



Ride the Waves Without the Waste

The City of Malibu bans expanded polystyrene foam throughout the City

Expandable polystyrene products, when used for food service purposes, have a useful life that can be measured in minutes or hours, yet take several decades to hundreds of years to deteriorate in the environment of a landfill. There is currently no meaningful way to recycle expandable polystyrene food service products, due in part to contamination from food residue. Alternative products that are bio-degradable, less prone to wind and water transport, reusable and/or recyclable are readily available at a reasonable cost.

A member of the Malibu community requested that the Council adopt a ban against the use of polystyrene containers by take-out restaurants in an effort to reduce pollution of the City's beaches. Based on the above justification, the City of Malibu moved into action to create an environment where you can *Ride the Waves Without the Waste* and implemented a ban on expanded polystyrene foam throughout the City.

In July 2004, the Council directed staff to research the legality and practicality of an ordinance prohibiting the use of expandable polystyrene at restaurants. City staff contacted representatives from Los Angeles County Beaches and Harbors who indicated their support for a ban on expanded polystyrene. It was also determined that several Southern California cities, including the cities of Huntington Beach, San Clemente, Aliso Viejo, Laguna Hills and San Juan Capistrano, have adopted resolutions prohibiting the use of expandable polystyrene (commonly, and incorrectly, referred to by the trade name "Styrofoam") food service products within City facilities and at City-sponsored events. Furthermore, in 1986, the City of Portland, Oregon, adopted an ordinance banning polystyrene foam food containers (Portland City Code Chapter 9.28). This ban is still in effect and continues to be successfully implemented and enforced.

Based on the foregoing information, as well as the Council's desire to protect the environment and reduce litter on its beaches, on February 28, 2005, the City Council adopted Ordinance No. 276, which bans polystyrene food service products (intended to take effect on July 1, 2005).

Since that time, the ordinance has been refined to clarify its applicability. This was necessary due to the fact that this was new territory for a city. On May 13, 2005, prior to Ordinance No. 276 actually taking effect, the Council reconsidered Ordinance No. 276 based on input from the business community and directed staff to bring back amendments to limit the ban to expandable polystyrene foam. Ordinance No. 286, limiting the ban to expanded polystyrene, rather than all polystyrene, was presented to the Council on June 27, 2005. When the ordinance was presented to the Council for second reading, the Council directed staff to further amend the ordinance so that the sale of multiple unit packages of expanded polystyrene intended for personal use was not affected and to add a provision prohibiting the use of expanded polystyrene foam within City facilities and at City-sponsored events.

On July 25, 2005, the City Council introduced Ordinance No. 286 on first reading and scheduled second reading and adoption for the August 8, 2005 Regular City Council meeting. The lesson learned from this experience was that when a brand new policy is being considered, a process of refining the law will be a necessity.

Madelyn Glickfeld, visiting lecturer at UCLA's Institute on the Environment, in conjunction with the Southern California Coastal Water Resource Project (also known as SCCWRP) and Heal the Bay, is working on a plan to conduct a two to three year study to monitor any changes in the amount of polystyrene trash on beaches in Malibu that might be attributable to the enforcement of the ban on expanded polystyrene in Malibu. The objective will be to develop a study design that includes a set of beach sampling sites, a sampling methodology and time schedule for taking baseline and subsequent monitoring samples. SCCWRP has published peer-reviewed studies of plastic waste on beaches in Newport Beach and Redondo Beach. Heal the Bay has agreed to provide volunteers through its extensive volunteer program and assist in the design of the sample locations and monitoring protocol. Ms. Glickfeld is working with both organizations to help design the study, and with the City to monitor enforcement and compliance of the ordinance. She is also hopeful that faculty from the Institute of the Environment can identify funding to understand the role of ocean currents in depositing plastics already in the ocean back onto beaches in the area, as well as watershed contributions, but no commitments of time or funding have been made as of this time.

City staff has been informed that the Los Angeles County Department of Beaches and Harbors is already spreading the word of the ban on polystyrene and is prepared to enforce compliance. Purchasing agents for local businesses have started buying only paper cups.

Adoption of City of Malibu Ordinance No. 286 banning expanded polystyrene food packing is one example of Malibu's dedication to protecting the beach environment and a step toward preventing debris from entering the local waterways and becoming part of the ocean marine debris problem.

Join in and help –

Ride the Waves Without the Waste!

Contacts:

Lisa Pope, City Clerk, (310) 456-2489 ext. 228 or lpope@ci.malibu.ca.us

Katie Lichtig, City Manager, (310) 456-2489 ext. 226 or klichtig@ci.malibu.ca.us

ORDINANCE NO. 286

AN ORDINANCE OF THE CITY OF MALIBU AMENDING
CHAPTER 9.24 OF THE MALIBU MUNICIPAL CODE BANNING
EXPANDED POLYSTYRENE FOOD PACKAGING AND
REPEALING ORDINANCE NO. 276

The City Council of the City of Malibu does ordain as follows:

Section 1. Title 9, Chapter 9.24 of the Malibu Municipal Code is hereby amended to read as follows:

“Chapter 9.24 Ban on Expanded Polystyrene Food Packaging”

Section 9.24.010 Definitions

For purposes of this chapter, the following terms shall have the following meanings:

“Customer” means any person obtaining food or beverages from a restaurant or retail food vendor.

“Expanded Polystyrene” means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam[®], a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials 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, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term “polystyrene” shall not include clear polystyrene known as “oriented polystyrene.”

“Food Packager” means any person, located within the City of Malibu, who places meat, eggs, baked products, or other food in packaging materials for the purpose of retail sale of those products.

“Food Packaging” means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are made from Expanded Polystyrene, on or in which any foods or beverages are placed or packaged on a restaurant’s or retail food vendor’s premises.

“Food Vendor” means any restaurant or retail food vendor.

“Non-Profit Food Provider” means a recognized tax exempt organization which provides food as a part of its services.

“Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.

“Prepared Food” means food or beverages which are served on the Food Vendor's premises and are prepared on the Food Vendor's premises or within the City of Malibu by packaging, cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared Food does not include any uncooked meat or eggs. Prepared Food may be eaten either on or off the premises.

“Restaurant” means any establishment located within the City of Malibu, selling Prepared Food to be eaten by customers. Restaurant includes a sidewalk food vendor.

“Retail Food Vendor”, “Vendor” means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, located within the City of Malibu, which provides Prepared Food.

9.24.020 Food Packaging Prohibitions.

- A. No Restaurant, Food Packager, Retail Food Vendor, Vendor or Non-Profit Food Provider shall provide Prepared Food to its customers in any Food Packaging that utilizes Expanded Polystyrene.
- B. The City of Malibu shall prohibit the use of Expanded Polystyrene Food Packaging at all City facilities. The City of Malibu shall not purchase or acquire Expanded Polystyrene Food Packaging.
- C. The use or distribution of Expanded Polystyrene Food Packaging at special events sponsored or co-sponsored by the City of Malibu shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event Food Vendors and any other party (including non-profit organizations) who enter into an agreement with one or more of the co-sponsors of the event to sell Prepared Food at the event or otherwise provide an event-related service.
- D. All facility rental agreements for any City-owned property or facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of Expanded Polystyrene Food Packaging at the associated function. The facility rental agreement shall indicate that the violating contractor's security deposit will be forfeited if the Parks and Recreation Director, or his/her designee, determines that Expanded Polystyrene Food Packaging was utilized in violation of the rental agreement.

9.24.030 Exceptions.

- A. Food items packaged outside the boundaries of the City of Malibu are exempt from the provisions of this chapter.
- B. The City Council, or its appointee, may exempt a Food Vendor, Food Packager or Non-Profit Food Provider from the requirements of this Code for a one year period, upon showing by the applicant that the conditions of this Code would cause undue hardship. The phrase undue hardship, shall be construed to include, but not be limited to:
 - 1. Situations where there are no acceptable alternatives to Expanded Polystyrene Food Packaging for reasons which are unique to the Vendor, Packager or Non-Profit Provider;

2. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right.
- C. Coolers and ice chests made of Expanded Polystyrene are exempt from the provisions of this chapter.
- D. Food Packaging required to be purchased under a contract entered into one year prior to the effective date of this chapter is exempt from the provisions of this chapter. This exemption will apply up to one year from the effective date of this chapter.

9.24.040 Enforcement and Notice of Violations.

- A. The City Manager or his/her designee shall have primary responsibility for enforcement of this chapter. The City Manager or his/her designee 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, inspecting any Vendor's premises to verify compliance.
- B. Anyone violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction punishable pursuant to Malibu Municipal Code Chapter 1.16.010.B.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive of one another.

9.24.050 Severability.

If any part or provision of this Code or the application thereof to any person or circumstances is held invalid, the remainder of the Code, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Code are severable.

Section 2. The City Council hereby repeals Ordinance No. 276.

Section 3. The City Clerk shall certify the adoption of this ordinance.

PASSED, APPROVED AND ADOPTED this 12th day of September, 2005.

ANDY STERN, Mayor

ATTEST:

LISA POPE, City Clerk

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney