

**ORDINANCE NO. \_\_\_\_\_ (N.C.S.)**

**AN ORDINANCE AMENDING CHAPTER 14 OF THE SALINAS CITY CODE  
REGARDING FOOD PACKAGING**

**WHEREAS**, on July 12, 2011, the Salinas City Council, held a duly noticed public hearing to consider a new Article to the Salinas Municipal Code for an Environmentally Acceptable Food Packaging Ordinance to regulate and limit the use of polystyrene foam food packaging by food providers within the City of Salinas; and

**WHEREAS**, polystyrene is a plastic resin that is used to make up a wide range of consumer goods and packaging, and in its “foamed” or “expanded” state is frequently used to produce takeout containers for food. However, unlike many other types of packaging, littered polystyrene foam remains permanently in the environment where it breaks into pieces that disperse widely. Polystyrene foam means and includes expanded polystyrene (EPS), which is not collected for recycling in the Central Coast region because it is not economically viable. There are presently no manufacturers in the region currently using this material as a feedstock; and

**WHEREAS**, the City of Salinas has seen first-hand the impact of polystyrene foam plastic litter in the City’s storm drains, agricultural fields, roadways and highways, and in the Salinas River. Prohibiting the use of polystyrene foam take-out packaging locally will help address pollution by requiring the use of environmentally preferable alternatives while helping to educate business owners and residents on the positive impact their packaging choices can make; and

**WHEREAS**, the City of Salinas has a responsibility to protect its natural environment, its economy, and the health, safety, and welfare of its residents. Solid waste that is non-degradable or non-recyclable poses an acute problem for any environmentally and financially responsible solid waste management program; and

**WHEREAS**, food and beverage packaging constitutes a significant and growing portion of the waste in the city. Laws, policies, and regulations pertaining to disposable food service wares are a vital component in the City of Salinas’s efforts to reduce the amount of disposed waste; and

**WHEREAS**, a prevalence of polystyrene foam packaging, which is highly durable and which persists longer than any other type of refuse, litters parks and public places, streets and roads, waterways, and stormdrains. This litter ultimately floats or is blown into the Salinas River and the Monterey Bay; and

**WHEREAS**, it is not economically feasible at this time to recycle polystyrene foam in or near the City of Salinas.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF SALINAS** as follows:

**SECTION 1.** Existing Article III shall be renumbered as Article IV and Section 14-32 shall be renumbered and shall be amended in its entirety to read as follows:

“Sec. 14-36. Penalty for violation of chapter. Except as may otherwise be specifically provided in any article or any other section of this chapter, any person violating or failing to comply with any of the provisions of this chapter shall be guilty of an infraction.”

**SECTION 2.** A new Article III, commencing with Section 14-32, is hereby added to Chapter 14 as follows:

**Sec. 14-32. Definitions.** Unless otherwise expressly stated, whenever used in this Article, the following terms shall have the meanings set forth below.

- (a) “Affordable” means that a biodegradable, compostable or recyclable product may cost up to fifteen percent (15%) more than the purchase cost of the non-biodegradable, non-compostable, or non-recyclable alternative(s).
- (b) “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, as those standards may be amended from time to time.
- (c) “Biodegradable” means the ability of organic matter to break down from a complex to a more simple form.
- (d) “City Facility” means any building, structure or vehicle owned and operated by the City of Salinas, its agencies, and/or departments.
- (e) “City Contractor” means any person or entity that has a contract with the City of Salinas for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be donated or to be purchased at the expense of the City.
- (f) “Compostable” means all the materials in the produce or package will break down, or otherwise become part of usable compost in a safe and timely manner. Compostable disposable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic.

- (g) "Disposable Food Service Ware" means single-use disposable products used by a food provider for serving or transporting prepared, ready-to-consume food or beverages including, but not limited to plates, cups, bowls, trays, and hinged or lidded containers. Disposable food service ware includes single-use disposable items such as plastic straws, cup lids or utensils.
- (h) "Effective Date" means the effective date of this ordinance enacting Article III of Chapter 14 of the Salinas City Code.
- (i) "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 packaging does not include polystyrene foam coolers and ice chests used for the storage or transportation and/or intended for reuse.
- (j) "Food Provider" means any vendor located or providing food within the City of Salinas which provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, supermarket, delicatessen, catering truck, non-motorized pushcart, or any other vehicle, or any other person who provides prepared food; and any organization, group or individual which provides food as a part of its services.
- (k) "Person" means any individual, sole proprietorship, firm, association, organization, partnership (whether limited or general), corporation, limited liability corporation, political subdivision, government agency, municipality, industry, public or private corporation, trust, joint venture, regulatory authority or any other entity.
- (l) "Polystyrene" means a thermoplastic petrochemical material utilizing styrene monomers. Polystyrene includes clear and solid polystyrene ("oriented polystyrene").
- (m) "Polystyrene Foam" means and includes expanded polystyrene that is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres ("expanded bead polystyrene"), injection molding, form molding, and extrusion-blow molding ("extruded foam polystyrene"). To include, but not limited to, Polystyrene Foam Plate, bleached paperboard plate with low density polyethylene coating and bleached paperboard plate with polystyrene coating.
- (n) "Prepared Food" means any food or beverage prepared at the food provider's premises, using any cooking or food preparation technique. Prepared food does not include any raw uncooked meat, poultry, fish or eggs unless provided for consumption without further food preparation.

- (o) "Recyclable" means any material that is accepted by the City or its franchise waste hauler for recycling including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars, and tubs. Recyclable plastics comprise those plastics coded with the recycling symbols #1 through #5.
- (p) "Retail Food Establishment" shall include, but shall not be limited to, any place where food is prepared to include any fixed or mobile restaurant or food service vehicle, drive-in, coffee shop, public food market, produce stand or similar place which food or drink is prepared for sale or for service on the premises or elsewhere.
- (q) "Special Event" means any special event as that term is defined by and is regulated by the Salinas City Code at which food and/or beverages are being provided for public consumption. This definition shall apply whether such food and/or drinks are prepared within or outside of the Salinas City limits.

**Sec. 14-33. Prohibited Disposable Food Service Ware.**

- (a) Food providers shall not dispense prepared food in any disposable food service ware that contains polystyrene foam or otherwise sell, hand out, give away, distribute or otherwise make available for public or customer use any disposable food service ware that contains polystyrene foam, unless exempted by this Article.
- (b) Disposable food service ware that contains polystyrene foam is prohibited from use in all City of Salinas facilities.
- (c) The prohibition of disposable food service ware containing or utilizing polystyrene foam shall also apply to all City of Salinas contractors in the performance of City of Salinas contracts and special events sponsored by the City.
- (d) It shall also be a policy goal of the City that business establishments located outside the City limits, but that may sell or offer for sale their products within the city of Salinas, shall not package any food product in any package that contains or that utilizes polystyrene foam. The City of Salinas shall promote and shall encourage, on a voluntary basis, the elimination of all polystyrene foam disposable food service ware by these outside business establishments.
- (e) To allow food providers an opportunity to use remaining stocks of food packaging, food providers shall have one hundred eight (180) days from the effective date to comply with the regulations of this Article. During the 180-day period, it shall be the policy of the City to encourage voluntary adherence to the requirements of this Article. After one hundred eighty (180) days from the effective date of this Article, food providers shall be subject to and shall comply with the regulations of this Article.

**Sec. 14-34. Required Biodegradable, Compostable, or Recyclable Disposable Food Service Ware.**

- (a) All food providers within the City of Salinas utilizing disposable food service ware shall use only biodegradable, compostable or recyclable products, unless there is no affordable alternative available as determined by the City Manager or his designee.
- (b) All City of Salinas facilities utilizing disposable food service ware shall use only products that are biodegradable, compostable or recyclable.
- (c) All promoters and participants in special events utilizing food service ware shall use only products that are biodegradable, compostable or recyclable.
- (d) City of Salinas contractors and promoters or participants in City-sponsored events utilizing disposable food service ware shall also be required to use only biodegradable, compostable or recyclable products while performing under a City of Salinas contract or permit.

**Sec. 14-35. Exemptions.**

- (a) There are no exemptions that allow for the use of polystyrene foam disposable food service ware by food providers within the City of Salinas.
- (b) The City of Salinas may exempt a food provider from the requirements set forth in Sections 14-33 and 14-44 of this Article for a non-renewable, one-year period upon the food provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The City Manager, or his designee, shall prepare a written decision to grant or to deny a one-year exemption, which decision shall be final. A request for an exemption shall include all information necessary for the City Manager or his designee to make a decision including, but not limited to, documentation showing factual support for the claimed exemption. The applicant may be required to provide additional information. The City Manager or his designee may approve the request for an exemption in whole or in part, with or without conditions.
- (c) Food prepared or packaged outside the City of Salinas and sold inside the City are exempt from the provisions of this ordinance except for those foods prepared or packaged in connection with a special event held within the City. Other purveyors of food prepared or packaged outside the City are encouraged to follow the provisions of this ordinance, as it is a policy goal of this City to eliminate the use of polystyrene foam for packaging unprepared food.
- (d) Polystyrene foam coolers and ice chests used by food providers for item storage and/or transportation and intended for reuse shall be exempt from the provisions of this Article.

- (e) During an emergency requiring immediate action to prevent or to mitigate the loss of impairment of life, health, property or essential public services, persons providing emergency relief are exempt from the provisions of this Article until such time as the emergency has ceased.

**Sec. 14-35. Enforcement.**

- (a) The remedies and penalties provided in this ordinance are cumulative and in addition to any other remedies available at law or in equity.
- (b) The City Manager, or his designee, shall be primarily responsible for the implementation and the enforcement of this Article. Such person is authorized to establish guidelines and procedures to implement this Article and to take such action as may be necessary, including inspection of food providers, to monitor compliance with this Article.
- (c) Violation of this Article is a misdemeanor. Alternatively, and in the discretion of the City Attorney, a violation of this Article may be prosecuted administratively. Any enforcement officer of the City, at his or her discretion, may issue an administrative citation for a violation of this Article. The authority granted the City in this section shall be in addition to all other remedies available at law or in equity and the City Attorney is hereby authorized to take such enforcement action as is authorized under the Salinas City Code or any other provision of law.
- (d) The City Manager or his designee shall be responsible for enforcing this ordinance and shall have authority to issue citations for violations. The City Manager or his designee, in accordance with applicable law, may inspect any vendor or food provider's premises to verify compliance.
- (e) For the first violation a written warning shall be issued to the food provider specifying that a violation of this ordinance has occurred and which further notifies the food provider of the appropriate penalties to be assessed in the event of future violations. The food provider will have no more than thirty (30) days to comply. Upon failure of the food provider to comply within the thirty (30) day period set forth in this section, the City may pursue enforcement action by utilizing any of the remedies set forth in this section.
- (f) If issuance of an administrative citation is deemed to be the appropriate enforcement method, such citation shall issue following the failure of the food provider to comply with the 30-day notice period set forth in this section. In lieu of the fine for the first administrative citation, but not for subsequent administrative citations, the City may allow the violator to submit receipts demonstrating the purchase of at least \$100 worth of biodegradable, compostable or recyclable products after the citation date, as an alternative disposable food service ware for the items which led to the violation.

**SECTION 3.** This ordinance shall take effect six (6) months from and after its adoption by the Salinas City Council, in order to allow vendors to use up any remaining stock of prohibited product. This ordinance shall become effective and shall become mandatory on the first day of the month following the six (6) month voluntary period.

**SECTION 4.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Salinas City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 5.** The City Clerk of the City of Salinas is hereby directed to cause the following summary of this ordinance to be published by one (1) insertion in The Salinas Californian, a newspaper of general circulation printed, published, and circulated in the City of Salinas and hereby designated for that purpose by the Council of Salinas:

"Article III of Chapter 14 of the Salinas City Code is hereby amended to impose a prohibition on the use of disposable food service wares that contain or that utilize polystyrene foam."

This ordinance was introduced and read on the 12th day of July, 2011, and passed and adopted on the 19th day of July, 2011, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Dennis Donohue, Mayor

ATTEST:

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Ann Camel, City Clerk

