

## LARA WEISIGER

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**From:** Trish Spencer  
**Sent:** Monday, June 05, 2017 5:28 PM  
**To:** LARA WEISIGER; IRMA Glidden  
**Subject:** Fwd: Straw ban question  
**Attachments:** StyrofoamOrdinance.pdf; ATT00001.htm; CaseStudy\_Lola's\_02.23.16aRevised.pdf; ATT00002.htm; Sustainable PackagingOrdinanceAdopted.pdf; ATT00003.htm; Sustainability.pdf; ATT00004.htm; Letter to Restaurants.pdf; ATT00005.htm; Flyer.pdf; ATT00006.htm; FAQs.doc; ATT00007.htm; Sp\_Flyer.doc; ATT00008.htm; FAQs\_Spanish.doc; ATT00009.htm; 8.16.16 Bd Letter re Food Service.pdf; ATT00010.htm

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From: "**Ruth's Gmail**" <[ruth.abbe@gmail.com](mailto:ruth.abbe@gmail.com)>  
Date: Fri, Jun 2, 2017 at 12:17 PM -0700  
Subject: Fwd: Straw ban question  
To: "Trish Spencer" <[TSpencer@alamedaca.gov](mailto:TSpencer@alamedaca.gov)>  
Cc: "Liam Garland" <[LGarland@alamedaca.gov](mailto:LGarland@alamedaca.gov)>, "MARIA DIMEGLIO" <[MDIMEGLI@alamedaca.gov](mailto:MDIMEGLI@alamedaca.gov)>, "Debi Ryan" <[debi@proudplanet.com](mailto:debi@proudplanet.com)>, "Sylvia Gibson" <[sylviansyl@yahoo.com](mailto:sylviansyl@yahoo.com)>, "Michele Kuttner" <[mlkuttner@gmail.com](mailto:mlkuttner@gmail.com)>, "Jim Oddie" <[JOddie@alamedaca.gov](mailto:JOddie@alamedaca.gov)>, "Marilyn Ezzy Ashcraft" <[MEzzyAshcraft@alamedaca.gov](mailto:MEzzyAshcraft@alamedaca.gov)>, "Malia Vella" <[MVella@alamedaca.gov](mailto:MVella@alamedaca.gov)>, "Frank Matarrese" <[FMatarrese@alamedaca.gov](mailto:FMatarrese@alamedaca.gov)>

Mayor Spencer — I corresponded with Tim Goncharoff at Santa Cruz County about their plastic straw ban ordinance (which includes plastic lids, plastic stirrers, and requires all food ware to be compostable or recyclable - see below). We were concerned about how the fast food franchises and bubble tea outlets reacted to their ban - there was surprisingly little pushback (see below). This was the same experience that Alameda had when it implemented its styrofoam ban in 2008 (which also requires all food ware to be compostable or recyclable).

More interesting was that they did not change their 2008 food ware ordinance (which is similar to ours), they just provided an interpretation that things like straws, stirrers and lids are not recyclable (see staff report attached). In actuality, we may already have a plastic straw ban in Alameda. Our current ordinance is attached.

They also conducted extensive outreach to their food service businesses to inform them of the requirement.

They also specified that in order to be considered “compostable”, the items must be BPI (Biodegradable Products Institute) certified. Thus, coffee cups could not be lined with plastic (as they are in Alameda coffee shops currently), but must be BPI certified - which means that the coating must be compostable (like PLA polylactic acid).

Therefore, in your council referral, we may not need a new ordinance. You could request that staff look into an interpretation of the existing ordinance to conform to what is “recyclable” and “compostable” and provide outreach to Alameda businesses on sources for the alternatives. Tim included a lot of good information about what they did in Santa Cruz County.

We still like the “straws on request” concept, as we wouldn’t want to automatically be served a paper straw if we didn’t want one. Lola’s Chicken Shack on Park Street implemented this policy and reduced straw usage by 43% (see case study attached).

Let me know if you need any more information in order to support your council referral. Thanks, Ruth 415-235-1356

CITY OF ALAMEDA ORDINANCE NO. 2977  
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING  
SECTION 4-4 TO ARTICLE I (LITTERING AND  
MAINTENANCE OF PROPERTY) OF CHAPTER IV  
(OFFENSES AND PUBLIC SAFETY) TO PROHIBIT  
POLYSTYRENE FOAM FOOD SERVICE WARE AND  
AMENDING SECTION 1-5.6 OF CHAPTER 1 (GENERAL)  
TO AUTHORIZE ADDITIONAL CITY EMPLOYEES TO  
SERVE AS CODE ENFORCEMENT OFFICERS

Approved as to Form

*Debra A. Highsmith*  
City Attorney

BE IT ORDAINED by the City Council of the City of Alameda that:

Section 1. The Alameda Municipal Code is amended by adding  
Section 4-4 (PROHIBITION OF POLYSTYRENE FOAM FOOD SERVICE WARE)  
to Article I (LITTERING AND MAINTENANCE OF PROPERTY) of Chapter IV  
(OFFENSES AND PUBLIC SAFETY), which shall read as follows:

**4-4 POLYSTYRENE FOAM FOOD SERVICE WARE**

**4-4.1 Title**

This section shall be known as the Alameda Polystyrene Foam Food  
Service Ware Reduction Law.

**4-4.2 Purpose and Findings**

The City Council finds that polystyrene foam food service ware constitutes a  
significant adverse environmental impact. Solid waste that is non-degradable or  
non-recyclable poses an acute problem for any program of integrated waste  
management. Such waste covers the City's streets, parks, public places, and  
open spaces. It clogs storm drains, arch culverts, and catch basins thereby  
significantly increasing time and expense to public works maintenance crews  
during a storm event. It enters the marine and natural environment and is  
damaging to the environment and marine wildlife.

Products which are degradable or recyclable offer environmentally sound  
alternatives to non-degradable and non-recyclable products currently used. By  
decaying into their constituent substances, degradable products, compared to their  
non-degradable equivalents, are less of a danger to the natural environment, less  
likely to be a permanent blight on the urban landscape, less likely to engender  
storm drainage system maintenance expenses, and less likely to cause flooding  
due to clogged storm drains, arch culverts, and catch basins. Recycling of  
products reduces costly waste of natural resources and energy used in production  
of new products as well as costly disposal of waste in landfills.

#### **4-4.3 Definitions**

“Affordable” means purchasable by the Food Vendor of a non-polystyrene form container for the same or less purchase cost than the non-biodegradable, non-compostable alternative.

“ASTM Standard” means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics.

“Biodegradable” means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal and is consistent with the materials accepted at the composting facility used by the City’s franchisee for integrated waste management.

“Compostable” means all materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner consistent with the composting facility used by the City’s franchisee for integrated waste management. Compostable disposable food service ware must meet ASTM standards for compostability and must be clearly labeled.

“City facilities” means any building, structure or vehicle owned or operated by the City of Alameda, its agencies, departments and the integrated waste franchisee that are located within the City of Alameda.

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

“Disposable food service ware” means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items that are designed for one-time use and on, or in, which any restaurant or retail food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at restaurants or retail food vendors.

“Food vendor” means any restaurant or retail food vendor located or operating within the City of Alameda.

“Polystyrene foam” means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic

petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make items such as cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.

“Prepared food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption. For the purposes of this ordinance, “prepared food” does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared food may be eaten either on or off the premises, also known as “takeout food.”

“Restaurant”, for the purposes of this Article, means any establishment located within the City of Alameda that sells prepared food for consumption on, near, or off its premises by customer. “Restaurant,” for purposes of this Article, includes itinerant restaurants, pushcarts and vehicular food vendors.

“Retail food vendor” means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the City of Alameda that sells prepared food.

#### **4-4.4 Prohibited food service ware**

a. Food vendors are prohibited from providing prepared food to customers in disposable food service ware that uses polystyrene foam.

b. All City facilities are prohibited from using polystyrene foam disposable food service ware and all city departments and agencies will not purchase or acquire polystyrene foam disposable food service ware for use at city facilities.

c. Except as provided in Section 4-4.6 of this Article, agents, contractors and vendors doing business with the city shall be prohibited from using polystyrene foam disposable food service ware in City facilities or on City projects within the City of Alameda.

#### **4-4.5 Required biodegradable and compostable disposable food service ware**

a. All food vendors using any disposable food service ware will use biodegradable or compostable disposable food service ware unless they can show an affordable biodegradable or compostable product is not available for a specific application. Food vendors are strongly encouraged to provide reusable food service ware in place of disposable food service ware. In instances where food

vendors decide to use a biodegradable or compostable disposable food service ware product that is not affordable, a food vendor may charge a "take out fee" to customers to cover the cost difference.

b. All City facilities will use biodegradable or compostable disposable food service ware unless they can show an affordable biodegradable or compostable product is not available for a specific application.

c. City contractors and vendors doing business with the City will use biodegradable food service ware in City facilities or on City projects within the City of Alameda, unless they can show an affordable biodegradable or compostable product is not available for a specific application.

#### **4-4.6 Exemptions**

a. Prepared foods packaged outside the City of Alameda are exempt from the provisions of this Article. Purveyors of food prepared or packaged outside the City of Alameda are encouraged to follow the provisions of this Article.

b. Food vendors that are currently existing or are established in the City by July 1, 2008, will be exempted from the provisions of this Article prohibiting the use of polystyrene foam food service ware if the City Manager or his/her designee finds that an undue hardship exists. Exemptions may be granted for up to a one-year period from the effective date of the Ordinance.

The phrase "undue hardship" shall be construed to include, but not be limited to a food vendor demonstrating to the satisfaction of the City Manager or his/her designee that there is significant difficulty or expense incurred by meeting the prohibition which directly impacts the food vendor's ability to conduct business or the food vendor has been deprived a legally protected right.

Significant difficulty will be established based on, but not necessarily limited to, the food vendor documenting the list of suppliers contacted and explaining how it has determined that no acceptable alternative is available at a commercially reasonable price, for reasons which are uniquely burdensome to the food vendor and its type of operation(s) or the food being served.

Significant cost will be established by, but not necessarily limited to, demonstrating that the acceptable alternative food ware is not available at a commercially reasonable price and the additional cost associated with providing the acceptable alternative food ware is uniquely burdensome to the food vendor based on the type of operation(s) affected, the overall size of the business, the number, type and location of its facilities and the impact on the overall financial resources of the food vendor. It shall also consider the ability to recover the additional costs through existing expenses and resources, the availability of tax credits and deductions, and/or outside funding.

c. Polystyrene foam coolers and ice chests that are intended for reuse are exempt from the provision of this Article.

d. Disposable food service ware composed entirely of aluminum is exempt from the provisions of this Article.

e. Emergency supply and services procurement: In a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety, City facilities, food vendors, agents, contractors, and vendors doing business with the city shall be exempt from the provisions of this Article.

#### **4-4.7 Liability and enforcement**

a. The Public Works Director or his/her designee will have primary responsibility for enforcement of this Article. The Public Works Director or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Article, including, but not limited to, entering the premises of any food vendor during regular business hours to verify compliance.

b. Anyone violating or failing to comply with any of the requirements of this Article will be subject to an administrative citation pursuant to Section 1.7 et seq. of the Alameda Municipal Code.

c. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Article.

#### **4-4.8 Violations – Penalties**

a. Enforcement of the provisions of this Article shall be pursuant to the provisions adopted for the imposition of administrative citations and the hearing procedures related to those citations adopted under Section 1-7 et seq. of the Alameda Municipal Code.

Section 2. Section 1-5.6 (AUTHORIZATION OF CODE ENFORCEMENT OFFICERS; LIMITATIONS) of Chapter 1 (GENERAL) of the Alameda Municipal Code is amended to add new categories of employees empowered to issue citations, which shall read as follows:

##### **1-5.6 Authorization of Code Enforcement Officers; Limitations**

a. The following classification of City employees and agents shall have the authority under Penal Code Section 836.5 to issue citations for violations of the Alameda Municipal Code:

1. Fire/Building Code Compliance Officer;
2. Planning and Building Director;
3. Public Works Director;
4. Public Works Maintenance Superintendent;
5. City Engineer;
6. Building Official;
7. Combination Building Inspector;
8. Supervising Building Inspector;
9. Environmental Services Manager;
10. Environmental Services Program Specialist I and II.
11. Any other position designated by the City Manager

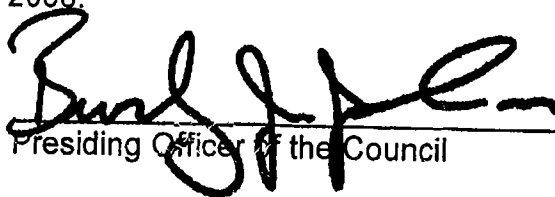
Section 3. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council of the City of Alameda hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 4. All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance hereby adopted, to the extent of such conflict only, are hereby repealed.

Section 5. The City hereby finds and determines that this Ordinance is not subject to the requirements of the California Environmental Quality Act (CEQA). Specifically, the basis for the exemptions include, without limitation, the following (each providing a separate and independent basis and when viewed collectively providing an overall basis for an exemption): (1) CEQA Guidelines section 15061(b)(3); (2) CEQA Guidelines section 15378(a); (3) CEQA Guidelines section 15378(b)(2); (4) CEQA Guidelines section 15308; and (5) CEQA Guidelines section 15307.

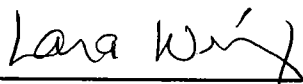
Section 6. The City Clerk of the City of Alameda is hereby directed to cause this ordinance to be published in the Official Newspaper of the City of Alameda.

Section 7. This ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect on July 1, 2008.

  
Presiding Officer of the Council



Attest:

  
\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 2<sup>nd</sup> day of January, 2008 by the following vote to wit:


AYES: Councilmembers deHaan, Gilmore, Matarrese, Tam and Mayor Johnson – 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 3<sup>rd</sup> day of January, 2008.

  
\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

# CASE STUDY: Lola's Chicken Shack



## BUSINESS PROFILE

**Name:** Lola's Chicken Shack

**Business Type:** Fast Casual

**Location:** Alameda, CA

**On-site dining:** 48 seats

**Take-out:** Yes

**Employees:** 12

**Ware washing:** Dishwasher

**Lola's Chicken Shack** is a family-run restaurant, serving specialty fried chicken from scratch in a casual, friendly environment. They are a local favorite, conducting about 200 transactions per day and employ 12 staff. They have a robust catering clientele and about 50% of their orders are for dine-in. Customers place their order at the counter and seat themselves. Staff serve the food and bus the tables.

## Packaging Practices prior to Rethink Disposable:

- ➔ Disposable plastic cups offered for water
- ➔ All high school students served in large disposable food boxes
- ➔ Sugar packets, disposable plastic stir sticks, and wrapped straws offered for coffee and cold drinks



Owners Mark and Nancy Rogers knew that their location near the local high school would present an interesting challenge. Service had to be quick and efficient, as students and other customers form a line out of the door at lunchtime. They relied heavily on disposables to speed up service. When the owners learned that they were using 52,430 disposable plastic water cups per year, they were ready to make the switch to reusable water glasses, but were concerned about increased water usage due to additional dishwashing.

## Recommendations Implemented:

- ➔ Reusable water cups replaced disposable water cups
- ➔ Provided reusable spoons and bulk sugar dispensers for coffee and iced tea
- ➔ Unwrapped straws in a dispenser replaced wrapped straws
- ➔ Minimized disposable foodware for students
- ➔ Eliminated disposable lids for students

The **ReThink Disposable** recommendations improved the dining room experience, saved staff time, and streamlined the operation. The new reusable water glasses were an easy switch to make with a very low up-front cost. Washing them requires only three additional loads and five extra gallons of water consumed in the dishwasher per day. The owners also appreciate the time and money they save now that they no longer have to order thousands of disposable plastic cups.

The unwrapped straws in a dispenser with signage reading “Do you *Really* need a straw?” resulted in a surprising 43% reduction in straw usage! The owners have noticed that fewer straws and wrappers to sort out of bus tubs have led to a faster, streamlined dishwashing process. The self-service area looks clean and organized with the elimination of wrapped straws, stir sticks, and sugar packets.

The owners were able to significantly minimize disposable foodware in the dining room for high school students. They replaced large to-go boxes with a smaller food tray, and eliminated disposable lids on items like mac and cheese. These simple changes save \$1,458 and prevent 573 lbs. of waste annually.



*Before and After: Self-service Station*



## Results:

Recommendation	Product Replaced or Minimized	% Disposable Reduction	Payback Period (including dishwasher)	Annual Savings (after payback period)	Annual Waste Reduction
Provide unwrapped straws in a dispenser with customer signage	Wrapped straws	43%	1 year, 9 days	\$68	17 lbs.
Provide reusable spoons for stirring coffee	Plastic stir sticks	100%	0 days	\$9	1 lb.
Provide reusable cups for water	10 oz Plastic cups	100%	15 days	\$1,670	809 lbs.
Replace large box with smaller food tray for on-site dining (students)	Paper food box	45%	0 days	\$1,458	573 lbs.
				<b>\$3,205</b>	<b>1,400 lbs.</b>



**Mark Rogers, owner:** “There is less trash in the self service area due to straw and sugar wrappers, and no more overfilled garbage cans. In a nutshell, it’s a win, win, win. It’s a win for the planet, a monetary win for me, and an operational win.”

### THE BOTTOM LINE

- 65,022 disposable items reduced per year
- \$3,205 annual savings after payback period
- 1,400 pounds of annual waste reduction
- Increased water usage for the reusable cups was negligible and less than 5 gallons per day
- Increased operational efficiency (saved staff time)
- Improved dining experience (less mess)
- Business has increased by 40% — with no increased trash

ReThink Disposable is a [Clean Water Fund](#) program conducted in partnership with local businesses and government agencies. Generous support for the program is provided by a changing list of public and private funders. To learn more about the program, its partners, and funders, visit: [www.rethinkdisposable.org](http://www.rethinkdisposable.org).



Tel. 415.369.9174  
[ReThinkDisposable@cleanwater.org](mailto:ReThinkDisposable@cleanwater.org)  
[www.rethinkdisposable.org](http://www.rethinkdisposable.org)



**ORDINANCE NO. \_\_\_\_\_**  
**AN ORDINANCE OF THE COUNTY OF SANTA CRUZ**  
**AMENDING CHAPTER 5.46 OF THE COUNTY CODE PERTAINING TO**  
**THE USE AND SALE OF POLYSTYRENE FOAM**

**Chapter 5.46**  
**ENVIRONMENTALLY ACCEPTABLE MATERIALS**

**Sections:**

- 5.46.010 Findings and intent.**
- 5.46.020 Definitions.**
- 5.46.030 Prohibited Food Service Ware and Products.**
- 5.46.035 Non-food Packaging Material.**
- 5.46.040 Required Biodegradable/Compostable or Recyclable Disposable Food Service Ware**
- 5.46.050 Implementation; county contracts and leases.**
- 5.46.060 Exemptions.**
- 5.46.070 Enforcement.**
- 5.46.080 Violations.**
- 5.46.090 Severability.**
- 5.46.100 No conflict with federal or state law.**
- 5.46.110 Preemption.**

**5.46.010 Findings and intent.**

The Board of Supervisors finds and declares:

- A. The County of Santa Cruz has a duty to protect the natural environment, our economy, and the health of its citizens.
- B. Products made from expanded polystyrene foam (commonly called Styrofoam) are not biodegradable, returnable or recyclable. Polystyrene foam easily breaks up into smaller pieces and because it is lightweight, is carried by the wind even when it has been disposed of properly.
- C. As litter, polystyrene foam is highly durable, persisting and detracting from the appearance of an area longer than any other type of litter. There is a prevalence of polystyrene foam debris littering our parks and public places, streets and roads, waterways, storm drains and beaches. This litter ultimately floats, or is blown, into the Monterey Bay. This litter exists at a financial cost to residents and an environmental cost to our natural resources.
- D. The County of Santa Cruz is situated at the edge of the Monterey Bay National Marine Sanctuary. Marine animals and birds often confuse

polystyrene foam pieces as a food source which, when ingested, can impact the digestive track which often leads to death.

- E. The U.S. EPA has stated that the physical properties of polystyrene foam are such that “the material can have serious impacts on human health, wildlife, the aquatic environment and the economy.” According to the U.S. Food and Drug Administration, there is medical evidence to suggest that styrene, a primary component of polystyrene foam, leaches from polystyrene foam containers into food and drink. The general public, especially the non-English speaking community, is not typically warned of any potential hazard from styrene. A 1986 EPA study detected Styrene in the fat tissue of every man, woman and child tested.
- F. Discarded polystyrene constitutes a significant portion of the County of Santa Cruz waste stream. Laws, policies and regulations pertaining to material which is difficult to recycle have become a vital component in the efforts to reduce the amount of disposed waste.
- G. It is not economically feasible to recycle polystyrene in Santa Cruz County. Eliminating the use of polystyrene foam and other non-compostable, and nonrecyclable items will maximize the operating life of our landfills and will lessen the economic and environmental costs of waste management for businesses and citizens of Santa Cruz County.
- H. Food waste, including food related packaging, makes up more than thirty percent of the county of Santa Cruz waste stream and the county of Santa Cruz has adopted a policy and program goal of establishing municipal level composting to manage this portion of the waste stream. Countywide composting will help the county to achieve its zero waste goal, including seventy-five percent landfill diversion by the year 2010. If polystyrene foam is found within compost feedstock, the compost is rendered unmarketable and unusable because the application of such compost degrades the soil.
- I. At the present time, over fifty businesses in the county of Santa Cruz engage in organics recycling and it has been demonstrated that the use of biodegradable or compostable food service ware can reduce waste disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill. Compost produced from biodegradable products can be used as a soil amendment for farms, landscaping and gardens thereby moving towards a healthier zero waste system.
- J. Biodegradable/compostable and recyclable take-out food packaging such as cups, plates, hinge containers, cutlery and straws are made from organic materials such as paper, sugarcane stalk, corn waste and potato starch.

These products are available locally and are competitively priced. (Ord. 4920 § 2 (part), 4/8/08)

- K. According to local environmental organizations, despite the passage of the County's Environmentally Acceptable Packaging Materials Ordinance in 2008, polystyrene foam is still one of the most abundant types of litter found during beach cleanups.
- L. According to the California Department of Resources Recycling and Recovery (CalRecycle) polystyrene's overall environmental impacts were the second highest of any product, behind only aluminum,
- M. Styrene is a suspected carcinogen and neurotoxin which potentially threatens human health.
- N. Alternative products exist for almost all uses of polystyrene foam.
- O. Due to these concerns nearly 100 cities have banned polystyrene foam food service ware including several California cities, and many local businesses and several national corporations have successfully replaced polystyrene foam and other non-biodegradable food service ware with affordable, safe, biodegradable products.
- P. Restricting the use of polystyrene foam products will further protect the public health and safety of the residents of the County of Santa Cruz, the County's natural environment, waterways and wildlife, would advance the County's goal of limiting greenhouse gas impacts, and contribute toward the County's goal of Zero Waste.

#### **5.46.020 Definitions.**

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

"Affordable" means purchasable by the Food Vendor for same or less purchase cost than the non-Biodegradable, non-Polystyrene Foam alternative.

"ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International standards D6400 or D6868 for biodegradable and compostable plastics.

"Biodegradable" means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

"Compostable" means all materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material,

mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Compostable Disposable Food Service Ware includes ASTM-Standard Bio-Plastics (plastic-like products) that are clearly labeled, preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic. For the purposes of this chapter the term biodegradable shall have the same meaning as compostable. This chapter uses the terms biodegradable and compostable interchangeably and in all cases whether the terms are used separately, in the disjunctive or in the conjunctive they shall always be interpreted and applied consistent with the definition of the term “compostable.”

“County” or “County of Santa Cruz” means all that territory within the unincorporated area of the county of Santa Cruz, state of California.

“County contractors and lessees” means any person or entity that has a contract with the county for public works or improvements to be performed, for a franchise, concession or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the county, or to be paid out of monies deposited in the treasury or out of trust monies under the control or collected by the county.

“County facilities” means any building, structure or vehicles owned or operated by the county of Santa Cruz, its agent, agencies, departments and franchisees.

“County facility food provider” means any entity that provides prepared food in county facilities.

“Disposable food service ware” is interchangeable with “to go” packaging and includes all containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, napkins and other items designed for one-time use for prepared foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by food providers. The term “disposable food service ware” does not include items composed entirely of aluminum or polystyrene foam coolers and ice chests that are intended for reuse.

“Food provider” means any business, organization, entity, group or individual, and including retail food establishments, located in the county that offers food or beverage to the public.

“Person” means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.

“Polystyrene foam” means 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 polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. The term “polystyrene” also include clear or solid polystyrene which is know as “oriented polystyrene.”

“Prepared food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food provider’s premises or within the county of Santa Cruz. For the purposes of this chapter, prepared food does not include packaging for raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared food may be eaten either on or off the premises, also known as “takeout food.”

“Recyclable” means material that can be sorted, cleansed, and reconstituted using recycling collection programs available in Santa Cruz County for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

“Retail food establishment” means all sales outlets, stores, shops, vehicles or other places of business located within the county of Santa Cruz which operate primarily to sell or convey foods or beverages directly to the ultimate consumer, which foods or beverages are predominantly contained, wrapped or held in or on packaging. Retail food establishment shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, short-order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out prepared food place, industrial feeding establishment, catering kitchen, mobile food preparation unit, commissary, grocery store, public food market, produce stand, food stand, or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served or provided for the public; and any organization group or individual which provides food or beverage as part of its service or in conjunction with a special event it sponsors. (Ord. 4920 § 2 (part), 4/8/08)

“Special Event” means an applicant for any special events permit issued by the County or any County employee(s) responsible for any organized special event.

“Retail vendor” means any store or other business that sells goods or merchandise located or operating within the unincorporated area of the County of Santa Cruz.

#### **5.46.030 Prohibited disposable food service.**

A. Retail food establishments shall not sell, hand out, give away, distribute or otherwise make available for public or customer use prepared food in disposable food service ware that contains polystyrene foam.



- B. County facility food providers may not provide prepared food in disposable food service ware that contains polystyrene foam.
- C. County departments may not purchase, acquire or use disposable food service ware that contains polystyrene foam.
- D. County contractors and lessees may not use disposable food service ware that contains polystyrene foam. (Ord. 4920 § 2 (part), 4/8/08)

#### **5.46.031 Prohibited retail sales**

No retail vendor or special event in the unincorporated area of the County of Santa Cruz may sell, rent or otherwise provide any product which is composed entirely or primarily of polystyrene foam, except as exempted in section 5.46.060 below. This specifically includes but is not limited to cups, plates, bowls, clamshells and other products intended primarily for food service use, as well as coolers, pool or beach toys, packing peanuts or other packaging materials.

#### **5.46.035 Non-food packaging material.**

It shall also be a policy goal of the county that business establishments located outside the county of Santa Cruz shall not package any non-food product in any package which utilizes polystyrene foam both block polystyrene or packing peanuts; or purchase, obtain, keep, distribute or sell for home or personal use, or give, or otherwise provide to customers any packaging which utilizes polystyrene foam. The county shall promote and encourage, on a voluntary basis, the elimination of all polystyrene foam packaging. (Ord. 4920 § 2 (part), 4/8/08)

#### **5.46.040 Required biodegradable/compostable or recyclable disposable food service.**

- A. All retail food establishments utilizing any disposable food service ware shall use a biodegradable/compostable or recyclable product, unless there is no affordable product available as determined by the director of public works in accordance with this subsection and Section 5.46.060(B). Not later than thirty days before the operative date of this chapter, and after a public hearing, the director of public works shall adopt a list of available suitable affordable biodegradable/compostable or recyclable alternatives for each product type. The director of public works shall regularly update the list.
- B. All county facilities and departments using any disposable food service ware shall use biodegradable/compostable or recyclable disposable food service ware unless there is no affordable biodegradable or compostable product available as determined by the director of public works in accordance with subsection A of this section.

C. County contractors and lessees using any disposable food service ware shall use biodegradable/compostable or recyclable disposable food service ware in city/county facilities while performing under a county contract or lease unless there is no affordable biodegradable or compostable product available as determined by the director of public works in accordance with subsection A of this section. (Ord. 4920 § 2 (part), 4/8/08)

#### **5.46.050 Implementation; county contracts and leases.**

A. The public works director is authorized to promulgate regulations, guidelines and forms and to take any and all other actions reasonable and necessary to enforce this chapter.

B. All county contracts and leases, shall contain the following minimum language: “Contractor agrees to comply fully with and be bound by all of the provisions of the food packaging ordinance as set forth in the Santa Cruz County Code Chapter 5.46 including the remedies provided, and implementing guidelines and rules. The provisions of this chapter are incorporated herein by reference and made a part of this agreement as though fully set forth. This provision is a material term of this agreement. By entering into this agreement, the contractor agrees that if it breaches this provision, the county will suffer actual damages that will be impractical or extremely difficult to determine; further, contractor agrees that the sum of one hundred dollars liquidated damages for the first breach, two hundred dollars liquidated damages for the second breach in the same year, and five hundred dollars liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that the county will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by the county because of contractor’s failure to comply with these provisions.” (Ord. 4920 § 2 (part), 4/8/08)

#### **5.46.060 Exemptions.**

A. There are no exemptions that allow for the use of polystyrene foam disposable food service ware.

B. The Board of Supervisors may exempt a retail vendor or special event from the requirements of this chapter for a one year period upon showing that this chapter would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The director of public works shall put the decision to grant or deny a waiver in writing and it shall be final.

C. A retail vendor or special event granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

D. An exemption application shall include all information necessary for the county 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 determine facts regarding the exemption application.

E. The director may approve the exemption application, in whole or in part, with or without conditions.

F. Foods prepared or packaged outside the county and sold inside the county are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the county are encouraged to follow the provisions of this chapter.

G. Products which pose a small risk of becoming litter or in which polystyrene foam is included for insulating or flotation purposes and is completely encased in more durable material are exempt from the provisions of this ordinance. Examples include surfboards, boats, life preservers, construction materials, craft supplies and durable coolers not principally composed of polystyrene.

H. Packaging for meat is exempt from the provisions of this chapter.

I. Packaging for medical devices and for harvesting and storage of grapes is exempt from the provisions of this chapter.

#### **5.46.070 Enforcement.**

Enforcement of this chapter shall be as follows:

A. The Director of Public Works, or designee, shall have primary responsibility for enforcement of this chapter and shall have authority to issue citations for violation of this chapter. The director, or designee, is authorized to establish regulations or administrative procedures to obtain compliance with this chapter, including, but not limited to, inspecting any vendor's premises to verify compliance in accordance with applicable law.

B. Anyone violating or failing to comply with any of the requirements of this chapter or of any regulation or administrative procedure authorized by it shall be guilty of an infraction.

C. The county attorney may seek legal, injunctive, or any other relief to enforce this chapter and any regulation or administrative procedure authorized by it.

D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

E. The county may inspect any retail vendor's or special event's premises to verify compliance with this chapter. (Ord. 4920 § 2 (part), 4/8/08)

#### **5.46.080 Violations.**

Violations of this chapter shall be enforced as follows:

A. For the first violation, the Director of Public Works, or the Director's designee, upon determination that a violation of this chapter has occurred, shall issue a written warning notice to the retail vendor or special event promoter specifying that a violation of this chapter has occurred, along with the appropriate penalties in the event of future violations. The vendor will have thirty days to comply.

B. The following penalties will apply for subsequent violations of this chapter:

1. A fine not exceeding one hundred dollars for the first violation thirty days after the first warning.
2. A fine not exceeding two hundred dollars for the second violation sixty days after the first warning.
3. A fine not exceeding five hundred dollars for the third violation ninety days after the first warning, and for every thirty days not in compliance.

C. Vendors or special events who violate this chapter in connection with commercial or noncommercial special events shall be assessed fines as follows:

1. A fine not exceeding two hundred dollars for an event of one to two hundred persons.
2. A fine not exceeding four hundred dollars for an event of two hundred one to four hundred persons.
3. A fine not exceeding six hundred dollars for an event of four hundred one to six hundred persons.
4. A fine not exceeding one thousand dollars for an event of six hundred one or more persons. (Ord. 4920 § 2 (part), 4/8/08)

#### **5.46.090 Severability.**

The provisions of this chapter are declared to be severable and if any provision, sentence, clause, section or part of this chapter is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this chapter or their application to persons and circumstances. (Ord. 4920 § 2 (part), 4/8/08)

#### **5.46.100 No conflict with federal or state law.**

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law. (Ord. 4920 § 2 (part), 4/8/08)

**5.46.110 Preemption.**

The provisions of this chapter shall be null and void on the day that California statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent California state or federal administrative agency issues and promulgates regulations, preempting such action by the county of Santa Cruz. The board of supervisors shall determine by ordinance whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section. (Ord. 4920 § 2 (part), 4/8/08)



# County of Santa Cruz

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SUSAN A. MAURIELLO, J.D., COUNTY ADMINISTRATIVE OFFICER

## PRESS RELEASE

Date: August 25, 2016  
Release: Immediately  
Contact: Jason Hoppin  
Communications Manager  
831-454-3401

### COUNTY BOARD EXPANDS SUSTAINABILITY ORDINANCE

Demonstrating a renewed commitment to environmental stewardship, the Santa Cruz County Board of Supervisors has taken further steps to help local food service businesses become more sustainable, while reducing litter and cutting the waste flowing into local landfills.

Under new rules that go into effect January 1, 2017, local restaurants and other food service businesses must comply with heightened standards for the use of biodegradable and compostable materials. On that date, all to-go packages, utensils, straws, stir sticks, cups and lids must be certified as fully compostable.

“The County passed its Sustainable Packaging Ordinance back in 2007,” said Tim Goncharoff, County resource planner. “But we’ve learned since then that a lot of the products marketed as compostable or biodegradable really aren’t. And that’s created real problems with our composting program, especially as we’re about to roll it out to many more local businesses.”

Santa Cruz County has long been an early adopter of environmentally friendly practices and policies, and was among the first jurisdictions to implement curbside recycling, ban polystyrene to-go containers and single-use plastic bags, and prohibit the sale of polystyrene toys and other items. The Board also passed a Zero Waste Plan to eventually eliminate landfill waste.

The new rules close a loophole with current regulations, which lack strict definitions of what is considered “biodegradable.” The result was that many products still need to be screened from food waste and in some cases led to food waste being sent to the landfill rather than composted.

The changes are also needed to comply with AB 1826, which expanded California’s Mandatory Commercial Organics Recycling (MORE) law to include a greater number of



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participating businesses. More than 50 Santa Cruz County businesses in the unincorporated area participate in organic waste composting, while local waste hauler GreenWaste Recovery is working with local businesses to double that figure.

Advances in technology and the growth of the biodegradable market have led to many options for local businesses. An independent testing lab, the Biodegradable Products Institute, now certifies products that fully break down in commercial composting operations. A full list of products and sources is available at [www.bpiworld.org](http://www.bpiworld.org).

Additionally in 2017, plastic straws and stir sticks, as well as cups lined with plastic and lids made of #6 polystyrene, will no longer be allowed as they cannot be effectively recycled. Small plastics in particular pose a danger to a variety of marine life.

The County will contact food service businesses in the unincorporated area by mail and in person to educate business owners about the new requirements, share samples of acceptable products and to alert business owners about the changes.

For more information, contact County Recycling and Solid Waste Services at (831) 454-2160 or go to the County web site at [www.santacruzcountyrecycles.org](http://www.santacruzcountyrecycles.org).