

ORDINANCE NO.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS REPEALING AND REPLACING ARTICLE III OF CHAPTER 10 OF THE LOS GATOS TOWN CODE RELATED TO FOOD SERVICE WARE

WHEREAS, on December 16, 2014, the Town of Los Gatos adopted an ordinance (2235) prohibiting food providers from selling or providing prepared food using food packaging containing polystyrene foam, and vendors from selling polystyrene foam food service, currently codified as Article III of Chapter 10 of the Town Code; and

WHEREAS, this ordinance continues to prohibit the sale and use of polystyrene foam food service ware and also further regulates nonreusable plastic food service ware and food service ware accessories in Los Gatos ; and

WHEREAS, on October 5, 2021, AB 1276 was signed into law by Governor Gavin Newsom. AB 1276 restricts the distribution of single use foodware accessories (e.g., utensils, straws, stirrers, condiment packets, etc.) by restaurants and other food facilities; and

WHEREAS, on October 5, 2021, AB 1200 was also signed into law by the Governor which prohibits the sale or distribution of food packaging made primarily from paper, paperboard, or other natural fiber that contains per- and polyfluoroalkyl substances (PFAS) in California beginning January 1, 2023; and

WHEREAS, Ordinance 2235 includes requirements that are well aligned with many of the requirements on foodware in AB 1276 and AB 1200; however, some discrepancies exist. As such, the Ordinance must be amended to ensure alignment with requirements in both State bills; and

WHEREAS, Assembly Bill 1200 does not include a verification mechanism to assist food providers in identifying whether the food packaging contains PFAS; and

WHEREAS, this ordinance, as an exercise of the Town's police power, requires that food service ware used by a food provider in Los Gatos be certified as PFAS-free by an independent third-party certifying organization to assist Los Gatos food providers in identifying PFAS-free food service ware; and

WHEREAS, the State also recently adopted Assembly Bill 1276, which prohibits the distribution of single-use food service ware accessories and standard condiments packaged for single use by food providers except upon request by the consumer; and

WHEREAS, a prohibition of plastics for specified nonreusable food service ware accessories further the Town's goals and is more restrictive than the recently enacted State law; and

WHEREAS, this ordinance is consistent with the Town of Los Gatos 's Sustainability Plan that seeks to reduce solid waste at its source and reduce nonreusable food service ware and packaging; and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 10, Article III consisting of Sections 10.30.010 through 10.30.040, relating to use of polystyrene foam food service ware by food providers, is hereby repealed in its entirety and replaced by a new Article III Chapter 10 of the Los Gatos Town Code, to read as follows:

“ARTICLE III. - REGULATION OF NONREUSABLE FOOD SERVICE WARE

SEC. 10.30.010. – Findings and purpose.

The Town Council finds and determines that:

- a. Nonreusable food service ware, including plates, cutlery, cups, lids, straws, “clamshells” and other containers, is a major contributor to street litter, ocean pollution, marine and other wildlife harm, and greenhouse gas emissions.
- b. It is in the interest of the health, safety, and welfare of all who live, work, and do business in the Town of Los Gatos that the amount of litter on public streets, parks and in other public places be reduced.
- c. The production and disposal of nonreusable food service ware and foodservice ware accessories have significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of nonrenewable polluting fossil fuels, greenhouse gas emissions and increased clean-up and end-of-life management costs.
- d. Food service ware made from plastic polymers may last for hundreds and even thousands of years and have broad, long-lasting negative impacts, even though most food service ware is discarded after only a single use.
- e. Certain synthetic chemicals known as per- and polyfluoroalkyl substances (PFAS), which are commonly used in disposable food service ware to repel water and grease, pose a public health risk as they have been linked to serious health effects.
- f. Nonreusable plastic and polystyrene foam food service ware breaks apart easily into small pieces, can end up as litter and is often mistaken as food by birds, fish and wildlife. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable and are present in most of the world's oceans.
- g. Polystyrene foam food service ware is a distinctive litter concern because it is

lightweight, easily windblown into streets and waterways, and floats in water until it reaches the San Francisco Bay and ocean.

h. Eliminating the use of polystyrene foam and other noncompostable and nonrecyclable single-use food service ware items and requiring certification that food service ware is PFAS-free will maximize the operating life of landfills, lessen the economic and environmental costs of waste management for businesses and residents of the Town of Los Gatos and further protect the public health and safety of residents, the natural environment, waterways, and wildlife.

i. Compostable natural fiber-based food service ware can be diverted from landfill and processed into an organic soil amendment and breaks down in the environment if littered.

j. Reduction of nonreusable food service ware and accessories will advance compliance with the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit by helping to reduce trash and litter in the waterways, thus improving water quality in Town waterways and reduces risk of harm to wildlife.

k. The Town Council does, accordingly, find and declare that it should restrict the use of nonreusable food service ware and food service ware accessories. The Town of Los Gatos has a substantial interest in protecting its residents and the environment from the negative impacts of nonreusable food service ware. This Chapter is consistent with the Town's Zero Waste Policy and Plan.

SEC 10.30.015. - Definitions.

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

a. "Aluminum foil-based" means any nonreusable food service ware composed entirely of aluminum, including, but not limited to, aluminum trays, aluminum foil wrappers and aluminum foil baskets.

b. "Compostable" means that an item or material will break down or otherwise become part of usable compost in a safe and timely manner consistent with the composting facility used by the city's franchisee and: (1) is natural fiber-based (including items that are natural fiber-based and coated or lined with biologically based polymer, such as corn or other plant sources, if certified by an independent third-party certifying organization approved by the public works director or designee); or (2) made from other materials approved by the public works director or designee. Compostable does not include items made primarily of biologically based polymer, PLA or other "compostable" plastic, even if labeled or certified as compostable.

c. "Disposable" means designed to be discarded after a single or limited number of uses and not designed or manufactured for longer-term multiple reuse.

d. "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, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, delicatessens, fraternal clubs serving the public, mobile food vendors, vehicles or carts, or roadside stands.

e. "Food service ware" means any products used for serving or packaging prepared food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrappers or liners, hinged or lidded containers (clamshells) and other items used as part of food or beverage service, or in which prepared food is placed or packaged on a food provider's premises. Food service ware does not include a food service ware accessory.

f. "Food service ware accessory" means any other item used as part of a prepared food or beverage service that accompanies food service ware such as straws, stirrers, napkins, utensils, condiment packets, cup sleeves, tops, lids, splash sticks and other similar accessory or accompanying items.

g. "Health-care facilities" means places that provide health-care services. Health-care facilities include, but are not limited to, hospitals, clinics, outpatient care centers, nursing homes, psychiatric care centers, medical offices, hospice homes, mental health and addiction treatment centers, orthopedic and other rehabilitation centers, urgent care, birth centers, etc.

h. "Nonreusable" means food service ware or food service ware accessories that are designed to be discarded after a single or limited number of uses and not designed or manufactured for sanitation and reuse over an extended period of time.

i. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

j. "Regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS" means either of the following:

1. PFAS that a manufacturer has intentionally added to a product and that have a functional or technical effect in the product, including the PFAS components of intentionally added chemicals and PFAS that are intentional breakdown products of an added chemical that also have a functional or technical effect in the product.

2. The presence of PFAS in a product or product component at or above one hundred (100) parts per million, as measured in total organic fluorine.

j. “Polystyrene foam” means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene or EPS), 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 nonreusable food service ware products. “Polystyrene foam” does not include clear or solid polystyrene (oriented polystyrene).

k. “Prepared food” means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of a food provider for consumption, including, but not limited to, ready-to-eat, dine-in, take-out or complimentary food or beverage. “Prepared food” does not include: (1) raw eggs and raw, butchered meat, fish or poultry that is sold from a butcher case or a similar retail method; (2) prepackaged food that is delivered to the food provider wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food provider in the same container or packaging; or (3) nonpolystyrene foam prepackaged items prepared on-site, which are not made to order and sold as “grocery items.”

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

SEC 10.30.020. - Nonreusable food service ware requirements.

a. **Polystyrene foam:**

1. No food provider within the Town of Los Gatos shall use, sell or otherwise provide prepared food using food service ware made from polystyrene foam.

2. Food service ware made from polystyrene foam and coolers, or ice chests made from polystyrene foam that are not wholly encapsulated or encased within a more durable material shall not be sold or provided by any vendor in the Town of Los Gatos .

b. **Certified PFAS-free and compostable:**

Effective as of January 1, 2023, food providers within the Town of Los Gatos, when providing prepared food in nonreusable food service ware, must ensure it is: (1) certified as free of all regulated perfluoroalkyl and polyfluoroalkyl substances or PFAS by an independent third-party certifying organization approved by the Parks and Public Works Director or designee; and (2) compostable.

SEC 10.30.025. - Plastics prohibited for nonreusable food service ware accessories.

Effective as of January 1, 2023, the following shall apply to nonreusable food service ware accessories:

a. Food providers shall not use, provide, distribute, or sell the following nonreusable food service ware accessories if they are made from or packaged in plastic, including biologically based polymers or compostable plastic: beverage straws, drink stirrers, food picks or toothpicks.

b. **Exception.** Food providers that customarily offer straws may maintain a small supply of plastic or compostable plastic straws to accommodate individuals who may require and request the use of plastic straws due to disability or other medical or physical conditions or circumstances. Health-care facilities may distribute plastic straws with or without a request by a patient at the discretion of the health-care facility staff based on the physical or medical needs of the patient. Nothing in this Article shall conflict with or be construed to conflict with the Americans with Disabilities Act or any other applicable law concerning the rights of individuals with disabilities.

SEC 10.30.030. - Exemptions.

The following are exempt from the provisions of this Article:

a. Nonreusable food service ware that is entirely aluminum foil-based.

b. The Parks and Public Works Director or designee may approve temporary exemption of specific nonreusable food service ware items. If the Parks and Public Works Director or designee determines that a reasonably feasible nonreusable food service ware item that complies with this Chapter is not available at the time of evaluation, this item will be exempt from the provisions of this Article until the Parks and Public Works Director, or designee determines that a reasonably feasible alternative is readily available on the market for purchase. The Town will publicly list any items approved as temporarily exempt from the ordinance.

c. In the event of an emergency, the provisions of this Article shall be suspended until the emergency has terminated. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to, natural disasters, emergencies due to release of hazardous materials, emergencies associated with loss of power and/or water or emergency medical response.

SEC 10.30.035. - Waivers.

a. A food provider may apply, in writing, to the public works director or designee for a waiver from compliance with Sec. 16.92, Nonreusable food service ware requirements, subsection (b), Certified PFAS-free and Compostable, if compliance with the Section will impose a unique hardship not generally applicable to other persons in similar circumstances, including, but not limited to, the following:

1. An undue economic hardship.

2. A suitable packaging alternative that conforms to the requirements of this Article does not exist for a specific usage.

3. The omission of noncompliant items from the city's waste streams, which could include, but is not limited to, a city-approved on-site waste processing system.

b. The Parks and Public Works Director or designee shall issue a written decision to grant or deny a waiver and may exempt the food provider for no more than one (1) year from the date of the decision. The Parks and Public Works Director's or designee's decision shall be final and is not subject to appeal.

c. The Parks and Public Works Director or designee may require independent verification of the basis for the requested waiver, which may include, but is not limited to, a request for supporting documentation.

SEC 10.30.045 - Penalties and enforcement.

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

b. A food provider, vendor or other entity violating or failing to comply with any requirement of this Article may be subject to enforcement and penalties pursuant to Chapter 1 Article III of the Los Gatos Town code.

c. Violation of this Article shall be deemed to constitute a public nuisance subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures contained in this Article and state law, including, but not limited to, an action for abatement or injunctive relief.

d. The remedies and penalties provided by this Article are cumulative and in addition to any other remedies available at law or in equity.

SECTION II. CEQA FINDINGS. This Ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential to result in physical change in the environment, directly or indirectly. This Ordinance is also exempt under CEQA Guideline 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

SECTION III. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person or circumstance is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of

the remaining portions of this Ordinance or its application to other persons and circumstances. The Town Council of the Town of Los Gatos declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof despite the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION IV. EFFECTIVE DATE AND PUBLICATION. This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 5th day of April 2022 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 19th day of April 2022. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the _____ day of _____ 2022, by the following vote:

COUNCIL MEMBERS:

AYES

NAYS:

ABSENT:

ABSTAINING:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATED: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____