

ORDINANCE NO. 09 – 19

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF DUBLIN**

**ADDING CHAPTER 5.34 (DISPOSABLE FOOD SERVICEWARE) TO TITLE 5
(PUBLIC WELFARE) OF THE DUBLIN MUNICIPAL CODE**

WHEREAS, the City of Dublin has a duty to protect the natural environment and the health of its citizens; and

WHEREAS, expanded polystyrene litters city storm drains, streets, creeks, parks and other public places; and

WHEREAS, expanded polystyrene in the environment may become part of the food chain, resulting in negative impacts to wildlife; and

WHEREAS, banning expanded polystyrene disposable food serviceware in the City of Dublin will help address pollution by requiring the use of compostable or recyclable alternatives while helping educate business owners and citizens about the positive impact their packaging choices can make; and

WHEREAS, there is no currently economically feasible means of recycling expanded polystyrene disposable food serviceware in the City of Dublin; and

WHEREAS, due to these concerns, a number of California cities have banned expanded polystyrene disposable food serviceware, and many local businesses and several national corporations have successfully replaced expanded polystyrene food serviceware; and

WHEREAS, the City's goal is to replace expanded polystyrene disposable food serviceware with alternative products that are compostable and recyclable.

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

Section 1. Chapter 5.34 of the Dublin Municipal Code is hereby added to read as follows:

Chapter 5.34
DISPOSABLE FOOD SERVICEWARE

5.34.010. Purpose

- A. The purpose of this Chapter shall be to reduce garbage in landfills and assist the City with meeting its recycling goals and Municipal Regional Stormwater NPDES Permit requirements.
- B. The requirements of this Chapter do not replace or supplant the requirements of California or Federal law.

5.34.020. Definitions

In addition to the general definitions applicable to this Code, whenever used in this Chapter, the following terms shall have the meanings set forth below:

A. "City facility users" means all persons, societies, associations or organizations or special events promoters that require a permit to use a city facility as defined in Chapter 5.100, Parks and Recreation Areas and Facilities; or that require a special events permit for events which require city services, involve city-owned property such as streets and plazas, closure of public right-of-way or impair emergency vehicle access, and parades, as defined in Chapter 5.12, Parades and Events, 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 25 or more persons.

B. "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. These products are made primarily from natural fibers such as paper, cardboard, wood, bamboo, sugarcane, or wheat stalks. These products may have very thin (*de minimis*) polyethylene or polylactic acid coatings only, and uncoated products are preferred. Rigid compostable plastic products are not compliant.

C. "Disposable food serviceware" means single-use disposable products used by food vendors or city facility users for serving or transporting prepared and ready-to-consume food or beverages. This includes, but is not limited to, plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single-use disposable straws, utensils, or cup lids.

D. "Expanded polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer, marked with recycling symbol No. 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.

E. "Food vendor" means any establishment which provides prepared food or beverages for public consumption within the City of Dublin, including, but not limited to, any store, supermarket, delicatessen, restaurant, retail food vendor, sales outlet, shop, cafeteria (including schools and corporate centers), catering truck or vehicle, sidewalk or other outdoor vendor, or caterer.

F. "Prepared food" means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique by a food vendor or city facility user. "Prepared food" does not include uncooked meat, fish, poultry, or eggs unless provided for consumption without further food preparation.

G. "Recyclable" means any material included as part of the commercial recycling program including, but not limited to, paper, glass, metal, cardboard, and plastic.

H. "Commercial recycling program" means the city of Dublin's adopted commercial recycling program.

5.34.030. Use of Expanded Polystyrene Food Serviceware Prohibited.

A. A food vendor that offers prepared food shall utilize only disposable food serviceware that is either recyclable or compostable. The use of disposable food serviceware manufactured with expanded polystyrene is prohibited, unless otherwise specified in this chapter.

B. All City facility users are prohibited from using disposable food service wares made from expanded polystyrene. All city facility users shall use a suitable recyclable or compostable product for disposable food serviceware.

5.34.040. Exemptions

The Public Works Director, or his or her designee, shall have the responsibility to grant waivers or exemptions from the requirements of this chapter.

A. Application for Exemption. If a food vendor or city facility user can demonstrate undue hardship resulting from compliance with the provisions of this chapter, or that a container required by the food vendor or city facility user is only available in expanded polystyrene, then the food vendor or city facility user may apply, in writing, for a one-year exemption from compliance. The Public Works Director or his/her designee will review the application for exemption and may meet with the applicant to discuss possible ways of meeting the requirements of this chapter. If the Public Works Director or his/her designee determines that compliance with the provisions of this chapter would cause the food vendor or City facility user to experience undue hardship, or that a non-expanded polystyrene version of a necessary container is not available, then the Public Works Director or his/her designee shall grant the food vendor or city facility user a one-year exemption. At the end of the one-year exemption, the food vendor or city facility user will be required to comply with this chapter or submit another exemption application to be reviewed by the Public Works Director or his/her designee.

B. Prepackaged Foods. Prepared food prepackaged outside the limits of the city of Dublin (i.e., commercially packaged foods) are exempt from the provisions of this chapter. This exemption does not apply to food vendors as defined in this chapter, including caterers which provide prepared food for public consumption within the city of Dublin. Purveyors of food prepared or packaged outside the City are encouraged to follow the provisions of this Chapter.

C. Emergency Supplies or Services Procurement. Food vendors, city facility users, city franchises, and contractors doing business with the City shall be exempt from the provisions of this chapter in a situation deemed by the city council or city manager, or his or her designee, to be an emergency for the immediate preservation of the public health, safety, or welfare.

5.34.050. Enforcement and Penalties

- A. Enforcement. Public Works Director or his/her agent has primary responsibility for the enforcement of this Chapter. The Public Works Director or his/her agent 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, investigating violations, issuing fines, and entering the premises of any food vendor during business hours. Other City staff may assist with this enforcement responsibility by entering the premises of a food vendor as part of their regular inspection functions and reporting any alleged violations.
- B. Written Warning. If a food vendor or city facility user is found to be in violation of this chapter, the Public Works Director or his/her designee shall issue a written warning to the food vendor.
- C. Penalties for Violation. Any food vendor or city facility user that violates or fails to comply with any of the requirements of this chapter after written notice has been issued for a previous violation shall be guilty of an infraction punishable as specified in section 1.04.030 of this Code.

Section 2. Severability. The provisions of this Ordinance are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the ordinance or their applicability to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall take effect and be enforced thirty (30) days following its adoption. However, until March 1, 2020, the City will not enforce section 5.34.030(A) prohibiting food vendors from using disposable food service wares made from expanded polystyrene.

Section 4. Posting. The City Clerk of the City of Dublin shall cause this Ordinance to be published or posted as required in Section 36933 of the Government Code of the State of California.

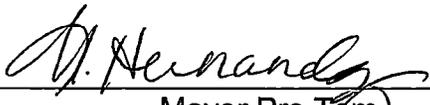
PASSED, APPROVED AND ADOPTED this 3rd day of September 2019, by the following vote:

AYES: Councilmembers Goel, Hernandez, and Josey

NOES:

ABSENT: Councilmember Kumagai and Mayor Haubert

ABSTAIN:



Mayor Pro Tem

ATTEST:



City Clerk