

AN ORDINANCE ADDING CHAPTER 6.118 TO THE GENERAL ORDINANCE CODE OF THE COUNTY OF ALAMEDA TO PROHIBIT POLYSTYRENE FOOD SERVICE WARE

The Board of Supervisors of the County of Alameda ordains as follows:

Title 6 of the Alameda County Health and Safety Code is hereby amended by adding chapter 6.118, Sections 6.118.005 to 6.118.20 to read as follows:

CHAPTER 6.118 POLYSTYRENE FOOD SERVICE WARE

SECTION I – General

6.118.005 Findings.

The Alameda County Board of Supervisors finds and declares the following:

- (a) Styrene, a component of Polystyrene, is a known hazardous substance and is classified as a possible human carcinogen by the United States Environmental Protection Agency ("EPA").
- (b) Polystyrene commonly used in food packaging is not biodegradable and is a common environmental pollutant.
- (c) Polystyrene products litter storm drains, streets, creeks, parks, and other public places. Polystyrene in the environment may become part of the food chain, resulting in negative impacts to tourism and wildlife.
- (d) Polystyrene is manufactured from nonrenewable petroleum products and in a 2004 study, the California Integrated Waste Management Board (CIWMB) ranked Polystyrene's environmental impacts second highest, behind aluminum, in the categories of energy consumption, greenhouse gas effect, and total environmental effect.
- (e) Discarded packaging from single servings of food and beverages constitutes a significant and growing portion of the waste stream.
- (f) There is no meaningful reuse or recycling of Polystyrene. Polystyrene products can take hundreds of years to deteriorate in the environment or a landfill.
- (g) Polystyrene is notorious as a pollutant that breaks down into smaller, non-biodegradable pieces that pose significant threats to marine and other wildlife from ingestion.

- (h) Cost-effective, reusable and biodegradable food packaging products are readily available for most food service applications such as cold cups, plates and hinge containers and are less toxic and more environmentally friendly than Polystyrene.
- (i) Numerous jurisdictions in California have adopted ordinances banning the use of Polystyrene packaging with local and national businesses successfully replacing Polystyrene and other non-biodegradable food packaging with affordable and reusable food service ware or biodegradable products.
- (j) Restricting the use of Polystyrene products will protect the public health and safety of the County's residents and environment, waterways and wildlife.
- (k) Restricting the use of Polystyrene products will reduce garbage in landfills and help the County meet its renewable and recycling goals.

6.118.010 Applicability.

This Chapter shall apply in all unincorporated areas of the County of Alameda.

6.118.020 Purpose of Chapter.

The purpose of this Chapter is to promote and protect the public health of the citizens and take steps to reduce litter and harmful materials from the environment by the regulation and limiting of the use of Polystyrene food packaging by food providers. This Chapter may be cited as the Polystyrene Food Service Ware Ordinance.

6.118.030 Definitions.

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

“County” means the County of Alameda.

"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.

“Director” means Director of the Alameda County Department of Environmental Health.

“Disposable Food Service Ware” means all disposable products used for serving, consuming or transporting food or beverages including, but not limited to plates, cups, bowls, cartons, trays, and hinged or lidded containers. Disposable food service ware includes single-use disposable items such as straws, cup lids, or utensils.

"Food Packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws, and lids on or in which any foods or beverages are placed or packaged or are intended to be placed or packaged.

"Food Provider" means any establishment within the jurisdiction of this Chapter, or any establishment which provides prepared food or beverages within the jurisdiction of this Chapter for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food; and any individual, group, or organization which regularly provides food as part of its services.

"Polystyrene" means a thermoplastic petrochemical material utilizing styrene monomers. It includes all Polystyrene, meaning any styrene or vinyl chloride polymer which is blown into a foam-like material. This includes the thermoplastic petrochemical material utilizing the styrene monomer, which may be marked with resin symbol #6. sometimes referred to as Styrofoam, a Dow Chemical Company trademarked form of Polystyrene insulation Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons

"Prepared Food" means any food and beverage that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption. Prepared food may be eaten either on or off the premises and includes takeout food and "ready to eat food." Prepared food does not include raw, butchered meats, poultry, fish, or eggs unless provided for consumption without further food preparation.

"Recyclable" means any material including glass, cans, cardboard, paper, mixed paper, or other items which can be easily recycled, salvaged, composted, processed, or marketed by any means other than landfilling or burning, whether as fuel or otherwise, so that they are returned to use by society. For the purposes of this Chapter, recyclable plastic does not include polystyrene foam labeled with resin symbol #6.

6.118.040 Disposable Food Service Ware - Prohibition on use of Polystyrene and Requirement to Use Biodegradable or Recyclable Disposable Food Service Ware

A. Food Providers shall not provide Prepared Food in any Disposable Food Service Ware or Food Packaging that contains Polystyrene or otherwise sell, hand out, give away, distribute or make available for public or customer use any disposable food service ware that contains Polystyrene.

B. Food Providers shall advise any vendor or supplier from which they receive prepackaged and ready for sale food not to use Polystyrene Disposable Food Service Ware or Food Packaging. It is not a violation of this Chapter for a Food Provider to sell or provide a prepackaged and ready for sale food that it receives from a vendor or supplier not under the direct jurisdiction of this ordinance which is received in a Polystyrene Disposable Food Service Ware or Food Packaging.

C. To allow Food Providers an opportunity to use remaining stocks of Food Packaging, Food Providers shall have until November 30, 2015 to be in full compliance with its requirements.

D. Food Providers using Disposable Food Service Ware shall use Biodegradable or Recyclable Disposable Food Service Ware.

6.118.050 Exemptions

The ban of the use of Polystyrene products and requirement to use Biodegradable or Recyclable Disposable Food Service Ware does not apply to:

- A. Prepared Food made or packaged outside the unincorporated area of the County but sold in the unincorporated area of the County. Food Providers are encouraged, on a voluntary basis, to work with their suppliers to eliminate all Polystyrene packaging.
- B. Polystyrene coolers and ice chests used by food providers for their own item storage and/or transportation and intended for reuse.
- C. Emergency situations which require immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. The exemption shall be in place until the emergency has ceased or the Director determines the exemption is no longer applicable to the situation.

6.118.060 Continuing Violation

Unless otherwise provided, it shall be considered a separate offense for each and every day during any portion of which a violation of this section is committed, continued or permitted by the Food Provider and shall be punishable accordingly as herein provided.

6.118.070 Concealment

Concealing or aiding or abetting concealment of a violation of this chapter shall constitute a separate and distinct violation of concealment of a violation of the prohibition of providing Food in any Disposable Food Service Ware or Food Packaging that contains Polystyrene.

6.118.080 Reinspection Fees

Whenever an authorized enforcement officer determines that upon reinspection there has been a failure to comply, the enforcement officer may charge a reinspection fee.

6.118.090 Enforcement

- A. The Director of the Alameda County Department of Environmental Health shall be primarily responsible for implementation and enforcement of this Chapter. The Director is authorized to establish guidelines and procedures to implement this Chapter and to take such action as may be necessary, including inspection of Food Providers, to monitor compliance. Implementation, enforcement and fees related to this Chapter may be done pursuant to and as a part of the Food Safety and Food Facility Inspection programs.
- B. In the event of a violation of this Chapter or any requirement imposed pursuant to this Chapter, the County may in its discretion, in addition to all other remedies, take

such enforcement action as is authorized under the Alameda County Code, state, federal and local laws and regulations and any other action authorized by law.

C. A Food Provider shall be allowed one warning prior to the first citation for a violation of this Chapter. Each citation shall have the following minimum penalties

- (1) A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
- (2) A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
- (3) A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.

D. Fees and administrative costs may be imposed by the Director for the cost of enforcement, in accordance with a fee schedule approved by the Board of Supervisors. In addition, late payment charges, compliance re-inspection and collections cost may be assessed.

E. The Director may waive a violation of this Chapter if the Director finds that the Food Provider has demonstrated that an undue hardship exists. An undue hardship exists if it can be demonstrated by the Food Provider that an acceptable alternative food service ware is not available at a commercially reasonable price and the significant additional cost associated with providing the acceptable alternative food service ware is uniquely burdensome to the Food Provider and its type of operation 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.

6.118.100 Appeal of Administrative Citation

A. Persons receiving an administrative citation under this chapter may appeal it within twenty-one (21) calendar days from the date the administrative citation was issued. If the deadline falls on a weekend or county holiday, then the deadline shall be extended until the next regular business day.

B. The request to appeal must:

- (1) Be in writing;
- (2) Be accompanied by a deposit of the total fine and any fees noted on the citation;
- (3) Specify the basis for the appeal in detail;

- (4) Be postmarked within twenty-one (21) days from the date the administrative citation was issued; and
- (5) Be sent to the address as set forth on the administrative citation.

C. The written request to appeal will be reviewed and, if found to be complete, a date, time and place shall be set for a hearing before the Director, or other hearing officer appointed by the Director. Written notice of the time and place for the hearing will be served by first class mail or personal service at least twenty-one (21) days prior to the date of the hearing to the party appealing the citation. Service by first class mail shall be effective on the date of mailing.

D. The failure of any person to receive notice of the hearing shall not affect the validity of any proceedings under this chapter.

E. Failure of any person to file an appeal in accordance with the provisions of this section shall constitute waiver of that person's rights to administrative determination of the merits of the administrative citation and the amount of the fine and any fees.

F. The hearing officer shall conduct an orderly, fair hearing and accept evidence as follows:

- (1) A valid citation shall be prima facie evidence of the violation;
- (2) All testimony shall be by declaration under penalty of perjury;
- (3) The person responsible for the violation or any other interested person may present testimony or evidence concerning the violation.

H. The hearing officer shall make findings based on the record of the hearing and make a written decision based on the findings. The decision shall be served by first class mail on all parties. The decision of the hearing officer affirming or dismissing the administrative citation is final.

I. A person contesting the final decision on an administrative citation may seek review by filing an appeal to be heard by the superior court. Such appeal is governed by Government Code Section 53069.4, subdivision (b)(1).

6.118.110 Payment

The fine and any fees shall be paid within thirty (30) days from the date of the administrative citation if an appeal is not requested. Additional fees and fines may be assessed for late payments, and the matter may be referred to a collection agency. Payment shall be made as set forth on the administrative citation.

If there is an administrative appeal, fines and any fees determined to be due in the written decision of the hearing officer shall be deducted from the deposit made when the appeal is requested. Any amount owed in excess of the deposit shall be due and payable ten days after receipt of the written decision. Any refund due from the deposit shall be returned by check sent through the U.S. Mail.

6.118.120 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this chapter or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

Passed and adopted this _____ day of _____ 2015 by the Board of Supervisors of Alameda County, California. This shall go into effect 30 days after passage.

AYES:

NOES:

EXCUSED:

Scott Haggerty,
PRESIDENT, BOARD OF SUPERVISORS

APPROVED AS TO FORM:
Donna Ziegler, County Counsel

By _____