

ORDINANCE NO. 634

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA,
CALIFORNIA, ESTABLISHING CHAPTER 8.50 OF THE CARPINTERIA
MUNICIPAL CODE PERTAINING TO A BAN ON CERTAIN NON-RECYCLABLE
PLASTIC FOOD CONTAINERS.**

WHEREAS, the City of Carpinteria ("City") pursuant to its police powers has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

WHEREAS, the City is required under state and federal law to implement policies and programs to protect unique coastal resources and environmentally sensitive habitat areas (California Coastal Act), reduce the amount of waste generated in the community that goes to landfills (AB 939), and prevent storm water runoff from polluting creek and ocean waters (National Pollutant Discharge Elimination System Permit Program and the State Municipal Storm Water Permitting Program); and

WHEREAS, the Carpinteria community is attractive to residents, businesses, and visitors due to a local economy and quality of life that is centered on a clean and healthy environment, including but not limited to, parks, public open spaces, creeks, estuary, tidelands and the ocean; and

WHEREAS, there are approximately 53 restaurants and other food service operators in the City of Carpinteria and most currently use expanded polystyrene (EPS) take-out food containers; and

WHEREAS, the City Council of the City of Carpinteria has held publicly noticed meetings on February 25 and September 22, 2008, and jointly hosted a community workshop on September 11, 2008, in order to discuss issues and alternative responses to the use of EPS in the City; and

WHEREAS, The City Council received testimony and other information documenting the fact that EPS products often find their way into the local environment since EPS breaks down into smaller pieces and is so light that it floats in water and is easily carried by the wind, even when it has been disposed of properly; and

WHEREAS, numerous studies have documented the prevalence of EPS debris in the environment, including in storm drains and on beaches, negatively impacting the local environment and creating clean-up costs for the City;

WHEREAS, EPS can contain potentially harmful constituents such as phthalates, bisphenol A, styrene, vinyl chloride and flame retardants. Research is being conducted to determine whether water leaches these constituents out of plastic products, presenting a threat to the health of humans and wildlife. For example, styrene is a known hazardous substance and a suspected carcinogen and neurotoxin. Medical evidence and the Food and Drug Administration suggest that styrene may penetrate into food and drink stored in polystyrene containers which could potentially threaten the health of humans and wildlife; and

WHEREAS, recycling of EPS is currently not available through the City's franchise waste hauler or anywhere in the region and it is not financially feasible for the City to develop such a program;

WHEREAS, there are alternatives to EPS food containers available, and

WHEREAS, it is in the City's interest to establish programs and services that reduce the amount of litter in the environment, in particular beach litter and marine pollution, which increase the quality of life from the City of Carpinteria residents and visitors and protect local wildlife habitat.

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

SECTION 1. INCORPORATION OF RECITALS

The City Council finds and determines that the above recitals are incorporated herein and are each relied upon independently by the City Council for its adoption of this Ordinance.

SECTION 2. CREATION OF CHAPTER 8.50

Chapter 8.50 of the Carpinteria Municipal Code shall hereby be created and shall read as follows:

8.50.010 Title.

The title of this chapter shall be "Food Container Regulations".

8.50.020 Purpose

The purpose of these provisions is to promote:

- A. The protection of unique coastal resources found in Carpinteria and identified for protection as a part of the City's General Plan/Local Coastal Plan including the Carpinteria "El Estero" Salt Marsh, Beaches, Tidelands, and Offshore Reefs, Harbor Seal Hauling Grounds, and Creekways and Riparian Habitat.
- B. To protect the public health, safety and general welfare.
- C. Compliance with federal and state mandates for Clean Water (NPDES) and waste stream reduction (AB 939).
- D. A reduction in the amount of waste/debris in City parks, public open spaces, creeks, estuary, tidelands and the ocean, and the amount of material going to landfills.

8.50.030 Definitions.

The following definitions shall govern the construction of this chapter:

- A. "City Facilities" refers to buildings, structures, parks and open spaces, streets and other rights-of-way, owned or leased by the City of Carpinteria.

B. "Disposable Food Service Container" 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, cup lids, utensils, carryout bags, or plastic film wrapping, nor does it include single-use disposable packaging for unprepared foods, or coolers and ice chests that are intended for reuse.

C. "Expanded Polystyrene" (EPS) means polystyrene that has been expanded or "blown" using a gaseous blowing agent into solid foam.

D. "Food Provider" means any establishment, located or providing food within the City of Carpinteria, 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.

E. "Municipal Recycling Program" means the collection, transport, and processing of recyclable materials generated in the City of Carpinteria for reuse.

F. "Non-Recyclable Plastic" refers to any plastic which cannot be feasibly recycled by a municipal recycling program available in the City of Carpinteria, including expanded polystyrene.

G. "Polystyrene" 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".

H. "Prepared Food" means any 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.

I. "Recyclable" means any material, e.g., glass, paper, plastic, which can be recycled, salvaged, composted, processed, and/or marketed through a Municipal Recycling Program, such that the material is not placed in a landfill or incinerated.

J. "Recyclable Plastic" means any plastic which can be feasibly recycled by a municipal recycling program available in the City of Carpinteria. Recyclable plastics comprise those plastics with the recycling symbols #1 through # 7, including certain polystyrenes, but excluding non-recyclable plastic.

8.50.040 Prohibition and Reporting Requirement.

A. Commencing September 1, 2009, food providers are prohibited from dispensing prepared food to customers in disposable food service containers made entirely or in part from Non-Recyclable plastic.

B. Commencing on September 1, 2009, users of any City Facilities, City-managed concessions, and City sponsored events, including but not limited to, City franchises, contractors and vendors doing business in the City, are prohibited from using disposable food service containers made entirely or in part from non-recyclable plastic.

C. Commencing on January 1, 2010, each food provider shall report on or before January 1, 2010 and the first business day of each calendar year thereafter, a written certification, signed under the penalty of perjury by one authorized to bind the food provider, stating that the owners

and operators of the establishment are aware of the requirements of this chapter and comply with it. Such reports may be on a form provided for that purpose by the City.

8.50.050 Exemptions.

- A. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and food providers shall be exempt from the provisions of this Chapter;
- B. Items packaged outside the city, whether sold at retail within the city or elsewhere, are exempt from the provisions of this ordinance.
- C. The City Manager or his/her designee, may exempt a food provider from the requirements herein for a one year period, upon showing by the food provider that the application of the provisions herein would cause undue hardship. In determining whether undue hardship exists the City Manager or his/her designee shall consider:
 - 1. Situations unique to the food provider where there are no reasonable alternatives to non-recyclable plastic disposable food service containers and compliance with this Chapter would cause significant economic hardship to that food provider;
 - 2. The existence of franchise or other contractual obligations which require a food provider to use disposable food service containers that are not in compliance with this Chapter;
- D. The decision of the City Manager or his/her designee to grant or deny an exemption shall be final. Exemptions granted under the provisions of this section are valid for one year. A food provider granted an exemption by the City must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.
- E. 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.

8.50.060 Penalties and Enforcement.

- A. The presence on the premises of a food provider of non-recyclable plastic shall constitute a rebuttable presumption that such packaging is being dispensed.
- B. Violations of this ordinance shall be enforced as follows:
 - 1. For the first violation, upon a determination that a violation of this Chapter has occurred, City shall issue a written warning notice to the food provider which will specify the violation and the appropriate penalties in the event of future violations.
 - 2. Thereafter, any person violating or failing to comply with any of the requirements of this Chapter shall be subject to remedies specified pursuant to Chapters 1.06 and 1.08 of this code.
 - 3. Each and every sale or other transfer of non-recyclable plastic food packaging shall constitute a separate violation of this ordinance.
 - 4. The city attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- C. The remedies and penalties provided in this Chapter are cumulative and not exclusive of other remedies and penalties available under other provisions of applicable law.

8.50.070 Construction; Preemption

This Chapter and any provisions thereof 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 chapter. This chapter is intended to be a proper exercise of the City's police power, to operate only upon its own facilities and other food providers acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

SECTION 3. CEQA FINDINGS.

The adoption of this Ordinance is not subject to the California Environmental Quality Act, as this ordinance does not constitute a project, as defined by Public Resources Code Section 21065 and even if it is determined that the proposed action constitutes a project, the project would be exempt pursuant to CEQA Guidelines §§15307 [exemptions for actions to protect natural resources], 15308 [exemptions for actions to protect the environment], 15378(b)(2) [exemption for policymaking], and 15183 [actions consistent with the general plan].

SECTION 4. EFFECTIVE DATE.

This Ordinance shall be in full force and effect thirty (30) days following a second reading of the ordinance; and before the expiration of fifteen (15) days of its passage shall be published once with the names of the City Council voting for and against the same in the Coastal View, a newspaper of general circulation, published in the City of Carpinteria.

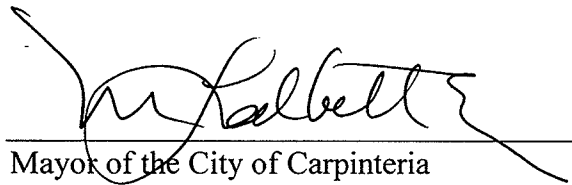
SECTION 5. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or application thereof to any person or circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed such section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases may be declared unconstitutional or invalid or ineffective.

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PASSED, APPROVED, AND ADOPTED this 27th day of October, 2008, by the following called vote:

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|--------------------------------|--|
| AYES: COUNCILMEMBERS: | Armendariz, Stein, Clark, Carty, Ledbetter |
| NOES: COUNCILMEMBERS: | None |
| ABSENT: COUNCILMEMBERS: | None |



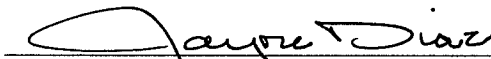
Mayor of the City of Carpinteria

ATTEST:



City Clerk, City of Carpinteria

I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the this 27th day of October, 2008.



City Clerk, City of Carpinteria

APPROVED AS TO FORM:



City Clerk, City of Carpinteria