

295-06

NO. 060944

ORDINANCE NO.

1 [Food Service Waste Reduction Ordinance.]

2
3 **Ordinance amending the San Francisco Environment Code by adding Chapter 16,**
4 **Sections 1601 through 1611, to: (1) prohibit the use of polystyrene foam disposable**
5 **food service ware and require the use of biodegradable/compostable or recyclable**
6 **disposable food service ware by restaurants, retail food vendors, City departments and**
7 **the City's contractors and lessees unless there is no affordable alternative; and, (2)**
8 **provide for penalties for violation; and amending the San Francisco Health Code by**
9 **repealing Sections 469 through 469.10, which ban the use of food packaging and**
10 **plastic food service ware made with chlorofluorocarbons.**

11 Note: Additions are single-underline italics Times New Roman;
12 deletions are strikethrough italics Times New Roman.
13 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough-normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. **Findings.**

16 (a) The City and County of San Francisco has a duty to protect the natural
17 environment, the economy, and the health of its citizens.

18 (b) Reusing food service ware and using compostable and biodegradable take-out
19 materials made from renewable resources such as paper, corn starch and sugarcane are
20 among the effective ways to reduce the negative environmental impacts of disposable food
21 service ware.

22 (c) Polystyrene foam is a common environmental pollutant as well as a non-
23 biodegradable substance that is commonly used as food service ware in the City and County
24 of San Francisco.

1 (d) There continues to be no meaningful means to recycle polystyrene foam food
2 service ware and biodegradable/ compostable or recyclable disposable food service ware is
3 an affordable, safe, more ecologically sound alternative.

4 (e) Affordable biodegradable/compostable or recyclable food service ware products
5 are increasingly available for various food service applications such as cold cups, plates and
6 hinge containers and these products are more ecologically sound than polystyrene foam
7 materials and can be recycled or turned into a compost product.

8 (f) The natural compost product from these biodegradable or compostable materials is
9 used as fertilizer for farms and gardens, thereby moving towards a healthier zero waste
10 system.

11 (g) Disposable food service ware constitutes a large portion of the litter in San
12 Francisco's streets, parks and public places and the cost of managing this litter is high and
13 rising.

14 (h) Polystyrene foam is a notorious pollutant that breaks down into smaller, non-
15 biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing
16 them.

17 (i) Due to the physical properties of polystyrene foam, the United States Environmental
18 Protection Agency (EPA) states "that such materials can also have serious impacts on
19 human health, wildlife, the aquatic environment and the economy."

20 (j) In the product manufacturing process as well as the use and disposal of the
21 products, the energy consumption, greenhouse gas effect, and total environmental effect,
22 polystyrene foam's environmental impacts were second highest, according to the California
23 Integrated Waste Management Board.

1 (k) Styrene, a component of polystyrene foam, is a known hazardous substance that
2 medical evidence and the United States Food and Drug Administration suggest leaches from
3 polystyrene foam containers into food and drink.

4 (l) Styrene is a suspected carcinogen and neurotoxin that potentially threatens human
5 health.

6 (m) The general public is not typically warned of any potential hazard from styrene
7 particularly in the immigrant and non-English-speaking community.

8 (n) Due to these concerns, nearly 100 cities have banned polystyrene foam food
9 service ware including several California cities, and many local businesses and several
10 national corporations have successfully replaced polystyrene foam and other non-
11 biodegradable food service ware with affordable, safe, biodegradable products.

12 (o) The City of Berkeley banned polystyrene foam in 1990 and has reported that
13 Berkeley restaurants have had no problem switching to paper and other alternatives.

14 (p) The City of Berkeley also reports positive environmental impacts from the ban,
15 citing there is almost no styrofoam litter in Berkeley since the ban and further that their food
16 waste stream is cleaner and more compostable.

17 (q) Restricting the use of polystyrene foam food service ware products and requiring
18 them to be replaced with biodegradable or recyclable food service ware products in San
19 Francisco will further protect the public health and safety of its residents, the City and County
20 of San Francisco's natural environment, waterways and wildlife, would advance the City's goal
21 of Zero Waste by 2020 and fulfill Article 10 of the Environmental Accords, whereby San
22 Francisco partnered with other cities across the globe in signing a commitment to eliminate or
23 restrict the use of one chemical or environmental hazard every year.

1 (r) In 1988, the Board of Supervisors adopted Ordinance No. 542-88 (Health Code
2 Section 469 – 469.10) which banned the use of food packaging and plastic food service ware
3 made with chlorofluorocarbons (CFC). The Ordinance provides that it shall be void upon the
4 enactment or adoption of any state or federal law or regulation imposing limits on the use of
5 CFCs in the manufacture of plastic foams. Effective 1994, the federal government banned the
6 use of CFCs in the manufacture of foam products. 40 CFR Part 82 (58 Federal Register 4678
7 January 15, 1993). Accordingly, the 1988 ordinance is void by its terms.

8
9 Section 2. The San Francisco Environmental Code is hereby amended by adding
10 Chapter 16, Sections 1601 through 1611, to read as follows:

11 **SEC. 1601. TITLE.**

12 *This Ordinance shall be known as the Food Service Waste Reduction Ordinance.*

13
14 **SEC. 1602. DEFINITIONS.**

15 *(a) "Affordable" means purchasable for not more than 15 percent more than the purchase cost*
16 *of the non-Biodegradable non-Compostable or non-recyclable alternative(s).*

17 *(b) "ASTM Standard" means meeting the standards of the American Society for Testing and*
18 *Materials (ASTM) International standards D6400 or D6868 for biodegradable and compostable*
19 *plastics, as those standards may be amended.*

20 *(c) "Compostable" means all the materials in the product or package will break down into, or*
21 *otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely*
22 *manner in San Francisco's composting program an appropriate composting program or facility,*
23 *or in a home compost pile or device. Compostable Disposable Food Service Ware includes, by*
24 *way of example, must meet ASTM-Standards for compostability Bio-Plastics (plastic-like*
25

1 products) that are and any bio-plastic or plastic like product must be clearly labeled, preferably
2 with a color symbol, to allow proper identification such that any San Francisco's compost collector
3 and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM
4 Standard Compostable plastic. For the purposes of this ordinance the term biodegradable shall have
5 the same meaning as compostable. This ordinance uses the terms biodegradable and compostable
6 interchangeably and in all cases whether the terms are used separately, in the disjunctive or in the
7 conjunctive they shall always be interpreted and applied consistent with this definition of the term
8 "compostable".

9 (d) "City Administrator" means the City Administrator appointed under Section 3.104 of the
10 Charter or his or her designee.

11 (e) "City contractors and lessees" means any person or entity that has a contract with the City
12 for public works or improvements to be performed, for a franchise, concession or lease of property, for
13 grant monies or goods and services or supplies to be purchased at the expense of the City and County,
14 or to be paid out of monies deposited in the Treasury or out of trust monies under the control or
15 collected by the City and County.

16 (f) "City Facility" means any building, structure or vehicle owned or operated by the City of
17 San Francisco.

18 (g) "City Facility Food Provider" means an entity that provides, but does not sell, Prepared
19 Food in City Facilities, including without limitation, San Francisco General Hospital, Laguna Honda
20 Hospital, San Francisco County Jail and the San Bruno Jail Complex.

21 (h) "Disposable Food Service Ware" means all containers, bowls, plates, trays, carton, cups,
22 lids, straws, forks, spoons, knives, napkins and other items that are designed for one-time use for
23 Prepared Foods, including without limitation, service ware for takeout foods and/or leftovers from
24 partially consumed meals prepared by Food Vendors. The term "Disposable Food Service Ware" does
25

1 not include items composed entirely of aluminum or polystyrene foam coolers and ice chests that are
2 intended for reuse. ~~nor does this term include recyclable food service ware.~~

3 (i) "Food Vendor" means any Restaurant or Retail Food Vendor located or operating within
4 the City and County of San Francisco.

5 (j) "Person" means an individual, trust, firm, joint stock company, corporation including a
6 government corporation, partnership, or association.

7 (k) "Polystyrene Foam" means blown polystyrene and expanded and extruded foams
8 (sometimes called StyrofoamTM) which are thermoplastic petrochemical materials utilizing a styrene
9 monomer and processed by any number of techniques including, but not limited to, fusion of polymer
10 spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding
11 (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays,
12 clamshell containers, meat trays and egg cartons.

13 (l) "Prepared Food" means food or beverages, which are serviced, packaged, cooked, chopped,
14 sliced, mixed, brewed, frozen, squeezed or otherwise prepared (collectively "prepared") within the City
15 and County of San Francisco for individual customers or consumers. For the purpose of this Chapter,
16 Prepared Food includes take-out food, but does not include raw, butchered meats, fish and/or poultry
17 sold from a butcher case or similar retail appliance.

18 (m) "Recyclable" means material that can be sorted, cleansed, and reconstituted using San
19 Francisco's available recycling collection programs for the purpose of using the altered form in the
20 manufacture of a new product. Recycling does not include burning, incinerating, converting, or
21 otherwise thermally destroying solid waste.

22 (n) "Restaurant" means any establishment located within the City and County of San Francisco
23 that sells Prepared Food for consumption on, near, or off its premises. For purposes of this Chapter,
24 the term includes a Restaurant operating from a temporary facility, cart, vehicle or mobile unit.

1 (o) "Retail Food Vendor" means any store, shop, sales outlet, or other establishment, including
2 a grocery store or a delicatessen, other than a Restaurant, located within the City and County of San
3 Francisco that sells Prepared Food.

4
5 **SEC. 1603. PROHIBITED DISPOSABLE FOOD SERVICE WARE.**

6 (a) Food Vendors may not sell Prepared Food in Disposable Food Service Ware that contains
7 Polystyrene Foam.

8 (b) City Facility Food Providers may not provide Prepared Food in Disposable Food Service
9 Ware that contains Polystyrene Foam.

10 (c) City Departments may not purchase, acquire or use Disposable Food Service Ware that
11 contains Polystyrene Foam.

12 (d) City contractors and lessees may not use Disposable Food Service Ware that contains
13 Polystyrene Foam in City Facilities and while performing under a City contract or lease.

14
15 **SEC. 1604. REQUIRED BIODEGRADABLE/ COMPOSTABLE OR RECYCLABLE**
16 **DISPOSABLE FOOD SERVICE WARE.**

17 (a) All Food Vendors using any Disposable Food Service Ware shall use a suitable Affordable
18 alternative Biodegradable/Compostable or Recyclable product, unless there is no suitable Affordable
19 Biodegradable/Compostable or Recyclable product available as determined by the City Administrator
20 in accordance with this subsection. Not later than 30 days before the operative date of this Chapter,
21 and after a public hearing, the City Administrator shall adopt a list of available suitable Affordable
22 Biodegradable/ Compostable or Recyclable alternatives for each product type. The City Administrator
23 shall regularly update the list.

1 **(b) All City Facility Food Providers and City departments using any Disposable Food Service**
2 **Ware shall use Biodegradable/Compostable or Recyclable Disposable Food Service Ware unless there**
3 **is no Affordable Biodegradable or Compostable product available as determined by the City**
4 **Administrator in accordance with subsection ~~1603(a)~~1604(a).**

5 **(c) City contractors and lessees using any Disposable Food Service Ware shall use suitable**
6 **Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while**
7 **performing under a City contract or lease unless there is no suitable Affordable**
8 **Biodegradable/Compostable or recyclable product available as determined by the City Administrator**
9 **in accordance with subsection ~~1603(a)~~1604(a).**

10
11 **SEC. 1605. IMPLEMENTATION; CITY CONTRACTS AND LEASES.**

12 **(a) The City Administrator is authorized to promulgate regulations, guidelines and forms and**
13 **to take any and all other actions reasonable and necessary to implement and enforce this Chapter.**

14 **(b) Any person may seek a waiver from the requirements of Section 1604 of this Chapter by**
15 **filing a request on a form specified by the City Administrator. The City Administrator, consistent with**
16 **this Chapter, may waive any specific requirement of this Chapter for a period of up to one year if the**
17 **person seeking the waiver has demonstrated that strict application of the specific requirement would**
18 **create an undue hardship or practical difficulty not generally applicable to other persons in similar**
19 **circumstances. The City Administrator's decision to grant or deny a waiver shall be in writing and**
20 **shall be final.**

21 **(c) All City contracts and leases, including without limitation, contracts with City Facility Food**
22 **Providers, shall contain the following minimum language: "Contractor agrees to comply fully with**
23 **and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in**
24 **San Francisco Environment Code Chapter 16, including the remedies provided, and implementing**
25

1 guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a
2 part of this agreement as though fully set forth. This provision is a material term of this agreement. By
3 entering into this agreement, contractor agrees that if it breaches this provision, City will suffer actual
4 damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the
5 sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars
6 (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars
7 (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the
8 damage that City will incur based on the violation, established in light of the circumstances existing at
9 the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed
10 monetary damages sustained by City because of contractor's failure to comply with this provision."

11
12 **SEC. 1606. ENFORCEMENT AND PENALTIES.**

13 (a) The City Administrator shall issue a written warning to any person he or she determines is
14 violating Sections 1603(a) or 1604(a) of this Chapter. If after issuing a written warning of violation
15 from the City Administrator, the City Administrator finds that person continues to violate the provisions
16 of Sections 1603(a) or 1604(a), the City Administrator may apply for or impose the various sanctions
17 provided in this Section.

18 (b) Any person who violates the provisions of Sections 1603(a) or 1604(a) of this Chapter shall
19 be guilty of an infraction. If charged as an infraction, upon conviction thereof, said person shall be
20 punished for the first offense by a fine of not more than \$100.00 for a first violation; not more than
21 \$200.00 for a second violation in the same year and not more than \$250.00 for each subsequent
22 violation in the same year.

23 (c) The City Administrator may issue an administrative civil liability citation to such person in
24 an amount not exceeding \$100.00 for the first violation, an amount not exceeding \$200.00 for the
25

1 second violation in the same year, and an amount not exceeding \$500.00 for each subsequent violation
2 in the same year.

3 In determining administrative civil penalties, the City Administrator shall consider the extent of
4 harm caused by the violation, the nature and persistence of the violation, the length of time over which
5 the violation occurs, the frequency of past violations, any action taken to mitigate the violation, and the
6 financial burden to the violator.

7 Any person to whom the City Administrator issues a written warning of violation or an
8 administrative civil liability citation may request an administrative hearing to appeal such warning or
9 determination of liability. Not later than 30 days before the operative date of this Chapter, and after a
10 public hearing, the City Administrator shall promulgate rules and procedures for requesting and
11 conducting an administrative hearing under this Chapter. In any administrative hearing under this
12 Article, all parties involved shall have the right to offer testimonial, documentary, and tangible
13 evidence bearing on the issues, to see and copy all documents and other information the City relies on
14 in the proceeding, and to confront and cross-examine any witnesses against them. A decision by the
15 hearing officer shall be final. Any person assessed a penalty under this subsection may contest such
16 decision to the Superior Court within 20 days after service of the City's decision.

17 (d) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this
18 Chapter, including without limitation, civil penalties in an amount not exceeding \$100.00 for the first
19 violation, \$200.00 for the second violation, and \$250.00 for each subsequent violation in any given
20 year.

21 (e) The City may not recover both administrative and civil penalties pursuant to subsections (c)
22 and (d) of this Section for the same violation. Penalties collected under subsections (c) and (d) of this
23 Section, which may include recovery of enforcement costs, shall be used to fund implementation and
24 enforcement of this Chapter.

1
2 **SEC. 1607. REPORT TO THE BOARD OF SUPERVISORS.**

3 No later than June 1 February 1, 2008, the Director of the Department of the Environment, in
4 consultation with the City Administrator and with input from members of the public, shall submit to the
5 Board of Supervisors a report recommending changes, if any, to this Chapter, including whether the
6 ban imposed by this Chapter should be extended to other products, as supported by the report. If the
7 Director recommends banning additional products, the report must include an estimate of the costs and
8 benefits of compliance with a ban on additional products, including the increased costs to the City as
9 well as to the City's food service industry.

10
11 **SEC. 1608. OPERATIVE DATE.**

12 This ordinance shall become operative on June 1, 2007.

13
14 **SEC. 1609. SEVERABILITY.**

15 If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to
16 be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall
17 not affect the validity of the remaining portions of the Chapter. The Board of Supervisors hereby
18 declares that it would have passed this Chapter and each and every section, subsection, sentence,
19 clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this
20 Chapter would be subsequently declared invalid or unconstitutional.

21
22 **SEC. 1610. NO CONFLICT WITH FEDERAL OR STATE LAW.**

23 Nothing in this Ordinance shall be interpreted or applied so as to create any requirement,
24 power or duty in conflict with any federal or state law.

1
2 **SEC. 1611. UNDERTAKING FOR THE GENERAL WELFARE.**

3 *In undertaking the implementation of this Chapter, the City is assuming an undertaking only to*
4 *promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an*
5 *obligation for breach of which it is liable in money damages to any person who claims that such breach*
6 *proximately caused injury.*

7
8 Section 3. The San Francisco Health Code is hereby amended by repealing Sections
9 469 through 469.10 in their entirety.

10 **~~SEC. 469. CHLOROFLUOROCARBON PROCESSED FOOD PACKAGING FINDINGS.~~**

11 *~~The Board of Supervisors finds that the release of chlorofluorocarbons (CFC) into the~~*
12 *~~environment may endanger public health and welfare by causing or contributing to significant~~*
13 *~~depletion of the stratospheric ozone layer.~~*

14 *~~CFCs are manufactured chemicals that remain in the atmosphere for decades slowly migrating~~*
15 *~~upwards without reacting with any other chemicals.~~*

16 *~~Stratospheric ozone shields the earth's surface from dangerous ultraviolet (UV-B) radiation.~~*
17 *~~When CFC molecules react with UV light in the stratosphere they break down, freeing chlorine atoms~~*
18 *~~which catalyze the destruction of ozone. One chlorine atom can destroy as many as 100,000 ozone~~*
19 *~~molecules before it is rendered inactive or removed from the atmosphere.~~*

20 *~~A national and international consensus has developed that unabated use of CFCs is resulting in~~*
21 *~~depletion of stratospheric ozone. The Environmental Protection Agency has determined that as~~*
22 *~~stratospheric ozone levels drop, penetration of UV-B radiation will increase resulting in potential~~*
23 *~~health and environmental harm. Direct effects are likely to include increased incidence of skin cancer~~*

1 *and cataracts, suppression of the immune response system and damage to crops and aquatic*
2 *organisms. (Federal Register, August 12, 1988, p. 30566.)*

3 *In the troposphere, the lower atmosphere, CFCs along with other chemicals absorb infrared*
4 *radiation, warming the earth. Scientists predict that global warming may melt polar ice, raise sea*
5 *levels and flood low-lying coasts. It may also disrupt agriculture due to shifts in global temperature*
6 *and rainfall patterns.*

7 *CFCs are widely used as blowing agents in the manufacture of plastic food packaging.*
8 *Moreover, while other foam products store or bank much of the CFCs within them, food service*
9 *products emit most of the CFC used in their manufacture during the manufacture, use and disposal of*
10 *the products.*

11 *The Board of Supervisors finds, therefore, that the widespread use of CFC processed food*
12 *packaging poses a threat by the introduction of toxic byproducts into the atmosphere and general*
13 *environment of the City and County of San Francisco.*

14 *The Board of Supervisors further finds that restricting the sale of CFC processed food*
15 *packaging and the use of CFC processed food packaging in retail food establishments in San Francisco*
16 *would be a step toward slowing ozone loss and greenhouse gas buildup, thereby protecting the public*
17 *health.*

18 *In addition to emitting CFCs, plastic food service items take hundreds of years to decompose*
19 *and cannot be recycled. However, these food packaging items can be made from other materials, such*
20 *as recycled or virgin paper, and other biodegradable products which are not made with CFCs. By this*
21 *legislation, the Board of Supervisors intends to encourage restaurant and food retailers and*
22 *wholesalers in San Francisco to use biodegradable packaging in place of those made with CFCs.*

23
24 ***SEC. 469.1. DEFINITIONS.***

1 ~~As used in Sections 469 through 469.9 inclusive, the following words and terms shall have the~~
2 ~~following meanings:~~

3 ~~(a) "Chlorofluorocarbons," ("CFCs") means the family of substances containing carbon,~~
4 ~~fluorine and chlorine and having no hydrogen atoms and no double bonds.~~

5 ~~(b) "CFC processed food packaging" means food packaging which uses chlorofluorocarbons~~
6 ~~as blowing agents in its manufacture.~~

7 ~~(c) "Director" means the Director of Health of San Francisco's Department of Public Health,~~
8 ~~or designee.~~

9 ~~(d) "Food" means any article intended for use for food, drink, confection, or condiment, or any~~
10 ~~article which is used or integrated for use as a component of the food or otherwise affecting the~~
11 ~~component of the food.~~

12 ~~(e) "Food packaging" means all food related wrappings, boxes, containers, bowls, plates,~~
13 ~~trays, cartons, cups, lids or drinking utensils, on which or in which food is placed or packaged on the~~
14 ~~retail food establishment's premises, and which are not intended for reuse. Food packaging does not~~
15 ~~include forks, knives, straws or single-service condiment packages.~~

16 ~~(f) "Retail food establishment" means any food product and marketing establishment as defined~~
17 ~~in Section 440 of this Code and any food preparation and service establishment as defined in Section~~
18 ~~451 of this Code.~~

19 ~~(g) "Supplier" means anyone selling, or otherwise supplying packaging to a retail food~~
20 ~~establishment.~~

21 ~~(h) "Wholesaler" means anyone who acts as a wholesale merchant, broker, jobber or agent,~~
22 ~~who sells for resale.~~

1 ~~SEC. 469.2. PROHIBITION ON USE OF CHLOROFLUOROCARBON PROCESSED FOOD~~
2 ~~PACKAGING.~~

3 ~~(a) No retail food establishment located and doing business within the City and County of San~~
4 ~~Francisco shall purchase, obtain, keep, sell, distribute, provide to customers or otherwise use in its~~
5 ~~business, any CFC processed food packaging, except as provided in Sections 469.4 and 469.5.~~

6 ~~(b) No wholesaler located and doing business within the City and County of San Francisco~~
7 ~~shall sell, distribute or provide to customers, or keep within the City and County of San Francisco, any~~
8 ~~CFC processed food packaging, except as provided in Sections 469.4 and 469.5.~~

9
10 ~~SEC. 469.3. FOOD PACKAGING - PROOF OF COMPLIANCE.~~

11 ~~(a) Every retail food establishment shall show proof of compliance with Section 469.2 of this~~
12 ~~Code by (1) either entering into a contract with its suppliers, or obtaining a written statement from its~~
13 ~~suppliers, which provides that the supplier will supply only food packaging not manufactured with~~
14 ~~CFCs and (2) obtaining a written statement from the supplier on each invoice for food packaging that~~
15 ~~the food packaging invoiced was not CFC processed.~~

16 ~~(b) Every wholesaler shall show proof of compliance with Section 469.2 of this Code by~~
17 ~~obtaining a written statement from the supplier on each invoice for food packaging that is sold,~~
18 ~~distributed or provided to customers in the City and County of San Francisco that the food packaging~~
19 ~~invoiced was not CFC processed, and acknowledging that the supplier is aware of the provisions of this~~
20 ~~ordinance making illegal the providing of false information on the invoice.~~

21 ~~(c) It shall be unlawful for any supplier to make any false statement regarding the use or non-~~
22 ~~use of CFCs in the manufacture of food packaging supplied to any wholesaler or retail food~~
23 ~~establishment.~~

1 ~~(d) Retail food establishments shall retain copies of each contract or written statement required~~
2 ~~by this Section, and wholesalers shall retain copies of invoices required by this Section, and they shall~~
3 ~~make them available for inspection upon request. Invoices and contracts required by this Section shall~~
4 ~~be retained for a period of one year.~~

5
6 **~~SEC. 469.4. EXCEPTIONS.~~**

7 ~~The Director may exempt an item or type of food packaging from the requirements of Sections~~
8 ~~469.2 and 469.3 upon application by the retail food establishment demonstrating to the satisfaction of~~
9 ~~the Director that the item or type of packaging has no acceptable non-CFC processed equivalent.~~

10
11 **~~SEC. 469.5. FOOD PACKAGING—EXISTING CONTRACTS.~~**

12 ~~Food packaging required to be purchased under a contract entered into prior to or within six~~
13 ~~months of the effective date of this ordinance is exempt from the provisions of this ordinance.~~

14
15 **~~SEC. 469.6. PENALTIES AND ENFORCEMENT.~~**

16 ~~(a) The Director may enforce the provisions of Sections 469.2 and 469.3 against violations by~~
17 ~~either of the following actions:~~

18 ~~(1) Serving notice requiring the correction of any violation;~~

19 ~~(2) Calling upon the City Attorney to maintain an action for injunction to enforce the~~
20 ~~provisions of Sections 469.2 and 469.3, to cause the correction of any such violation, and for the~~
21 ~~assessment and recovery of a civil penalty for such violation.~~

22 ~~(b) Any individual, firm, partnership, corporation, company, association, society, group, or~~
23 ~~other person or legal entity that violates any provision of Sections 469.2 and 469.3 shall be liable for a~~
24 ~~civil penalty, not to exceed \$500 for each day such violation is committed or permitted to continue. Any~~
25

1 ~~penalty shall be assessed and recovered in a civil action brought in the name of the people of the City~~
2 ~~and County of San Francisco by the City Attorney in any court of competent jurisdiction. Any penalty~~
3 ~~assessed and recovered in an action brought pursuant to this Section shall be paid to the Treasurer of~~
4 ~~the City and County of San Francisco.~~

5 ~~(e) Failure to comply with the provisions of Sections 469.2 and 469.3 shall be grounds for~~
6 ~~suspension or revocation of a permit issued pursuant to Sections 440 and 452, after a hearing by the~~
7 ~~Department of Public Health.~~

8
9 **~~SEC. 469.7. CITY AND COUNTY PURCHASES PROHIBITED.~~**

10 ~~The City and County shall purchase no CFC processed food packaging, except packaging~~
11 ~~required to be purchased under a contract entered into prior to or within six months of the effective~~
12 ~~date of this ordinance unless the department purchasing the item or type of packaging makes a showing~~
13 ~~to the Director that the item or type of packaging has no acceptable non-CFC processed equivalent.~~

14
15 **~~SEC. 469.8. CONFLICT WITH OTHER LAWS.~~**

16 ~~(a) By adopting this ordinance, the City and County of San Francisco does not intend to~~
17 ~~authorize any activity that federal or state law or regulation prohibits, to prohibit any activity that~~
18 ~~federal or state law or regulation authorizes, or to duplicate any federal or state law or regulation~~
19 ~~except to the extent allowed by law.~~

20 ~~(b) This ordinance shall be void upon the enactment or adoption of any state or federal law or~~
21 ~~regulation imposing limits on the use of CFCs in the manufacture of plastic foams.~~

22
23 **~~SEC. 469.9. PROMOTING PURPOSES OF LEGISLATION.~~**

1 ~~The Board of Supervisors will promote the lobbying of the State Legislature and United States~~
2 ~~Congress to stop the use of chlorofluorocarbons in the United States. The Board will promote~~
3 ~~consultations with San Francisco sister cities pursuing an end to chlorofluorocarbon use~~
4 ~~internationally.~~

5
6 **~~SEC. 469.10. SEVERABILITY.~~**

7 ~~If any Section, Subsection, Subdivision, Paragraph, sentence, clause or phrase of this Article or~~
8 ~~any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of~~
9 ~~competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining~~
10 ~~portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would~~
11 ~~have passed each Section, Subsection, Subdivision, Paragraph, sentence, clause or phrase thereof~~
12 ~~irrespective of the fact that any one or more Sections, Subsections, Subdivisions, Paragraphs,~~
13 ~~sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.~~

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15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: 
19 BURK E. DELVENTHAL
20 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 060944

Date Passed:

Ordinance amending the San Francisco Environment Code by adding Chapter 16, Sections 1601 through 1611, to: (1) prohibit the use of polystyrene foam disposable food service ware and require the use of biodegradable/compostable or recyclable disposable food service ware by restaurants, retail food vendors, City departments and the City's contractors and lessees unless there is no affordable alternative; and, (2) provide for penalties for violation; and amending the San Francisco Health Code by repealing Sections 469 through 469.10, which ban the use of food packaging and plastic food service ware made with chlorofluorocarbons.

October 31, 2006 Board of Supervisors — SUBSTITUTED

November 14, 2006 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

November 14, 2006 Board of Supervisors — PASSED ON FIRST READING AS AMENDED


Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

November 21, 2006 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Excused: 1 - Daly

File No. 060944

I hereby certify that the foregoing Ordinance was FINALLY PASSED on November 21, 2006 by the Board of Supervisors of the City and County of San Francisco.


for Gloria L. Young
Clerk of the Board

NOV 29 2006

Date Approved


Mayor Gavin Newsom