

ORDINANCE NO. 1925

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, TO ADD ARTICLE V (“POLYSTYRENE FOAM DISPOSABLE SERVICE WARE”) TO CHAPTER 13.20 (“STORM DRAINS AND DISCHARGES”) TO TITLE 13 (“PUBLIC SERVICES”) OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA” TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, polystyrene foam 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;

WHEREAS, polystyrene disposable food service ware comprises a majority of expanded polystyrene (“EPS”) litter observed in storm drains;

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

WHEREAS, the proposed regional ordinances disallowing the use of polystyrene disposable food service ware constitute “Projects” subject to the California Environmental Quality Act (“CEQA”), Pub. Res. Code § 21000 et seq.;

WHEREAS, the City of San Jose, as lead agency, conducted and prepared a regional environmental review pursuant to CEQA, and included the City of Santa Clara as a responsible agency in that review;

WHEREAS, on August 27, 2013, the City of San Jose conducted a public hearing and adopted the Negative Declaration analyzing the regional environmental impacts of local ordinances in the region to phase-out polystyrene disposable food service ware;

WHEREAS, as a responsible agency in that CEQA review, the City of Santa Clara must make a determination as to the adequacy of the environmental documentation prepared for the Project and make findings for each significant environmental impact effect, if any, pursuant to CEQA Guidelines Section 15096(h); and,

WHEREAS, the Santa Clara City Council now wishes to make its own determination with respect to the Negative Declaration for the phase-out of polystyrene disposable food service ware, and adopt its own ordinance phasing out such polystyrene disposable food service ware.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That pursuant to CEQA Guidelines Section 15050(b), the City of Santa Clara hereby certifies the City Council has reviewed and considered the information in the Negative Declaration for the Project.

SECTION 2: In its limited role as a responsible agency under CEQA, the City of Santa Clara has reviewed and considered the information contained in the Negative Declaration, environmental findings, supporting documentation, and the whole of the record of proceedings. Based on this review, and pursuant to CEQA Guidelines Section 15096, the City of Santa Clara finds that, as to those potential environmental impacts with the City's powers and authorities as responsible agency, the Negative Declaration contains a complete, objective and accurate reporting of those potential impacts, and these findings reflect the independent judgment and analysis of the City Council of

Santa Clara. The environmental findings, as adopted by the City of San Jose, are incorporated herein by reference only and available for review in the City Clerk's Office.

SECTION 3: That a new Article V ("Polystyrene Foam Disposable Service Ware") is added to Chapter 13.20 ("Storm Drains and Discharges") of Title 13 ("Public Services") of "The Code of the City of Santa Clara, California," ("SCCC") to read as follows:

"Article V. Polystyrene Foam Disposable Service Ware

13.20.160 Definitions.

(a) "Disposable food service ware" means single-use disposable products used in the restaurant and food 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 Santa Clara 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), 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.

13.20.170 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 September 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.

13.20.180 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 13.20.170 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 the following to qualify for a “financial hardship” exemption: (1) a gross income under \$300,000 on its 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 Public Works Department. The Director of Public Works or designee may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be with or without condition, for a period of 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 or designee shall be final and is not subject to appeal.”


SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: Constitutionality, severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 6: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this 6th day of May, 2014, by the following vote:


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| AYES: | COUNCILORS: | Davis, Gillmor, Kolstad, Mahan, Marsalli and O’Neill and Mayor Matthews |
| NOES: | COUNCILORS: | None |
| ABSENT: | COUNCILORS: | None |
| ABSTAINED: | COUNCILORS: | None |

ATTEST: 

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

FINALLY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA this 20th day of May, 2014, by the following vote:

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| AYES: | COUNCILORS: | Davis, Gillmor, Kolstad, Mahan, Marsalli and O’Neill and Mayor Matthews |
| NOES: | COUNCILORS: | None |
| ABSENT: | COUNCILORS: | None |
| ABSTAINED: | COUNCILORS: | None |

ATTEST: 

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None