

**ORDINANCE NO. 14-2116**

**AN ORDINANCE OF THE CITY OF CUPERTINO  
AMENDING TITLE 9 OF THE CUPERTINO MUNICIPAL CODE TO ADD  
CHAPTER 9.15 TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE  
FOOD SERVICE WARE BY FOOD VENDORS**

**WHEREAS**, plastic debris and in particular expanded polystyrene foam ("EPS") is a distinctive litter concern because it is lightweight, floats, breaks down into small pieces, and readily travels from land to inland waterways and out to the ocean where it can be mistaken for food by birds and other marine wildlife; and

**WHEREAS**, EPS disposable food service ware comprises 8% by volume of total litter observed in storm drains in Santa Clara County; and

**WHEREAS**, the proposed prohibition of EPS disposable food service ware would require food vendors to use alternative food service ware that will result in a reduction of EPS litter, reduce the risk of harm to aquatic wildlife, and improve water quality in the Cupertino creeks and the Southern San Francisco Bay; and

**WHEREAS**, on January 21, 2014, prior to taking action on the Ordinance, the City Council reviewed, considered and adopted by separate Council resolution, the proposed Negative Declaration analyzing the regional environmental impacts of the Ordinance to prohibit EPS disposable food service ware; and

**WHEREAS**, the City of Cupertino intends and does hereby find that this Ordinance falls within the scope of the City of San Jose's Program Initial Study/Negative Declaration for EPS;

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

**Section 1.** Chapter 9.15 is hereby added to the Cupertino Municipal Code to be numbered, entitled, and to read as follows:

CUPERTINO MUNICIPAL CODE

CHAPTER 9.15

PROHIBITION OF EXPANDED POLYSTYRENE (EPS) FOAM FOOD SERVICE WARE

**9.15.100 Definitions.**

The definitions set forth in this Section shall govern the application and interpretation of this Chapter.

A. "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving prepared food and includes, but is not limited to, plates, trays, cups, bowls, and hinged or lidded containers (clamshells). Disposable food service ware does not include straws, utensils, drink lids, or ice chests.

B. "Food vendor" means any establishment located in the City of Cupertino that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand.

C. "Polystyrene foam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). "Polystyrene foam" is commonly made into disposable food service ware products. "Polystyrene foam" does not include clear or solid polystyrene (oriented polystyrene).

D. "Prepared food" means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. "Prepared food" does not include (1) any raw, uncooked meat products, fruits, or vegetables, unless it is intended for consumption without further preparation; or (2) prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.

**9.15.110 Polystyrene Foam Disposal Food Service Ware Prohibited.**

No food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after July 1, 2014.

**9.15.120 Exemptions to the Polystyrene Foam Disposal Food Service Ware Prohibition.**

A. A food vendor may seek an exemption from the prohibition under Section 9.15.110 due to a “unique packaging hardship” under Subsection B of this Section, or “unused inventory” under Subsection C of this Section.

B. The food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a “unique packaging hardship” exemption.

C. The food vendor must demonstrate that before January 1, 2014, it purchased the polystyrene foam food service ware, which cannot be returned to the distributor, and, despite the food vendor’s best efforts, will remain in inventory on July 1, 2014, to qualify for an “unused inventory” exemption.

D. The food vendor may submit a written application for an exemption on a form provided by the Environmental Programs Division. The Director of Public Works designee (“Director”) may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to six (6) months or to January 1, 2015, whichever comes first. The determination of the Director shall be final and is not subject to appeal.

**9.15.130 Administrative citation and fine**

(a) Grounds for an administrative citation. An administrative citation may be issued upon findings made by the City Manager, or his or her designee, when any person or food vendor has provided EPS foam food service ware to a customer or violated any other provision of this Chapter.

(b) Administrative citation fine amounts. Upon findings made under subsection (a), the person or food vendor shall be subject to an administrative citation pursuant to Chapter 1.10 of this Code. Fines for the administrative citation are as follows:

- (1) First citation: One hundred dollars (\$100.00)
- (2) Second citation for the same violation within the same twelve month period: Two hundred dollars (\$200.00)
- (3) Third or any subsequent citation for the same violation within the same twelve month period: Five hundred dollars (\$500.00)
- (4) Each day that any person or food vendor violates the provisions of this Chapter a new and separate violation occurs.

(c) Administrative citation appeals and disposition shall be processed in accordance with Chapter 1.10 of this Code.

**9.15.140 Severability**

If any section, subsection, subdivision, sentence, clause, or phrase of this Chapter is for any reason held to be unconstitutional or otherwise void or invalid, by any court of competent jurisdiction the validity of the remaining portion of this Chapter shall not be affected thereby.

**Section 2.** This Ordinance shall be effective on July 1, 2014.

**Section 3.** The City Clerk shall certify the adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 21st day of January 2014 and ENACTED at a regular meeting of the City Council of the City of Cupertino the 4th day of February 2014, by the following vote:

PASSED:

Vote: Members of the City Council

Ayes: Wong, Sinks, Chang, Santoro

Noes: None

Absent: Mahoney

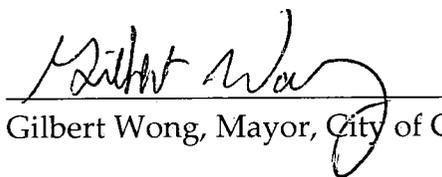
Abstain: None

ATTEST:

APPROVED:



Grace Schmidt, City Clerk



Gilbert Wong, Mayor, City of Cupertino

STATE OF CALIFORNIA )

COUNTY OF SANTA CLARA )

CITY OF CUPERTINO )

I, GRACE SCHMIDT, City Clerk and ex-officio Clerk of the City Council of the City of Cupertino, California, do hereby certify the attached to be a true and correct copy of Ordinance No. 14-2116, which was enacted on February 4, 2014, and that it has been published or posted pursuant to law (G.C. 40806).

IN WITNESS WHEREOF, I have hereunto set my hand and seal  
this 5th day of February, 2014.



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GRACE SCHMIDT, City Clerk and Ex-officio Clerk  
of the City Council of the City of Cupertino, California

## Chapter 6.44 - POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE

6.44.010 - Definitions.

6.44.020 - Polystyrene foam disposable food service ware prohibited.

6.44.030 - Exemptions to the polystyrene foam disposable food service ware prohibition.

6.44.040 - Administrative penalty.

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## Chapter 6.44 - POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE[2]

Sections:

6.44.010 - Definitions.

The definitions set forth in this section shall govern the application and interpretation of this Chapter 6.44.

A.

"Customer" means a person obtaining prepared food from a food provider.

B.

"Disposable food service ware" or "food container" means a container or single-use disposable product that is used, or intended to be used, to hold prepared food. "Disposable food service ware" or "food container" includes, but is not limited to, plates, trays, cups, bowls, and hinged or lidded containers (clamshells) and EPS coolers or ice chests which are not wholly encapsulated or encased within a more durable material. Disposable food service ware does not include straws, utensils or drink lids.

C.

"Food provider" means any establishment, vendor, business, organization, entity, group or individual located or operating in the city of Los Altos that offers prepared food or beverages, regardless of whether there is a charge for the food or beverage: (1) to the public for consumption on or off its premises; (2) as a catered event; and/or (3) at cafeterias of private schools and places of employment, whether or not such establishments are open to the general public. "Food provider" includes, but is not limited to, city-sponsored events, city-permitted events, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, pubs, coffee shops, convenience stores, liquor stores, supermarkets, delicatessens, fraternal clubs serving the public, itinerant restaurants, mobile food vendors, vehicles or carts, or roadside stands.

D.

"Vendor" means any store or business which sells or offers goods or merchandise, located or operating within the city of Los Altos.

E.

"Polystyrene foam" means the thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). "Polystyrene foam" is commonly made into disposable food service ware products. "Polystyrene foam" does not include clear or solid polystyrene (oriented polystyrene).

F.

"Prepared food" means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. "Prepared food" does not include (1) any raw, uncooked meat products or fruits or vegetables unless it can be consumed without further preparation; or (2) prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.

(Ord. No. 2014-397, § 1, 1-28-2014)

6.44.020 - Polystyrene foam disposable food service ware prohibited.

On or after July 4, 2014, a food provider shall not dispense prepared food to a customer in a polystyrene foam food container.

On or after July 4, 2014, polystyrene foam food containers and polystyrene foam service ware shall not be sold or provided by any vendor in the city of Los Altos.

(Ord. No. 2014-397, § 1, 1-28-2014)

6.44.030 - Exemptions to the polystyrene foam disposable food service ware prohibition.

A.

Raw eggs and raw, butchered meat, fish, or poultry that is sold from a butcher case or a similar retail appliance.

B.

A food provider may seek an exemption from the prohibition under Section 6.44.030 due to a "unique packaging hardship" under subsection C. of this section or a "financial hardship" under subsection D. of this section.

C.

The food provider must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a "unique packaging hardship" exemption.

D.

The food provider must demonstrate both of the following to qualify for a "financial hardship" exemption: (1) a gross income under three hundred thousand dollars (\$300,000.00) on their annual income tax filing for the most recent tax year; and (2) with respect to each specific and necessary polystyrene foam disposable food service ware, that there is no feasible alternative that would cost the same or less than the polystyrene foam disposable food service ware.

E.

The food provider may submit a written application for an exemption on a form provided by public works. The director of public works ("director") may require the applicant to submit additional information or documentation to make a determination regarding the exemption requested. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The food provider or vendor must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the director shall be final and is not subject to appeal.

(Ord. No. 2014-397, § 1, 1-28-2014)

#### 6.44.040 - Administrative penalty.

A penalty may be imposed upon findings made by a city's code enforcement officer that any food provider has provided a "disposable food service ware" or "food container" in violation of this chapter. The amount of penalty and the penalty procedures are contained in the Los Altos Municipal Code, Chapter 1.30, entitled "Administrative Citations and Orders."

(Ord. No. 2014-397, § 1, 1-28-2014)

## CITY OF PALO ALTO

### EXPANDED POLYSTYRENE AND NON-RECYCLABLE FOOD SERVICE CONTAINERS

#### Sections:

- 5.30.010 Definitions.
- 5.30.020 Prohibitions on the use of expanded polystyrene and non-recyclable plastic.
- 5.30.030 Exemptions.
- 5.30.040 Operative dates.
- 5.30.050 Severability.
- 5.30.060 Penalties.
- 5.30.070 Construction and preemption.

#### Bookmark5.30.010 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- (a) "City facilities" refers to any building, structure or vehicle owned or operated by the city of Palo Alto, its agents, departments and franchises.
- (b) "Disposable food service container" means single-use disposable product used by food vendors for serving or transporting prepared and ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, lids, trays and hinged or lidded containers. This does not include single-use disposable straws, utensils, or hot cup lids.
- (c) "Expanded polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer, marked with recycling symbol #6, 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), sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation. In food service, expanded polystyrene is generally used to make cups, bowls, plates, and trays.
- (d) "Food vendor" means any establishment, located or providing food within the city of Palo Alto, which provides prepared and ready-to-consume food or beverages, for public consumption including but not limited to any store, supermarket, delicatessen, restaurant, retail food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, sidewalk or other outdoor vendor, or caterer.
- (e) "Non-recyclable plastic" means all plastics that do not meet the definition of "recyclable plastic".
- (f) "Prepared food" means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique, including but not limited to cooking, chopping, slicing, mixing, freezing, squeezing, or brewing, and which requires no further preparation to be consumed. Prepared food includes uncooked fruits or vegetables and any "take-out" food, or food consumed off the food vendor's premises. Prepared food does not include any uncooked meat, fish, poultry, or eggs.

(g) "Recyclable plastic" means all plastics that can be recycled, salvaged, composted, processed, or marketed by any means other than land-filling or burning, whether as fuel or otherwise, so that they are returned to use by society. Recyclable plastics include any plastic which can feasibly be recycled by the city's municipal recycling program and presently is limited to those plastics with the following recycling symbols: #1 - polyethylene terephthalate (PET or PETE), #2 - high density polyethylene (HDPE), #3 - polyvinyl chloride (PVC), #4 - low density polyethylene (LDPE), #5 - polypropylene (PP), #6 - polystyrene, except for the expanded version of polystyrene, and #7 - other plastics, including compostable plastics such as polylactic acid (PLA). For purposes of this chapter, recyclable plastic does not include expanded polystyrene labeled with recycling symbol #6.

(Ord. 5039 § 2 (part), 2009)

Bookmark5.30.020 Prohibition on the use of polystyrene and non-recyclable plastic.

(a) Except as provided by Section 5.30.030 food vendors are prohibited from providing prepared food in disposable food service containers made from expanded polystyrene or non-recyclable plastic.

(b) Except as provided by Section 5.30.030 all city facilities, city managed concessions, city sponsored events, and city permitted events are prohibited from using disposable food service containers made from expanded polystyrene or non-recyclable plastic.

(c) Nothing in this chapter shall be interpreted to restrict the use of any form of fiber or paper disposable food service container, or the use of any form of biodegradable or compostable plastic food service container that meets the definition of recyclable plastic, in Section 5.30.010(g).

(Ord. 5039 § 2 (part), 2009)

Bookmark5.30.030 Exemptions.

(a) Foods prepared or packaged outside the city of Palo Alto are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the city of Palo Alto are encouraged to follow the provisions of this chapter.

(b) Coolers and ice chests that are intended for reuse are exempt from the provisions of this chapter.

(c) The director of public works, or his or her designee, may exempt a food vendor from the requirements of this chapter for a period of one year, upon showing by the food vendor that the conditions of this chapter would cause an undue hardship. An "undue hardship" includes, but is not limited to situations unique to the food vendor where there are no reasonable alternatives to expanded polystyrene or non-recyclable plastic disposable food service containers and compliance with this chapter would cause significant economic hardship to that food vendor, or cause the food vendor to be deprived of a legally protected right.

(d) A food vendor seeking an exemption application shall include all information necessary for the city to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The director may require the applicant to provide additional information to permit the director to determine facts regarding the exemption application.

(e) Emergency supplies and service procurement. City facilities, food vendors, city franchises, contractors and vendors doing business with the city shall be exempt from the provisions of this

chapter, in a situation deemed by the city manager to be an emergency for the immediate preservation of the public peace, health or safety.

(Ord. 5039 § 2 (part), 2009)

Bookmark5.30.040 Operative dates.

All food vendors and city facilities must comply with the requirements of this chapter by April 22, 2010.

(Ord. 5039 § 2 (part), 2009)

Bookmark5.30.050 Severability.

If any provision or clause of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this chapter, and clauses of this chapter are declared to be severable.

(Ord. 5039 § 2 (part), 2009)

Bookmark5.30.060 Penalties.

(a) Anyone violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction as set forth in Chapter 1.08 of the Palo Alto Municipal Code.

(b) Each and every sale or other transfer of disposable food service containers made from expanded polystyrene or non-recyclable plastic shall constitute a separate violation of this chapter.

(c) The remedies and penalties provided in this section are cumulative and not exclusive.

(Ord. 5039 § 2 (part), 2009)

Bookmark5.30.070 Construction and preemption.

This chapter and any of its provisions shall be null and void upon the adoption of any state or federal law or regulation imposing the same, or essentially the same, limits on the use of prohibited products as set forth in this chapter. This chapter is intended to be a proper exercise of the city's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

(Ord. 5039 § 2 (part), 2009)

Disclaimer:

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City Clerk

## CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk  
200 East Santa Clara Street  
San José, California 95113  
Telephone (408) 535-1260  
FAX (408) 292-6207

STATE OF CALIFORNIA)  
COUNTY OF SANTA CLARA)  
CITY OF SAN JOSÉ)

I, Toni J. Taber, Acting City Clerk & Ex-Officio Clerk of the Council of and for the City of San José, in said County of Santa Clara, and State of California, do hereby certify that **Ordinance No. 29298**, the original copy of which is attached hereto, was passed for publication of title on the **27th day of August 2013**, was published in accordance with the provisions of the Charter of the City of San José, and was given final reading and adopted on the **10th day of September 2013** by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA, KHAMIS,  
LICCARDO, NGUYEN, ROCHA; REED.

NOES: NONE.

ABSENT: OLIVERIO.

ABSTAINED: NONE.

VACANT: NONE.

Said ordinance is effective as of **January 1, 2014**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San José, this **13th day of November 2013**.

(SEAL)

TONI J. TABER, CMC  
CITY CLERK & EX-OFFICIO  
CLERK OF THE CITY COUNCIL

**ORDINANCE NO. 29298**

**AN ORDINANCE OF THE CITY OF SAN JOSE  
AMENDING CHAPTER 9.10 OF TITLE 9 OF THE SAN  
JOSE MUNICIPAL CODE TO ADD A NEW PART 17 TO  
PROHIBIT THE USE OF POLYSTYRENE FOAM  
DISPOSABLE FOOD SERVICE WARE BY FOOD  
VENDORS**

**WHEREAS**, plastic debris and in particular expanded polystyrene foam ("EPS") is a distinctive litter concern because it is lightweight, floats, and readily travels from land to inland waterways and out to the ocean where it breaks down into small pieces to be mistaken for food by birds and other marine wildlife; and

**WHEREAS**, EPS disposable food service ware comprises a majority of EPS litter observed in storm drains; and

**WHEREAS**, the proposed phase-out of EPS disposable food service ware would require food vendors to use alternative disposable food service ware that should result in a reduction of EPS litter, reduce the risk of harm to aquatic wildlife, and improve water quality in the San José creeks and the Southern San Francisco Bay; and

**WHEREAS**, on August 27, 2013, prior to taking action on the Ordinance, the City Council reviewed, considered and adopted by separate Council resolution, the proposed Negative Declaration analyzing the regional environmental impacts of the Ordinance to phase-out of EPS disposable food service ware (File NO. PP13-043);

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

**SECTION 1.** Chapter 9.10 of Title 9 of the San Jose Municipal Code is hereby amended by adding a new Part, to be numbered, entitled and to read as follows:

## Part 17

### Polystyrene Foam Disposable Food Service Ware

#### 9.10.3100 Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Part.

- A. "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving prepared food and includes, but is not limited to, plates, trays, cups, bowls, trays, and hinged or lidded containers (clamshells). Disposable food service ware does not include straws, utensils, drink lids, or ice chests.
- B. "Food vendor" means any establishment located in the City of San José that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand. A "food vendor" does not include a food service provider that is associated with either a nonprofit organization with Section 501(c)(3) status under the Internal Revenue Code or a public agency sponsored program.
- C. "National food vendor" means a food vendor that is a chain of franchised or corporate owned establishments located in more than one state.
- D. "Polystyrene foam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). "Polystyrene foam" is commonly made into

disposable food service ware products. "Polystyrene foam" does not include clear or solid polystyrene (oriented polystyrene).

- E. "Prepared food" means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. "Prepared food" does not include (1) any raw, uncooked meat products or fruits or vegetables unless it can be consumed without further preparation; or (2) prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.

**9.10.3110 Polystyrene Foam Disposable Food Service Ware Prohibited**

- A. No national food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2014.
- B. No food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2015.

**9.10.3120 Exemptions to the Polystyrene Foam Disposable Food Service Ware Prohibition**

- A. A national food vendor or food vendor may seek an exemption from the prohibition under Section 9.10.3110 due to a "unique packaging hardship" under Subsection B of this Section or a "financial hardship" under Subsection C of this Section.
- B. The national food vendor or food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a "unique packaging hardship" exemption.

- C. The national food vendor or food vendor must demonstrate both of the following to qualify for a "financial hardship" exemption: (1) a gross income under \$300,000 on their annual income tax filing for the most recent tax year, and (2) with respect to each specific and necessary polystyrene foam disposable food service ware, that there is no feasible alternative that would cost the same or less than the polystyrene foam disposable food service ware.
- D. The national food vendor or food vendor may submit a written application for an exemption on a form provided by the Department of Environmental Services. The Director of Environmental Services or designee ("Director") may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The national food vendor or food vendor must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Director shall be final and is not subject to appeal.

SECTION 2. This ordinance shall be effective on January 1, 2014.

PASSED FOR PUBLICATION of title this 27th day of August, 2013, by the following vote:

AYES: CAMPOS, CHU, HERRERA, KALRA, LICCARDO, NGUYEN,  
OLIVERIO, ROCHA; REED.

NOES: CONSTANT, KHAMIS.

ABSENT: NONE.

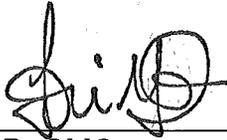
DISQUALIFIED: NONE.



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CHUCK REED  
Mayor

ATTEST:



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TONI J. TABER, CMC  
Acting City Clerk

RECEIVED  
San Jose City Clerk

This space for filing stamp only

2013 SEP -5 AM 9:49

**SAN JOSE POST-RECORD**

95 S. Market St., Ste. 535, SAN JOSE, CA 95113  
Telephone (408) 287-4866 / Fax (408) 287-2544

2.11

SUZANNE GUZZETTA  
SAN JOSE CITY CLERK  
200 E. SANTA CLARA ST.  
SAN JOSE, CA - 95113

SJ#: 2528836

**PROOF OF PUBLICATION**

(2015.5 C.C.P.)

State of California )  
County of SANTA CLARA ) ss

Notice Type: GORSJ - SAN JOSE ORDINANCE (1 PUB)

Ad Description:  
ORDINANCE #29298

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the SAN JOSE POST-RECORD, a newspaper published in the English language in the city of SAN JOSE, county of SANTA CLARA, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of SANTA CLARA, State of California, under date 02/03/1922, Case No. 27844. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

08/30/2013

Executed on: 08/30/2013  
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature

CITY OF  
**SAN JOSE**  
CAPITAL OF SILICON VALLEY  
ORDINANCE NO. 29298

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 9.10 OF TITLE 9 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW PART 17 TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS PASSED FOR PUBLICATION of title this 27<sup>th</sup> day of August, 2013, by the following vote:  
AYES: CAMPOS, CHU, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, REED, ROCHA.  
NOES: CONSTANT, KHAMIS.  
ABSENT: NONE.  
DISQUALIFIED: NONE.

CHUCK REED  
Mayor  
ATTEST:

TONI J. TABER, CMC  
Acting City Clerk  
8/30/13

SJ-2528836#



**ORDINANCE NO. 3005-13**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADDING CHAPTER 5.39 (ENVIRONMENTALLY ACCEPTABLE FOOD CONTAINERS AND SERVICE WARE) OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE SUNNYVALE MUNICIPAL CODE RELATED TO POLYSTYRENE FOOD CONTAINERS AND SERVICE WARE**

WHEREAS, on December 12, 2012, the City Council directed staff to prepare a draft ordinance prohibiting the use of polystyrene foam food containers and service ware; and

WHEREAS, the City of San Jose, acting as the lead agency under the California Environmental Quality Act (CEQA), undertook to prepare environmental documentation for a proposed ordinance prohibiting the use of polystyrene foam food containers and service ware on behalf of all 15 cities in Santa Clara County and the County of Santa Clara;

WHEREAS, the Initial Study and Notice of Intent to Adopt a Negative Declaration were circulated for public review and comments; and

WHEREAS, during the public review and comment period, the City of Sunnyvale, as the responsible agency, participated in the CEQA process as required by Title 14 of the California Code of Regulations, Section 15096; and

WHEREAS, the City of San Jose adopted the Negative Declaration on August 27, 2013; and

WHEREAS, on October 22, 2013, the City Council held a duly-noticed public hearing to consider the Initial Study and Negative Declaration in connection with the City Council's review and approval of the proposed ordinance prohibiting the use of polystyrene foam food containers and service ware in Sunnyvale.

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

**SECTION 1. CEQA REVIEW.**

1. The City Council has reviewed the Negative Declaration for the proposed ordinance to prohibit the use of polystyrene food containers and service ware, and all comments received regarding the Negative Declaration. After reviewing the foregoing, the City Council has determined that no evidence or circumstances exist that would require the preparation of additional environmental documents. Further, the City Council has exercised its independent judgment and has determined that the ordinance will not have a significant impact on the environment.

2. The City Council of the City of Sunnyvale adopts the Negative Declaration for the proposed ordinance to prohibit the use of polystyrene foam food containers and service ware within the City of Sunnyvale, which is on file with the City Clerk.

SECTION 2. CHAPTER 5.39 ADDED. Chapter 5.38 (Environmentally Acceptable Food Containers) of Title 5 (Business Licenses and Regulations) is hereby added to the Sunnyvale Municipal Code as follows:

### **Chapter 5.39**

#### **ENVIRONMENTALLY ACCEPTABLE FOOD CONTAINERS AND SERVICE WARE**

Sections:

- 5.39.010 Definitions
- 5.39.020 Polystyrene foam food containers and service ware prohibited
- 5.39.030 Exemptions
- 5.39.040 Violations

#### **5.39.010. Definitions.**

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

- (a) "Customer" means a person obtaining prepared food from a food provider.
- (b) "Food container" means a container that is used, or is intended to be used, to hold prepared food. "Food container" includes, but is not limited to, a cup, bowl, plate, tray, carton, or clamshell container that is intended for single use.
- (c) "Food provider" means any vendor, business, organization, entity, group or individual operating in the city of Sunnyvale that offers food or beverages to the public for consumption on or off premises, regardless of whether there is a charge for the food. "Food provider" includes, but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, delicatessens, itinerant restaurants, pushcarts, and vehicular food vendors. "Food provider" also includes cafeterias in private schools and places of employment whether or not such establishments are open to the general public.
- (d) "Food service ware" includes plates, bowls, cups, lids, straws, stirrers, forks, spoons, knives, napkins, trays, and other items primarily designed for use in consuming food.

(e) "Polystyrene foam" means a container made of blown polystyrene, and expanded and extruded foams (sometimes called Styrofoam™) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene), which is used, or is intended to be used, to hold prepared food.

(f) "Prepared food" means any food, including beverages, that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption, including but not limited to ready-to-eat and takeout food.

(g) "Vendor" means any store or business which sells or offers goods or merchandise, located or operating within the City of Sunnyvale.

**5.39.020 Polystyrene foam containers and service ware prohibited.**

(a) On or after April 22, 2014, a food provider shall not dispense prepared food to a customer in a polystyrene foam food container.

(b) On or after April 22, 2015, polystyrene foam food containers and polystyrene foam food service ware shall not be sold or provided by any vendor in the City of Sunnyvale.

**5.39.030 Exemptions.**

The following are exempt from the provisions of this Chapter:

(a) Raw eggs and raw, butchered meat, fish, or poultry that is sold from a butcher case or a similar retail appliance.

(b) A food provider may dispense prepared food to a customer using polystyrene foam containers if that food provider demonstrates, in writing, to the satisfaction of the director of environmental services that compliance with the provisions of this Chapter will impose a unique problem, not generally applicable to other persons in similar circumstances, that will result in an undue economic hardship. The director of environmental services shall put the decision to grant or deny an exemption in writing and may exempt the food vendor pursuant to this subdivision until April 22, 2015, or not more than one year from the date of the demonstration, whichever date is sooner. The Director's decision shall be final.

**5.39.040 Violations.**

(a) The director of environmental services has primary responsibility for enforcement of this chapter. The director of environmental services 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, investigating violations, issuing fines and entering the premises of any store during business hours.

(b) If the director of environmental services determines that a violation of this chapter has occurred, he or she will issue a written warning notice to the operator of the vendor or food provider that a violation has occurred and the potential penalties that will apply for future violations.

(c) Any vendor or food provider that violates or fails to comply with any of the requirements of this chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.

(d) If a vendor or food provider has subsequent violations of this chapter that are similar in kind to the violation addressed in a written warning notice, the following penalties will be imposed and shall be payable by the operator:

(1) A fine not exceeding one hundred dollars for the first violation after the written warning notice is given;

(2) A fine not exceeding two hundred dollars for the second violation after the written warning notice is given; or

(3) A fine not exceeding five hundred dollars for the third and any subsequent violations after the written warning notice is given.

(e) A fine shall be imposed for each day a violation occurs or is allowed to continue.

(f) All fines collected pursuant to this chapter shall be deposited in the Wastewater Management Fund of the department of environmental services to assist the department with its costs of implementing and enforcing the requirements of this chapter.

(g) Any vendor or food provider who receives a written warning notice or fine may request an administrative review of the accuracy of the determination or the propriety of any fine issued, by filing a written notice of appeal with the director of environmental services no later than thirty days after receipt of a written warning notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses, that the appellant wishes to be considered in connection with the appeal. The appeal will be heard by a hearing officer designated by the director of environmental services. The hearing officer will conduct a hearing concerning the appeal within forty-five days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the city, and will give the appellant ten days prior written notice of the date of the hearing. The hearing officer may sustain, rescind, or modify the written warning notice or fine, as applicable, by written decision. The hearing officer will have the power to waive any portion of the fine in a manner consistent with the

decision. The decision of the hearing officer is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on October 22, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on November 19, 2013, by the following vote:

AYES: GRIFFITH, MOYLAN, WHITTUM, MEYERING, MARTIN-MILIUS, DAVIS

NOES:

ABSTAIN:

ABSENT: SPITALERI

ATTEST:

APPROVED:

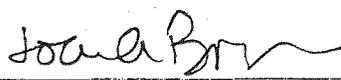
  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor

Date of Attestation: 11/26/2013

(SEAL

APPROVED AS TO FORM:

  
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Joan A. Borger, City Attorney