

San Francisco Department of the Environment Draft Regulation #SFE-16-01-FSPWR Proposed Regulations Implementing the Food Service and Packaging Waste Reduction Ordinance (Ordinance No. 140-16)

Regulation Effective Date: Upon Director's Signature

A. Authorization

The Food Service and Packaging Waste Reduction Ordinance (Ordinance) was signed by Mayor Lee on July 29, 2016 and became effective on August 28, 2016, and will be operational on January 1, 2017, provided, however, that the application of this ordinance to Meat and Fish Trays, as defined in Environment Code Section 1602, becomes operational on July 1, 2017. The Ordinance prohibits the sale and distribution of food service ware and other specified products including packing materials that are made from polystyrene foam or that are not recyclable or compostable, as codified in Environment Code Chapter 16.

The Director of the Department of the Environment (Director) adopts lists of suitable Compostable or Recyclable products pursuant to her authority in Environment Code Chapter 16, Section 1603, and promulgates these regulations and associated forms pursuant to her authority to adopt regulations, guidelines and forms and take any all other actions as reasonable and necessary to implement and enforce Chapter 16 as authorized in Environment Code Chapter 16, Section 1606.

B. Scope

San Francisco's 2006 Food Service Waste Reduction Ordinance, creating Environment Code Chapter 16, prohibited the use of disposable food service ware made of polystyrene foam or that is not compostable or recyclable when serving prepared food in San Francisco by restaurants, retail food vendors, City departments, City contractors and City lessees, unless there is no affordable alternative.

The Food Service and Packaging Waste Reduction Ordinance, passed in 2016, amends Chapter 16 to extend the prohibition on using polystyrene foam to anyone who sells or distributes polystyrene foam food ware, packing materials, and other specified products. Polystyrene foam means expanded, extruded or blown polystyrene (or so called Styrofoam™) as defined in Chapter 16, Section 1602. Distribute means the sale, offer for sale, or other transfer of possession of an item for compensation as defined in Chapter 16, Section 1602. The complete list of products that this applies to are:

- Food ware including cups, plates, clamshells, and other containers
- Meat and fish trays (as of July 1, 2017), and egg cartons
- Packing materials* including peanuts and shipping containers, and their use to pack within San Francisco products sold
- Coolers, ice chests or similar containers*
- Pool or beach toys*
- Dock floats, mooring buoys, or anchor or navigational markers*

* *Unless they are wholly encased within a more durable material*

The Ordinance also requires that packing materials used to pack within San Francisco products sold and disposable food ware sold or distributed must be accepted as compostable or recyclable in San Francisco's collection programs. Violation of the Ordinance may result in contractual damages, criminal fines, administrative penalties, or other civil enforcement action.

The Director is authorized to promulgate regulations, guidelines and forms necessary to implement and enforce the Ordinance. These regulations supercede Rules and Regulations previously issued by the City Administrator for Ordinance 295-06.

C. Requirements

1. Compliant Compostable or Recyclable Food Service Ware and Packaging

1.1 Compliant Compostable or Recyclable Food Service Ware List.

Section 1603(b) requires the Director to adopt, and regularly update, a list of suitable alternative compostable or recyclable Food Service Ware products ("Food Ware List"). These are products that the Director determines comply with the Ordinance by serving the same intended purpose as non-compliant food ware products (such as made with polystyrene foam), meeting the standards for what is compostable or recyclable (as defined in Section 1602 and is accepted in San Francisco's composting or recycling collection program), and are reasonably affordable. The Food Ware List includes, for public convenience, specific manufacturer, brand or distributor names ("vendors") as well as the type of product and whether the product is compostable or recyclable. The Director does not endorse any specific vendor, nor represent that the Food Ware List includes either all the products or the best products that comply with the Ordinance. The Food Ware List is found at:

http://sfenvironment.org/sites/default/files/fliers/files/sfe_zw_vendors_fsw_bags.pdf.

The Director, or his or her designee, will update this list as he or she identifies additional qualifying products. Any person that wishes to propose products to be added to the Food Ware List should contact the Department of the Environment at sfenvironment@sfgov.org, by facsimile 415-554-6393, by telephone 415-355-3700 or by mail at 1455 Market St., Suite 1200, San Francisco, CA 94103.

1.2 Compliant Compostable or Recyclable Packing Materials List.

Section 1606(b) authorizes the Director to promulgate guidelines to implement the Ordinance, as such the Director adopts, and requires the Director to adopt and regularly update a list of suitable alternative compostable or recyclable Packaging products ("Packaging List"). These are products that the Director determines comply with the Ordinance by serving the same intended purpose as non-compliant packing materials used to protect items sold in San Francisco (such as made with polystyrene foam that is not encased in more durable material), meeting the standards for what is compostable or recyclable (as defined in Section 1602 and is accepted in San Francisco's composting or recycling collection program), and are reasonably affordable. The Packaging List includes, for public convenience, specific manufacturer, brand or distributor names ("vendors") as well as the type of product and whether the product is compostable or recyclable. The Director does not endorse any specific vendor, nor represent

that the Packaging List includes either all the products or the best products that comply with the Ordinance. The Packaging List is found at:

http://sfenvironment.org/sites/default/files/fliers/files/sfe_zw_polystyrene_vendor_list.pdf.

The Director, or his or her designee, will update this list as he or she identifies additional qualifying products. Any person that wishes to propose products to be added to the Packaging List should contact the Department of the Environment at sfenvironment@sfgov.org, by facimille 415- , by telephone 415-355-3700 or by mail at 1455 Market St., Suite 1200, San Francisco, CA 94103.

1.3 Additional Guidance on Acceptable Compostable or Recyclable Products.

The Director, as authorized in Section 1606(b), provides, for public convenience, additional guidance on suitable alternative compostable or recyclable products. Criteria for acceptable compostable or recyclable food service ware can be found at:

http://sfenvironment.org/sites/default/files/fliers/files/sfe_zw_accepted_food_service_ware_list.pdf

And examples of acceptable compostable or recyclable packaging, along with an FAQ, can be found at: http://sfenvironment.org/sites/default/files/fliers/files/sfe_zw_polystyrene_faq.pdf.

2. Hardship Waiver Requests and Waiver Determinations

2.1 Feasibility-based Hardship Waiver Requests.

The Director, or his or her designee, may grant a waiver, due to a feasibility-based hardship, of the requirements in Section 1603(a) and 1604(b) for food service ware, and Section 1605(a), (b) and (c), for packing materials and other specified products. The waiver request form can be found at:

http://sfenvironment.org/sites/default/files/fliers/files/sfe_zw_food_service_ware_and_packaging_or_dinance_waiver.doc.

2.2 Financial Hardship Waiver Requests.

The Director, or his or her designee, may grant a waiver, due to a financial hardship, of the requirements in Section 1603(a) and 1604(b) for food service ware, and Section 1605(a), (b) and (c), for packing materials and other specified products. The waiver request form can be found at:

http://sfenvironment.org/sites/default/files/fliers/files/sfe_zw_food_service_ware_and_packaging_or_dinance_waiver.doc.

2.3 City Facility, Department or Contractor Waiver Request.

The Director, or his or her designee, may grant a waiver to a City officer, employee or department of the requirements in Section 1604(b), (c), and (d), in whole or in part, with or without conditions, for a period of up to 36 months. The waiver request form can be found at:

http://sfenvironment.org/sites/default/files/fliers/files/sfe_zw_food_service_ware_and_packaging_or_dinance_waiver.doc.

2.4 Waiver Determinations.

The Director, or his or her designee, shall acknowledge receipt of a waiver request within 10 working days of receiving a completed request. The Director may require that the waiver applicant provide

additional information or documentation to make a determination regarding the waiver. The Director will review waiver requests on a case-by-case basis and may grant a waiver in whole or in part, with or without conditions, for a period up to 36 months. The Director shall after receiving all necessary information issue his or her determination within a reasonable time period. The Director's determination is final and cannot be appealed.

2.5 Categorical Waivers.

The Director, or his or her designee, may grant a waiver of the requirements in Section 1605, in whole or in part, with or without conditions, for a period of up to 36 months, with respect to particular categories of uses of Packing Materials or of Egg Cartons or Meat and Fish Trays, upon finding that no suitable and reasonably affordable alternative to use of the non-compliant product is feasible. The Director may grant this waiver in response to a specific waiver request previously described or upon the Director's own information regarding feasibility of alternative products.

3. Enforcement

3.1. Warning Letters to Non-Complying Businesses

3.1.1. Issuance of Warning. Whenever the Director determines that a person has violated or is violating the Ordinance, the Director, or his or her designee, may, in his or her sole discretion, issue a written warning letter ("Warning").

3.2.2. Contents of Warning. A Warning shall include the following information: (1) a description of the violation(s) including a reference to each provision of Ordinance violated, the corrective action required for compliance, and the various sanctions that may follow from continued non-compliance; (2) the address or a description of the location where the violation occurred; (3) the date(s) of the violation; and (4) the name, address and signature of the Director, or his or her designee.

3.2. Imposition of Sanctions or Referral.

Whenever the Director determines that a Person that has received a Warning(s) has violated the Ordinance either by continuing the violation(s) for which the Warning was issued, or by other non-compliance, the Director, or his or her designee, may, in his or her sole discretion, issue additional Warnings and otherwise continue informal efforts to obtain compliance; or may issue an Administrative Citation imposing the penalties and enforcement costs as provided by the Ordinance; or may refer the matter to the District Attorney or City Attorney. The Director may also refer any violation by a City Contractor or lessee to the Contract awarding department for appropriate sanctions

3.3. Imposing Penalty by Administrative Citation.

3.3.1. Issuance of Administrative Citation. Whenever the Director determines that the circumstances warrant imposition of administrative penalties under the Ordinance, the Director shall issue an Administrative Citation imposing administrative penalties as specified in the Ordinance, which may be up to \$500, depending upon the circumstances and enforcement costs.

3.3.2. Contents of Administrative Citation. An Administrative Citation shall include the following information: (1) a description of the violation(s) including a reference to each provision of Ordinance violated and the amount of the administrative penalty imposed for the violation(s); (2) the amount of any enforcement costs assessed; (3) the address or a description of the location where the violation occurred; (4) the date(s) of the violation; (5) the date by which the administrative penalty and any must be paid, the procedure for making such payment, and the consequences of failure to pay; (6) the name and signature of the Director or his or her designee; and (7) how to appeal the Administrative Citation.

3.3.3. Payment of Penalties. If the cited party does not file an appeal within the 10-day period provided in Section 4.1.1, below, the Director's determination should become final. The cited party must pay all administrative penalty amounts no later than 90 days after service of the Administrative Citation, unless the cited party appeals the administrative citation as provided in Section 4. Overdue administrative penalties shall be subject to the collection procedures set forth in Section 5.

4. Appeal Process for Administrative Citation

4.1. Requesting Administrative Hearing to Appeal Penalty.

4.1.1. Ten Days to Make Written Request. Any person or entity that is cited in a Administrative Citation may appeal the Administrative Citation on the grounds that there was no violation of the Ordinance for which the Administrative Citation was issued, or that the person or entity cited is not the responsible party. Such person (hereinafter "appellant") must appeal in writing, preferably on the form provided by the Director, and serve the written appeal on the Director within 10 calendar days of the date the Director served the Administrative Citation for which review is sought. At a minimum, such appeal shall include a copy of the Administrative Citation being appealed and a brief statement of the reason(s) for the appeal.

4.1.2. Request for Appeal Stays Enforcement. A timely appeal shall stay enforcement of any Administrative Penalties and enforcement costs imposed pending the hearing officer's final decision, but shall not stay enforcement of any new or different violations of the Ordinance.

4.1.3. Appointment of Hearing Officer. The Director shall appoint a hearing officer and schedule a hearing within 15 calendar days of receipt of a timely appeal. The Director shall promptly notify the appellant of the time and date of said hearing, and shall include with the notice a copy of the Ordinance and these Regulations.

4.2. Hearing and Decision on Appeal.

4.2.1. Duties of the Hearing Officer. The hearing officer appointed by the Director shall conduct all appeal hearings and shall be responsible for deciding all matters relating to the hearing procedures not otherwise specified in these Regulations.

4.2.2. Conduct of the Hearing, Evidence.

a. Public Hearing. The appeal hearing is a public hearing and shall be audio recorded. Any party to the hearing may cause, at his or her own expense, the hearing to be recorded by a certified

court reporter, but this will not be the official record of the proceeding unless the Hearing Officer agrees and a copy of the transcript is provided at no cost to the Hearing Officer and the opposing party.

b. Burden of Proof. The Director shall have the burden of proof in the hearing.

c. Exchange of Documentary Evidence. Any written information in addition to that submitted with the Request for Administrative Hearing that either the Director or appellant submits to the Hearing Officer for consideration at the hearing, shall also be served on the other party at least 5 days prior to the date of the hearing.

c. Admissible Evidence. The hearing officer may accept and rely on evidence that responsible persons commonly rely upon in the conduct of serious affairs. All parties shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all documents and other information the City relies on in the proceeding, and to confront and cross-examine any witness against them.

d. Continuances. When all evidence has been presented, the hearing officer may, in his or her sole discretion, continue the hearing and request additional information from the appellant and/or Director. The Hearing Officer may also continue the hearing at any time, for good cause shown as determined in the discretion of the Hearing Officer.

4.2.3. Written Decision by Hearing Officer. After considering all of the testimony and evidence submitted by the parties, the hearing officer shall issue a written decision to uphold or vacate the Warning or Administrative Citation and shall set forth the reasons for the Decision. The hearing officer shall issue his or her written Decision within 10 calendar days of the completed hearing. The hearing officer shall serve a copy of the Decision on the appellant. The hearing officer's decision shall be final.

4.2.4. Judicial Review. Any person aggrieved by the hearing officer's Decision on a Warning or Administrative Citation may obtain review of the decision by filing a petition for judicial review within 20 days after service in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

5. Collection of Fines and Costs

If no appeal of the hearing officer's decision is filed as provided in Section 4.2.4, and if required administrative penalties (and enforcement costs) are not paid in full to the Office of the Director within 90 days after the mailing of the hearing officer's decision, the Director shall file a statement of each unpaid administrative penalty (and enforcement cost) with the Bureau of Delinquent Revenue, who shall collect the same on behalf of the City and County.

The Director of the Department of the Environment hereby adopts these regulations as of the date specified below.

Deborah O. Raphael
Director Department of the Environment

A handwritten signature in blue ink that reads "Deborah O. Raphael". The signature is written in a cursive style with a large initial "D".

Approved:

Date: 12/28/16