

ARTICLE III. EXPANDED POLYSTYRENE FOAM FOOD SERVICE CONTAINER-WARE

Sec. 10.30.010. Findings and purpose.

The Town Council finds and determines that:

- (1) Plastic debris and in particular expanded polystyrene foam ("EPS") is a distinctive litter concern because it is lightweight, floats, and readily travels from land to inland waterways and out to the ocean where it breaks down into small pieces which may be mistaken for food by birds and other marine wildlife.
- (2) EPS disposable food service ware comprises a majority of EPS litter observed in storm drains.
- (3) The proposed ban of EPS disposable food service ware would require food providers to use alternative disposable food service ware that should result in a reduction of EPS litter, reduce the risk of harm to aquatic wildlife, and improve water quality in the Town of Los Gatos creeks and Southern San Francisco Bay.

This Council does, accordingly, find and declare that it should prohibit the use of expanded polystyrene foam food service container-ware.

(Ord. No. 2235, § I(Exh. A), 12-16-14)

Sec. 10.30.015. Definitions.

[For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section.]

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

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

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

Vendor means any store or business, organization, or entity that sells or offers goods or merchandise, located or operating within the Town of Los Gatos.

Polystyrene foam means the thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer

spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is commonly made into disposable food service ware products. Polystyrene foam does not include clear or solid polystyrene (oriented polystyrene).

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

(Ord. No. 2235, § I(Exh. A), 12-16-14)

Sec. 10.30.020. Polystyrene foam disposable food service ware prohibited.

On or after June 1, 2015, any food provider or vendor shall not dispense prepared food to a customer in a polystyrene foam food container or sell polystyrene foam coolers or ice chests which are not wholly encapsulated or encased within a more durable material.

(Ord. No. 2235, § I(Exh. A), 12-16-14)

Sec. 10.30.025. Exemption to the polystyrene foam disposable food service ware prohibition.

- (a) Raw eggs and raw, butchered meat, fish, or poultry that is sold from a butcher case or a similar retail appliance.
- (b) A food provider may seek an exemption from the prohibition under section 10.30.[020] due to a "unique packaging hardship" under subsection [(c)] of this section or a "financial hardship" under subsection [(d)] of this section.
- (c) The food provider must demonstrate that no reasonably feasible alternative exists to a specific and unique polystyrene foam disposable food service ware in order to qualify for a "unique packaging hardship" exemption.
- (d) The food provider must demonstrate both of the following to qualify for a "financial hardship" exemption: (1) a gross income under three hundred thousand dollars (\$300,000.00) on 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.
- (e) The food provider may submit a written application for an exemption on a form provided by the Department of Parks and Public Works. The Director of Parks and Public Works ("Director") may require the applicant to submit additional information or documentation to make a determination regarding the exemption requested. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The national food vendor or food vendor must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Director shall be final and is not subject to appeal.

(Ord. No. 2235, § I(Exh. A), 12-16-14)

Sec. 10.30.030. Administrative penalty.

A penalty may be imposed upon findings made by the Town's code compliance officer that any food provider has provided a "disposable food service ware" or "food container" in violation of this chapter. The amount of penalty and the penalty procedures applicable to any violation of this chapter are contained in the Los Gatos Municipal Code, Article III, Section 1.30, entitled "Administrative Citations."

(Ord. No. 2235, § I(Exh. A), 12-16-14)

Sec. 10.30.040. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed to be a separate, distinct and independent provision and such decision shall not affect the validity of the remaining portion thereof.

(Ord. No. 2235, § I(Exh. A), 12-16-14)