

**CITY COUNCIL OF THE CITY OF OXNARD**

ORDINANCE NO. 3022

ORDINANCE OF THE CITY OF OXNARD, CALIFORNIA ADDING ARTICLE XXV TO CHAPTER 7 OF THE OXNARD CITY CODE PROHIBITING THE USE, MANUFACTURING, DISTRIBUTION, AND SALE OF DESIGNATED EXPANDED POLYSTYRENE PRODUCTS

WHEREAS, in 2015, the Governor of California approved Senate Bill (SB) 246 creating the Integrated Climate Adaptation and Resiliency Program to develop a cohesive and coordinated response to climate change impacts across State, local, and regional levels; and

WHEREAS, in response to SB 246, the City began preparing a Climate Action and Adaptation Plan (CAAP); and

WHEREAS, the City intends to regulate Polystyrene Plastic as a strategy to achieve the environmental and climate goals of the CAAP; and

WHEREAS, Polystyrene Plastic includes Expanded Polystyrene (EPS), known by the trademark Styrofoam, which is commonly used for single-use plates, cups, take-out food containers, and packing materials; and

WHEREAS, EPS is a petroleum-based lightweight plastic material that is slow to degrade and, if disposed of improperly, can leach chemicals into the environment harming water sources; and

WHEREAS, due to its fragility, EPS is one of the most prevalent and hard-to-remove items found on our storm drains, creeks, rivers, beaches, parks, and open space; and

WHEREAS, EPS is frequently used by restaurants and food establishments, including mobile food trucks/vehicles/food vendors, street and sidewalk vendors, and outdoor food sales, as containers for take-out food orders or for leftover food after dining; and

WHEREAS, plastics persist in the environment for hundreds of years, breaking down into ever smaller pieces through photo, physical, and biological degradation, and enter the food chain when ingested by animals that mistake them for food; and

WHEREAS, the California Coastal Commission developed "A Plan of Action from The Plastic Debris Project" in 2006 with funding from the State Water Resources Control Board, that recommends local government impose limits, bans, and prohibitions on materials that commonly become litter and marine debris; and

WHEREAS, manufacturing EPS creates enormous amounts of hazardous waste; and

WHEREAS, no EPS foodware products are recycled locally; and

WHEREAS, to successfully recycle EPS material, it must be clear of oils, food residue, tape, cardboard material, and all possible contaminants, which makes it difficult and costly to process; and

WHEREAS, more than one hundred municipalities in California have adopted ordinances prohibiting or restricting the distribution of polystyrene products and requiring their replacement with cost-effective reusable, recyclable, and/or biodegradable alternatives.

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

Part 1. Recitals. The City Council finds that all the recitals, facts, findings, and conclusions set forth above in the preamble of this Ordinance are true and correct.

Part 2. Article XXV is hereby added to Chapter 7 of the Oxnard City Code to read as follows:

“SEC.7-348. GENERAL PROVISIONS

(A) This Article shall be known as “City of Oxnard Prohibition of Designated Expanded Polystyrene Products Ordinance”.

(B) Purpose and Intent. The purpose of this Article is to establish standards and procedures for the distribution, manufacture, and use of expanded polystyrene (EPS) packaging and foodware to achieve environmental and climate change goals under the City’s Climate Action and Adaptation Plan by prohibiting the manufacture, distribution and use of EPS products and foodware within the City of Oxnard.

SEC. 7-349. DEFINITIONS

For the purposes of this Article, the following definitions shall apply:

(A) "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). To be considered "Compostable", disposable foodware must meet American Society for Testing and Materials (ASTM) Standards for compostable materials and must be certified by the Biodegradable Products Institute (BPI) as such.

- (B) "Disposable foodware" or "Disposables" means single-use, disposable products used for serving, transporting, or consuming prepared food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, hinged food containers, condiment containers, cups or drink ware, or any other container in or on which prepared foods are placed or packaged for consumption.
- (C) "Distribute" means to provide or offer to provide an item, either as a separate transaction or as part of a transaction for another item, regardless of whether compensation is received.
- (D) "Encapsulated EPS products" means expanded polystyrene products that have been completely encased by a more durable material that protects the EPS material from disintegration and makes the product suitable for reuse multiple times.
- (E) "Expanded polystyrene" or "EPS" means polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam. EPS is colloquially called "Styrofoam," a Dow Chemical Co. trademark form of polystyrene foam insulation.
- (F) "Expanded polystyrene product" or "EPS product" means any item such as a non-encased cooler or ice chest, cup, bowl, plate, hinged food container (clamshell), shipping box, packing material, or any other item made from expanded polystyrene.
- (G) "Food provider" means any person or public agency, including the City, that distributes prepared food within the City to the public to be consumed on the premises or for take-away consumption. Food provider includes but is not limited to (1) a grocery store, supermarket, delicatessen, restaurant, drive-thru, quick-service food, cafe, cafeteria, coffee shop, snack shop, public food market, farmers' market, convenience store, employee cafeterias operated at businesses located within the City or similar fixed place where prepared food is available for sale on the premises or for take-away consumption; and (2) any mobile store, food vendor, caterer, food truck, street and sidewalk vendors and outdoor food sales, vending machine or similar mobile outlet. Food Provider also includes any business, organization, or group that regularly provides Prepared Food to its members or the public as part of its activities or services.
- (H) "EPS foodware" or "EPS disposable foodware" means disposable foodware made in whole or in part from EPS.
- (I) "Polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or EPS, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding,

foam molding, or extrusion- blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene).

(J) "Prepared food" means any food or beverage that is ready to consume without any further preparation, alteration, or repackaging.

(K) "Recyclable" means materials that can be collected for return to the economic mainstream in the form of processed materials, rather than becoming solid waste. Such materials may include paper, cardboard, glass, metal, plastics, vegetable or plant matter, compostables, construction and demolition materials, and other materials specified by the City Manager, for inclusion in the city's recycling program.

#### SEC. 7-350. PROHIBITION ON EXPANDED POLYSTYRENE DISPOSABLE FOODWARE

(A) No food provider shall use or distribute any EPS disposable foodware within the City of Oxnard.

(B) Food providers shall:

(1) Only use and distribute disposable foodware made of a non-EPS material; and

(2) Maintain documentation about the composition of any disposable foodware. Documentation may include information from the supplier or manufacturer or provided in the product packaging or any other relevant information that demonstrates that the disposable foodware is not made, in whole or in part, from EPS. Documentation shall be provided to the City if requested.

#### SEC. 7-351. MANUFACTURE AND DISTRIBUTION OF EXPANDED POLYSTYRENE PRODUCTS

No person shall manufacture or distribute in the City of Oxnard:

(A) EPS disposable foodware; or

(B) Non-encapsulated EPS products, including ice chests or coolers, packaging and cushioning material intended for the packaging of products, equipment, or other items, including but not limited to, packing or packaging peanuts, popcorn, or noodles.

#### SEC. 7-352. EXEMPTIONS

The following EPS foodware and products are exempt from the provisions

of this Article:

(A) Prepared food packaged outside the City, provided such food is not altered or repackaged within the City limits.

(B) EPS insulated containers designed to safely transport by mail or common carrier prepared food, frozen goods, perishables, pharmaceuticals, biotech, and medical supplies in compliance with the Food and Drug Administration or other regulatory agency recommended temperatures.

(C) EPS containers, plates, or trays for raw eggs, butchered meats, fish, and/or poultry.

(D) Materials secured in response and due to an emergency or for a public health and safety requirement.

(E) The City may exempt a food provider or person when there is a locally declared emergency, a public health and safety requirement or a medical necessity to use an otherwise prohibited EPS product.

(F) Construction products made from, or that include, EPS if the products are used in compliance with other City, State, and Federal provisions, codes, ordinances, or regulations.

(G) EPS packaging products which have been received from sources outside the City may be reused to keep them out of the waste stream.

(H) EPS materials used to ship goods produced within the City where viable alternatives are not available.

(I) Other EPS products generated or manufactured outside of the City, including: shipping boxes, pool or beach toys, and other wholly encapsulated EPS products.

(J) Situations where no reasonably feasible and available alternative exists to a specific and necessary EPS use.

#### SEC. 7-353 AUTHORIZATION

(A) The City Manager shall have primary responsibility for enforcement of this Article and shall have authority to issue citations for violation of any provision of this Article. The City Manager may establish regulations or administrative procedures and take any actions reasonable and necessary to further the purpose of this Article or to obtain compliance with this Article, including, without limitation, performing an inspection to verify

compliance with this Article.

(B) The City may inspect and monitor affected food providers or persons locations to determine compliance with this Article.

#### SEC. 7-354 ENFORCEMENT

(A) The City Manager, charged with enforcing the provisions of the Oxnard City Code, or any provision thereof, may enter a food provider's or person's location within the City of Oxnard during operating hours and without notice, to request access to records for verification of procurement of EPS compliant foodware or EPS compliant products. If requested by the City, food provider or person shall provide records documenting procurement of compliant materials as stipulated by this Article.

(B) It is unlawful for any food provider or person to impede, obstruct, interfere with, or otherwise not allow, the City to conduct an inspection of the location, or inspect, review, or copy records required to be maintained by a food provider or person under this Article. It is also unlawful for a food provider or person to conceal, destroy, deface, or falsify any records or other documents required to be maintained under this Article.

(C) It shall be unlawful for any food provider or person to fail to comply with this Article.

(D) Any violation of this Article or other ordinance discovered during an inspection shall constitute a separate offense.

(E) Each and every violation of the provisions of this Article is hereby deemed unlawful and a public nuisance.

(F) Upon first violation of any provision of this Article, the City shall issue a written Notice of Violation to the offending food provider or person. The Notice of Violation shall specify the violation(s), and a date by which the violation(s) must be ceased or abated. If, after the specified correction period, the violation is not ceased or abated, the City may issue a civil citation, assessing fines in accordance with Oxnard City Code Section 1-10, which stipulates:

(1) A fine not exceeding \$100 for a first violation of a code section or ordinance;

(2) A fine not exceeding \$200 for a second violation of the same code section or ordinance within one year; and

(3) A fine not exceeding \$500 for the third and every

additional violation of the same code section or ordinance within one year.

(G) Any citation issued for a violation of this Article shall give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 7, Article III of the Oxnard City Code.

#### SEC.7-355 OPERATIVE DATE EDUCATION AND PHASE IN PERIODS

(A) The first six (6) months after this ordinance takes effect will be an education period with no enforcement. A six (6) month phase in period will follow the education period. This ordinance will be fully enforced twelve (12) months after the ordinance takes effect.

(B) During the phase in period, in lieu of payment of any fine violators cited may submit proof of purchase of any non-EPS containing foodware or product in any amount totaling or exceeding the amount of the fine in order to comply with the ordinance. Proof of purchase of EPS compliant materials must be submitted within fourteen (14) days of the civil citation. Failure to provide proof of purchase will result in citation being processed and all fees and fines owed.

#### SEC. 7-356 OTHER REMEDIES

(A) The remedies and penalties provided in this Article are cumulative and not exclusive, and nothing in this Article shall preclude the City from pursuing any other administrative, civil, or criminal enforcement remedies available under the law and/or the city code. ”

Part 3. The City Council determines and finds that this ordinance is exempt from the California Environmental Quality Act (CEQA) under section 15061(b)(3) of the CEQA Guidelines because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Part 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Part 5. Pursuant to Cal. Gov. Code Section 36933(c)(1), the City Attorney was designated to prepare, and the City Clerk published, a summary of this ordinance, and a certified copy of the ordinance was posted in the Office of the City Clerk a minimum of five days before the City Council’s adoption of the ordinance.

Part 6. The City Clerk shall certify as to the adoption of this ordinance and shall cause the summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this ordinance, including the vote for and against the same, in the office of the City Clerk, in accordance with Government Code Section 36933. Ordinance No. 3022 was first read on January 3, 2023, and finally adopted on \_\_\_\_\_, 2023, to become effective 30 days thereafter.

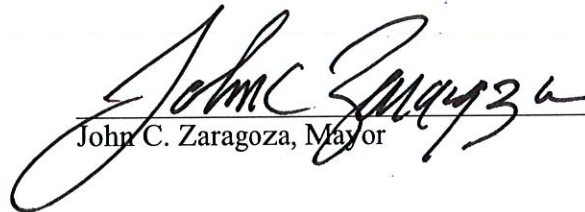
Part 7. This ordinance shall become effective on \_\_\_\_\_, 2023.

AYES: Councilmember Basua, Macdonald, Madrigal, Perello, Teran and Zaragoza

NOES: None.

ABSENT: None.

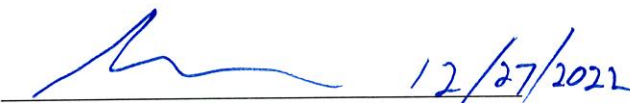
ABSTAIN: None.

  
John C. Zaragoza, Mayor

ATTEST:

  
Rose Chaparro, City Clerk

APPROVED AS TO FORM:

  
Stephen M. Fischer, City Attorney 12/27/2022