

**STAFF REPORT**

**DATE:** May 16, 2017  
**TO:** City Council  
**FROM:** Robert A. Clarke, Public Works Director  
Stan Gryczko, Assistant Public Works Director  
Richard Tsai, Environmental Resources Manager  
**SUBJECT:** Environmentally Acceptable Food Packaging Ordinance

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**Recommendation**

Adopt the ordinance to eliminate the use of polystyrene foam and other non-recyclable, non-compostable disposable food service ware.

**Fiscal Impact**

There would be a minimal impact (up to \$3,000 annually) on the City’s solid waste budget. The funding would cover expenses associated with outreach and assistance to businesses related to the Food Packaging Ordinance. Adequate outreach funds are budgeted in Program 7701.

**Council Goal(s)**

This work is consistent with the Council Goal to Pursue Environmental Stability.

**Background and Analysis**

This ordinance was introduced to City Council on April 25, 2017. Council voted unanimously to support the ordinance. An implementation timeline is provided below.

<b>Date</b>	<b>Action</b>
April 25, 2017	Food Packaging Ordinance First Reading
May 16, 2017	Food Packaging Ordinance Second Reading
September 1, 2017	Ordinance goes into effect
March 2017-January 2018	Outreach to business community

At the April 25 City Council meeting, Council requested staff return with an ordinance requiring sit-down restaurants to ask customers if they want a straw before providing one. Staff recommends that the beverage straw ordinance be added to Chapter 17 of the Municipal Code (Food and Food Establishments). Staff will return to Council for consideration of this ordinance prior to the summer break.

**Attachments**

1. Food Packaging Ordinance

**ORDINANCE NO. XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS ADDING  
ARTICLE 32.06 TO THE CITY OF DAVIS MUNICIPAL CODE TO  
ELIMINATE THE DISTRIBUTION OF NON-COMPOSTABLE AND NON-  
RECYCLABLE DISPOSABLE FOOD SERVING WARE.**

WHEREAS, on December 6, 2011, the City Council adopted Resolution No. 11-185, Series 2011, in which the City announced its intention to strive to implement zero waste strategies, and

WHEREAS, the City Council desires to conserve resources, reduce greenhouse gas (GHG) emissions, waste, litter, and pollution; and

WHEREAS, an important goal of the City of Davis is to procure and use sustainable products and services; and

WHEREAS, the use of polystyrene foam has negative environmental impacts including: litter, solid waste generation, and effects on wildlife; and

WHEREAS, polystyrene foam is a light weight material that can be blown by the wind out of garbage cans and landfills and into storm drains and waterways, creating litter, polluting the water, and potentially causing harm to wildlife who may mistakenly eat the material; and

WHEREAS, polystyrene foam food serving ware is not locally recyclable but has comparable and easily accessible recyclable and compostable alternatives; and

WHEREAS, from an overall environmental and economic perspective, a shift to reusable, recyclable, and compostable alternatives for food service ware are preferable and may educate the public to make other environmentally preferable decisions in their place of business or in their homes; and

WHEREAS, in July 2016, the City implemented the Organics Collection Program, collecting all organic-based materials for composting; and

WHEREAS, most food service ware, with the notable exception of polystyrene foam products, are now accepted for recycling or composting in the City's recycling program; and

WHEREAS, this Ordinance reflects the zero waste goals and strategies outlined in the 2013 Integrated Waste Management Plan, approved by City Council July 2013.

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

SECTION 1. The City Council hereby adopts the recitals of this Ordinance as true and correct and such recitals are hereby incorporated by reference as though fully set forth in the text of this Ordinance.

SECTION 2. Section 32.06 shall be added to the City of Davis Municipal Code as follows:

**ARTICLE 32.06 ENVIRONMENTALLY ACCEPTABLE FOOD PACKAGING**

**32.06.01 Definitions**

Unless otherwise expressly stated, whenever used in this Article the following terms shall have the meanings set forth below:

- (a) “City Facility” means any building, park, structure, vehicle or any other property owned and operated by the City of Davis, its agents, agencies, and departments.
- (b) “City Contractor” means any Person or entity that has a contract with the City of Davis for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be donated or to be purchased at the expense of the City.
- (c) “Compostable” means any material that will break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner that can be composted using the City’s available composting collection program. This includes, but is not limited to products that meet the then applicable American Society for Testing and Materials (ASTM) standards for compostability.
- (d) “Disposable Food Service Ware” means products that are designed for one-time use 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, cartons and hinged or lidded containers.
- (e) “Food Provider” means any vendor located or providing food within the City of Davis which provides Prepared Food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, supermarket, 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.
- (f) “Person” means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.
- (g) “Polystyrene Foam” means and includes expanded polystyrene that 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). To include, but not limited to, polystyrene foam plate, bleached paperboard plate with low density polyethylene coating, and bleached paperboard plate with polystyrene coating.
- (h) “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, poultry, fish or eggs unless provided for consumption without further food preparation.
- (i) “Recyclable” means any material that can be sorted, cleansed, and reconstituted using the City’s available recycling collection program for the purpose of using the altered form in the manufacture of a new product.

- (j) “Reusable” means materials that will be used more than once in its same form by the customer, food vendor or other reuse program. Reusable food service ware includes: food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor by the customer that is provided take-out containers. Reusable also includes durable containers, packages or trays used on-premises, returnable containers brought back to the food vendor and those intended to be taken home by the consumer for reuse. Includes all containers, bowls, plates, trays, cartons, cups, and other items that are designed for prolonged use, including but not limited to durable plastic, ceramic, glass, porcelain, and metal food service ware.
- (k) “Special Event” means any special event requiring a City of Davis Special Event Permit, which is held within the City of Davis and at which food and/or drinks are being provided for public consumption.

### **32.06.02 Prohibited Disposable Food Service Ware**

On and after September 1, 2017:

- (a) Food Providers shall not provide Prepared Food in any Disposable Food Service Ware that contains or utilizes Polystyrene Foam.
- (b) All Disposable Food Service Ware used by Food Providers shall be Reusable and/or Recyclable or Compostable.
- (c) No Person renting a City Facility shall use Disposable Food Service Ware that contains or utilizes Polystyrene Foam at that City Facility.
- (d) Promoters and participants of Special Events are prohibited from providing Prepared Food in any Disposable Food Service Ware that contains or utilizes Polystyrene Foam.
- (e) City contractors shall not use Disposable Food Service Ware that contains or utilizes Polystyrene Foam in the performance of City of Davis contracts.
- (f) The City encourages all businesses located within or outside the City limits to avoid using all Polystyrene Foam packaging.

### **32.06.03 Penalties**

- (a) Any person violating any section of this article is guilty of an infraction. The first violation shall be subject to a fine not to exceed one hundred dollars. The second violation within a six-month period shall be subject to a fine not to exceed two hundred dollars, and not to exceed five hundred dollars for the third and subsequent violations occurring within a one-year period.
- (b) The remedies provided herein shall be in addition to all other remedies authorized by law and the enumeration of certain remedies in this article shall not preclude the application of any other remedies not herein enumerated.
- (c) An administrative citation including associated fines may be issued for any violation of this article pursuant to Davis Municipal Code Chapter 1, Article 1.02.

SECTION 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, 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 Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

SECTION 4. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same or a summary thereof to be published as required by law.

SECTION 5. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Davis City Council on the 16<sup>th</sup> of May, 2017, and was passed and adopted at a regular meeting of the Davis City Council on the \_\_\_\_ day of \_\_\_\_\_, 2017.

AYES:

NOES:

ABSENT:

Robb Davis  
Mayor

ATTEST:

Zoe Mirabile, CMC  
City Clerk