



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: City Manager James J. Colangelo
MEETING DATE: May 7, 2008
SUBJECT: SECOND READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE TO ADD CHAPTER 11.99 TO THE PACIFIC GROVE MUNICIPAL CODE TO REQUIRE ENVIRONMENTALLY ACCEPTABLE FOOD PACKAGING WITHIN THE CITY LIMITS

RECOMMENDATION:

Hold a public hearing on a second reading and adopt an ordinance to add chapter 11.99 to the Pacific Grove Municipal Code to require environmentally acceptable food packaging within the City limits.

DISCUSSION:

On April 16, 2008, the City Council introduced an ordinance to add chapter 11.99 to the Pacific Grove Municipal Code to require environmentally acceptable food packaging within the City limits.

Introduction of the ordinance was the first step in this process. Adoption and passage of the ordinance by the City Council is the next step. No substantial changes to an ordinance can be made between its introduction and adoption. No changes have been made to the ordinance since it was introduced April 16, 2008. The ordinance will become effective 30 days following passage and adoption.

A summary of the proposed Ordinance has been published for public notice of the proposed ordinance amendment in a newspaper of general circulation, the Monterey County Herald, on Sunday, May 4, 2008.

ATTACHMENTS:

Proposed Ordinance

RESPECTFULLY SUBMITTED:

James J. Colangelo

Digitally signed: I have reviewed this document

James J. Colangelo
CITY MANAGER

April 28, 2008

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE
ADDING CHAPTER 11.99 TO THE PACIFIC GROVE
MUNICIPAL CODE TO REQUIRE ENVIRONMENTALLY
ACCEPTABLE FOOD PACKAGING WITHIN CITY LIMITS**

WHEREAS, the City of Pacific Grove Municipal Code Title 11 provides means to protect the health, safety and environment of the city; and,

WHEREAS, 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; and,

WHEREAS, polystyrene is a plastic resin used in a wide range of consumer goods and packaging and in its "foamed" state is frequently used to produce takeout containers for food. However, unlike many other types of packaging, when littered polystyrene foam remains permanently in the environment where it breaks into tiny pieces that disperse widely and pose a severe threat to wildlife. Foamed polystyrene is not collected for recycling in the Central Coast region because it is not economically viable, and because there are no local manufacturers using this material as a feedstock; and,

WHEREAS, polystyrene plastic litters city storm drains, city beaches and the adjacent ocean. Banning foamed polystyrene fast food packaging will help 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; and,

WHEREAS, it is a policy goal of this city to encourage supermarkets and other vendors to eliminate the use of polystyrene foam for packaging unprepared food; and,

WHEREAS, this ordinance shall take effect on the first day of the month that begins after one hundred and eighty (180) days following adoption to an opportunity for depletion of remaining stocks of prohibited products, but during that period it shall nonetheless be the policy of the city to encourage voluntary adherence to the requirements of this ordinance; and

WHEREAS, the proposed ordinance is exempt from CEQA review pursuant to Class 7 (Actions for Protection of Natural Resources) as set forth by CEQA Guideline section 1530 and is enacted to protect the health, safety and environment of the city;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The City Council declares its intent in enacting this ordinance to be as follows:

(a) The city 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 borders 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.

(c) Discarded food and beverage packaging constitutes a significant and growing portion of the waste in the city. Laws, policies and regulations pertaining to disposable food service-ware are a vital component in the city efforts to reduce the amount of disposed waste.

(d) Disposable 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 disposed of properly.

(e) Polystyrene foam is highly durable, persisting longer than any other type of litter. A prevalence of polystyrene foam packaging 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 to residents and adversely impacting our environment.

(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.

(j) 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. 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.

(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 will help protect the local environment, including the Monterey Bay National Marine Sanctuary, from contamination and degradation, helping to safeguard this area as a tourist destination. It will also support the city's goal of reducing waste and protecting the environment for generations to come.

(m) Actions required by this ordinance are cost-effective, helping to maximize the operating life of landfills and reducing the economic and environmental expense of managing waste and litter.

SECTION 3. Chapter 11.99, entitled “Food Packaging”, shall be added to the Pacific Grove Municipal Code.

SECTION 4. Section 11.99.010 of the Pacific Grove Municipal Code entitled, “Definitions”, shall be added to Chapter 11.99 as shown in bold, italic text (***bold, italic text***), as follows:

11.99.010 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 fifteen (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 through the action of bacteria or to undergo this process.***
- (d) ***“City facility” means any building, structure or vehicle owned and operated by the city, its agents, and departments.***
- (e) ***“City Contractor” means any person or entity that has a contract with the city for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be purchased at the expense of the city.***
- (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 straws, cups lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.***
- (h) ***“Food Provider” means any vendor located or providing food within the city which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, super market, 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 which 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). The term “polystyrene” also includes clear or solid polystyrene which is known as “oriented 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, fish or eggs unless provided for consumption without further food preparation.*
- (l) *“Recyclable” means any material that is accepted by the city 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 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-organized special event.*

SECTION 5. Section 11.99.020 of the Pacific Grove Municipal Code entitled, “Prohibited Disposable Food Service Ware”, shall be added to Chapter 11.99 as shown in bold, italic text (***bold, italic text***), as follows:

11.99.020 Prohibited Disposable Food Service Ware

- (a) *Food providers within the city 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 facilities.*
- (c) *City contractors in the performance of city contracts and special events promoters may not provide prepared food in disposable food service ware that contains polystyrene foam.*
- (d) *It shall be a policy goal of the city that business establishments located outside the city 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 shall promote and encourage, on a voluntary basis, the elimination of all polystyrene foam packaging.

SECTION 6. Section 11.99.030 of the Pacific Grove Municipal Code entitled, “Required Biodegradable, Compostable, or Recyclable Disposable Food Service Ware”, shall be added to Chapter 11.99 as shown in bold, italic text (***bold, italic text***), as follows:

11.99.030 Required Biodegradable, Compostable, or Recyclable Disposable Food Service Ware

- (a) All food providers within the city 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 term “affordable” defined in section 11.99.010) and an exemption has been granted in accord with section 11.99.040.*
- (b) Food providers may charge a “take-out fee” to cover the difference in cost.*
- (c) All city facilities utilizing disposable food service ware shall use products that are biodegradable, compostable or recyclable.*
- (d) City contractors, and special events promoters utilizing disposable food service ware shall use biodegradable, compostable, or recyclable products while performing under a city contract or permit.*

SECTION 7. Section 11.99.040 of the Pacific Grove Municipal Code entitled, “Exemptions”, shall be added to Chapter 11.99 as shown in bold, italic text (***bold, italic text***), as follows:

11.99.040 Exemptions

- a) No exemption shall allow for the use of polystyrene foam disposable food service ware.*
- b) The city manager, or his or her designee, may exempt a food provider from the requirement set forth in section 11.99.030, Required Biodegradable, Compostable, or Recyclable Disposable Food Service Ware, for a period not to exceed twelve (12) months per request upon the food provider showing, in writing, that this Chapter creates an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The city manager shall confirm the decision to grant or deny each exemption in writing; the city manager’s decision shall be final.*
- c) Each exemption request shall set forth all information necessary for the city manager to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The city manager may require additional information.*
- d) The city manager may approve an exemption request in whole or in part, with or without conditions.*
- e) Foods prepared or packaged outside the city and sold inside the city are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the city are encouraged to follow the provisions of this Chapter as it is a policy goal of this city to eliminate the use of polystyrene foam for packaging unprepared food.*

- f) Polystyrene Foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.*

SECTION 8. Section 11.99.050 of the Pacific Grove Municipal Code entitled, "Enforcement", shall be added to Chapter 11.99 as shown in bold, italic text (***bold, italic text***), as follows:

11.99.050 Enforcement

- a) Violations of this Chapter may be enforced in accordance with Chapters 1.16 and 1.19 of this Code. The city manager, or his or her designee, shall be responsible for enforcing this Chapter and shall have authority to issue citations for violations.*
- b) The city officer is authorized to establish regulations or administrative procedures to obtain compliance with this Chapter.*
- c) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.*
- d) The City 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 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 Chapter on their annual business license renewal forms.*

SECTION 9. Section 11.99.060 of the Pacific Grove Municipal Code entitled, "Penalties", shall be added to Chapter 11.99 as shown in bold, italic text (***bold, italic text***), as follows:

11.99.050 Penalties

Violations of this Chapter shall be enforced as follows:

- 1. For the first violation, city manager 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 thirty (30) days to comply.*
- 2. The following penalties shall apply for subsequent violations of this Chapter:*
 - a) A citation imposing a fine in the sum of one hundred dollars (\$100) for the first violation that occurs more than thirty (30) days after the warning issued pursuant to section 11.99.050 (1). In lieu of payment of the fine, the person cited may submit*

receipts to the city manager that demonstrate the purchase, following the service of the citation, of at least one hundred dollar's (\$100) worth of biodegradable, compostable, or recyclable products appropriate as an alternative disposable food service ware for the items, which led to the violation. Upon such proof, the city manager may dismiss the citation.

- b) A fine in the sum of two hundred dollars (\$200) for a violation that occurs after issuance of the citation referenced in section 11.99.050 (2)(a), and that is more than sixty (60) days after the warning issued pursuant to section 11.99.050 (1).*
- c) A fine in the sum of five hundred dollars (\$500) for the third and each subsequent violation which occurs after issuance of the citation referenced in section 11.99.050 (2)(a), and that is more than ninety (90) days after the warning issued pursuant to section 11.99.050 (1).*

3. Food providers who violate this Chapter in connection with commercial or non-commercial special events, as that term is defined by section 11.99.010 of this Chapter, shall be issued a citation imposing fines as follows:

- a) A fine of two hundred dollars (\$200) for each event of one (1) to two hundred (200) persons, or*
- b) A fine of four hundred dollars (\$400) for each event of more than two hundred (200) but less than four hundred (400) persons, or*
- c) A fine of six hundred dollars (\$600) for each event of more than four hundred (400) but less than six hundred (600) persons, or*
- d) A fine of one thousand dollars (\$1,000) for each event of one more than six two hundred (600) persons.*

SECTION 10. To allow all persons an opportunity to use remaining stock of prohibited products, this ordinance shall become effective and enforceable on the first day of the month that begins after one hundred and eighty (180) days following its following passage and adoption. During the six-month period following its enactment, it shall nonetheless be the policy of the city to encourage voluntary adherence to the requirements of this ordinance.

SECTION 11. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

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PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS ____ day of _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

DANIEL E. CORT, Mayor

ATTEST:

CHARLENE WISEMAN, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

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