, sections 3-7100 through 3-71012 and including permits to reserve or rent a City Facility, including concession contracts with the city and city managed concessions, city sponsored events, and food services provided at city expense. These City Facility permits also include but are not limited to picnic area reservations, park use application permits, field reservations, rental facilities, historic buildings and senior center rentals, and permits for gatherings and meetings in all parks and recreation areas which include group picnics and organized gatherings, educational, entertainment or recreation for twenty-five or more persons.

City Facility means any building, structure, land or park owned or operated by the City of Fremont and its agents, departments and includes city buildings, structures, parks, recreation facilities or property.

Compostable means that all materials in the product or package will biodegrade or otherwise become part of usable compost (e.g., soil conditioning material, mulch) in an appropriate composting program or facility. Compostable Disposable Food Service Ware includes ASTM-Standard bio-plastics (plastic-like) products that are clearly labeled.

Concession shall mean any agreement, authorization, license or contract to sell, barter, trade or otherwise to exchange goods or services in the parks and recreation areas of the City of Fremont.

Disposable Food Service Ware means single-use disposable product used by food vendors 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 definition does not include single-use disposable straws, utensils or hot cup lids.

Expanded Polystyrene means a thermoplastic petrochemical material utilizing the styrene monomer, marked with recycling symbol #6, 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), sometimes referred to as Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation. In food service, expanded polystyrene is generally used to make cups, bowls, plates, trays, and clamshell containers.

Food Vendor means any establishment located within the City of Fremont, or any establishment which provides prepared food or beverages for public consumption within the City of Fremont, including but not limited to any store, supermarket, delicatessen, restaurant, retail food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, sidewalk or other outdoor vendor, or caterer.

Prepared Food means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique by Food Vendor. Prepared food does not include uncooked meat, fish, poultry, or eggs unless provided for consumption without further food preparation.

Recyclable means any material that is accepted by the city recycling program, including, but not limited to, paper, glass, metal, cardboard, and plastic that can be recycled, salvaged, processed, or marketed by any means other than land-filling or burning, whether as fuel or otherwise, so that they are returned to use by society. Recyclable plastics include any plastic which can be feasibly recycled by the city's municipal recycling program and presently is limited to those plastics with the following recycling symbols: #1 – polyethylene terephthalate (PET or PETE), #2 – high density polyethylene (HDPE), #3 – polyvinyl chloride (PVC), #4 – low density polyethylene (LDPE), #5 – polypropylene (PP), #6 – polystyrene, (except for Expanded Polystyrene), and #7 – other plastics. For purposes of this Chapter, recyclable plastic does not include Expanded Polystyrene labeled with recycling symbol #6.

Special Events Promoter means an applicant for any special events permit issued by the city or any city employee(s) responsible for any organized special event within the City of Fremont.

Sec. 4-210101. Prohibited Use of Expanded Polystyrene Disposable Food Service Ware

(a) Except as provided by Section 4-210103 Exemptions, all Food Vendors are prohibited from providing Prepared Food in Disposable Food Service Wares made from Expanded Polystyrene.

(b) Except as provided by Section 4-210103 Exemptions, all City Facility Users are prohibited from using Disposable Food Service Wares made from Expanded Polystyrene.

Sec. 4-210102. Required Use of Recyclable or Compostable Food Service Ware

(a) All Food Vendors using any Disposal Food Service Wares shall use a suitable Recyclable or Compostable product.

(b) All City Facility Users shall use a suitable Recyclable or Compostable product for Disposal Food Service Wares.

Sec 4-210103. Exemptions.

(a) Foods prepackaged outside the limits of the City of Fremont are exempt from the provisions of this Chapter, but the purveyors of foods prepackaged outside of the limits of the

City of Fremont are encouraged to follow these provisions as it is a policy goal to eliminate the use of Expanded Polystyrene for Disposal Food Services Wares. The exemption under this Section 4-210103 (a) does not apply to Food Vendors as defined, including but not limited to caterers which provide prepared food for public consumption within the City of Fremont.

(b) Coolers and ice chests that are intended for reuse are exempt from the provisions of this article.

(c) The city manager may exempt a Food Vendor or City Facility User from the requirements set forth in Section 4-210101 or Section 4-210102 for a period of time to be determined by the city manager on a case by case basis for undue hardship. Undue hardship includes, but is not limited to situations unique to the Food Vendor or City Facility User not generally applicable to other persons in similar circumstances.

(d) Food Vendors and City Facility Users seeking an exemption shall include all information on the exemption application for the city to make its decision, including but not limited to documentation showing factual support for the claimed exemption. The city manager shall confirm the decision to grant or deny each exemption in writing and may approve an exemption request in whole or in part. The decision of the city manager shall be final.

(e) Emergency supplies or services procurement. City Facility Users and Food Vendors shall be exempt from the provisions of this article, in a situation deemed by the city manager to be an emergency for the immediate preservation of the public peace, health or safety.

Sec 4-210104. Administrative Rules and Regulations.

The city manager may make such rules and regulations, consistent with the provisions of this article, as may be necessary or desirable to supplement or clarify such provisions or aid in their enforcement.

Sec 4-210105. Enforcement and Penalties.

(a) The city manager shall issue a written warning to any Food Vendor or City Facility User for a violation of sections 4-210101 or 4-210102 of this article. If after issuing a written warning of violation, the city manager finds that Food Vendor or City Facility User continues to violate the provisions of sections 4-210101 or 4-210102, the city manager may impose the various sanctions provided in this Section and in the Fremont Municipal Code Title I, Chapter 4, sections 1-4100 through 1-4160, Administrative Remedies.

(b) Enforcement and penalties for violations of this article shall be in accordance with the Fremont Municipal Code Title I, Chapter 4, Administrative Remedies.

(c) In accordance with Title I, Chapter 4, Section 1-4115 Administrative Citation, each provision that is violated constitutes a separate offense, and each and every day a violation exists constitutes a separate and distinct offense. All civil penalties assessed by an administrative citation shall be payable to the City of Fremont.

(d) In accordance with Title I, Chapter 4, Section 1-4140, Penalties Assessed, the civil penalty assessed by administrative citation for violations of this article shall be as follows:

- (1) First administrative citation- A fine not exceeding one hundred dollars;
- (2) Second administrative citation within one year for violation of the same code section- A fine not exceeding two hundred dollars;
- (3) Third or subsequent administrative citation within one year for violation of the same code section a fine not exceeding five hundred dollars.

(e) Payment of the penalty shall not excuse the violation nor shall it bar further enforcement by the city. The failure of any person to pay a penalty assessed by administrative citation within the time specified on the citation shall result in the assessment of an additional late fee to be charged. The amount of the late fee shall be one hundred percent of the total amount of the administrative penalty owed. The combined penalty and late fee shall not exceed one thousand dollars.

Sec 4-210106. Construction and Preemption.

This article and any of its provisions shall be null and void upon the adoption of any state or federal law or regulation imposing the same, or essentially the same, limits on the use of prohibited products as set forth in this article. This article is intended to be a proper exercise of the city's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed with that intent.

SECTION 3. CEQA.

Negative declaration. The City Council hereby determines that the Negative Declaration prepared for this ordinance has been completed in compliance with the requirements of the California Environmental Quality Act (CEQA) and reflects the independent judgment of the City, and finds that adoption of the ordinance will have no significant negative impact on the area's resources, cumulative or otherwise. The Director of Community Development shall file a Notice of Determination with the County Clerk in accordance with CEQA guidelines.

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Fremont hereby declares that it would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect and will be enforced January 1, 2011.

SECTION 6. Publication and Posting.

The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under Government Code Section 36933(c), once in *The Tri-City Voice*, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause to be again published in *The Tri-City Voice* the summary of this ordinance with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

* * *

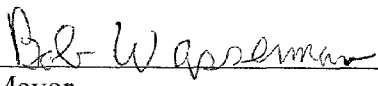
The foregoing ordinance was introduced before the City Council of the City of Fremont at the regular meeting of the City Council, held on the 11th day of May, 2010 and finally adopted at a regular meeting of the City Council held on the 25th day of May, 2010 by the following vote, to wit:

AYES: Mayor Wasserman, Vice Mayor Wieckowski, Councilmembers
Natarajan, Harrison and Chan

NOES: None

ABSENT: None


ABSTAIN: None



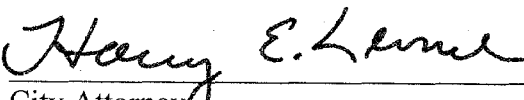
Mayor

ATTEST:

APPROVED AS TO FORM:



City Clerk



City Attorney

What You Need To Know

About The Expanded Polystyrene (EPS) Food Service Ware Ordinance

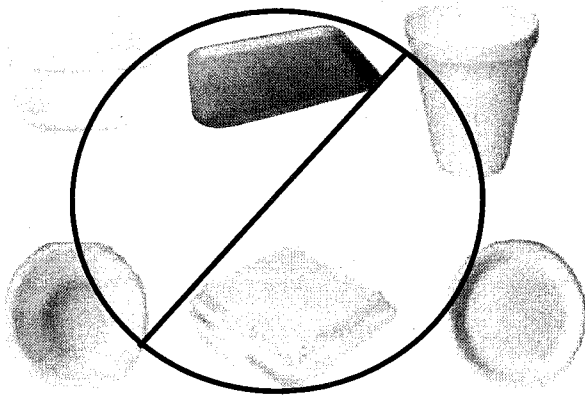
When

January 1, 2011

What is being prohibited?

- Expanded Polystyrene (#6) food service ware commonly known as Styrofoam™
- Plates
- Cups
- Bowls
- Lids
- Trays
- Hinged Container (Clamshell Style)
- Lidded Containers

Examples of what is being prohibited



What are acceptable products?

- Compostable/ recyclable products
- Paper or other paper products
- Plant-based bio-plastic (PLA)
- Aluminum foil & trays

Who is affected? Any establishment, located within the City of Fremont which provides prepared food or beverages including:

- Supermarket
- Delicatessen
- Restaurant
- Retail Food Vendor
- Caterer
- Sales Outlet
- Shop
- Cafeteria
- Catering Truck
- Outdoor Vendor
- City Facility Users

Why is the City implementing an Expanded Polystyrene ordinance?

- Expanded polystyrene is non-renewable, non-biodegradable, non-recyclable, and typically ends up in landfills or as litter in waterways
- Expanded polystyrene can break into pieces, which are often mistaken for food and ingested by wildlife

What is the penalty for not complying?

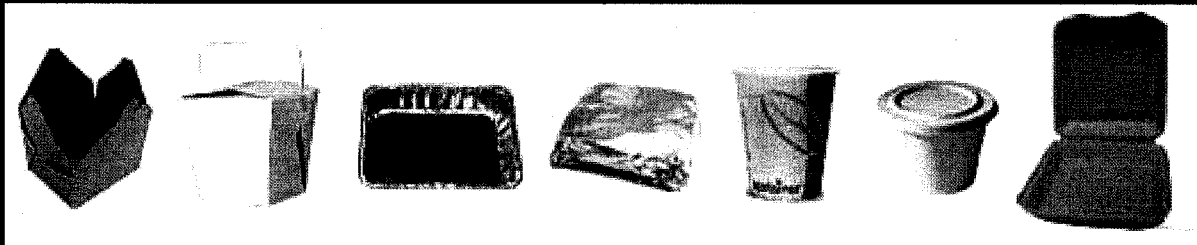
- Verbal or written warnings will be at the discretion of the enforcement officer
- Violations may result in fines of up to \$500.00 per day.

Where can I find the City's Ordinance and other related information?

- Visit www.fremont.gov/environment or call 510-494-4570



Examples of Compostable and Recyclable Food Service Ware



For more information please visit www.fremont.gov/environment or call Fremont's Environmental Services Division at 510-494-4570