

COPY

ORDINANCE NO. 964

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING SECTIONS 8.36.010, 8.36.020, 8.36.030, 8.36.040, 8.36.050, 8.36.60 AND 8.36.070
OF, AND ADDING SECTION 8.36.035 TO, THE CAPITOLA MUNICIPAL CODE
PERTAINING TO POLYSTYRENE FOAM AND BIODEGRADABLE AND
COMPOSTABLE DISPOSABLE FOOD SERVICE WARE**

THE CITY COUNCIL OF THE CITY OF CAPITOLA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Subsection T. of Capitola Municipal Code Section 8.36.010, Findings and intent, is hereby amended to read as follows:

T. Restricting polystyrene foam products that are not wholly encapsulated or encased by a more durable material and replacing non-biodegradable food service ware with biodegradable food service ware products in Capitola will further protect the public health and safety of the residents of Capitola, the City of Capitola's natural environment, waterways and wildlife, would advance the City's goal of Developing a Sustainable City, advance the City's goal of Zero Waste by 2020 and fulfill Article 10 of the Environmental Accords, whereby Capitola partnered with other cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year.

Section 2. Subsections F., G., K., L., M., N., and O. of Capitola Municipal Code Section 8.36.020, Definitions, are hereby amended to read as follows:

"F. "Customer" means any person obtaining prepared food, merchandise or product from a restaurant or Retail food vendor, or retail vendor.

G. "Disposable food service ware" means all containers, bowls, plates, trays, cartons, cups, forks, spoons, knives and other items that are designed for one-time use and on, or in, which any restaurant, retail vendor or retail food vendor directly places or packages Prepared Foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at restaurants, sold at restaurants, retail vendors or retail food vendors.

K. "Product" means any product such as coolers, cups, bowls, plates, clamshells, containers, ice chests, packing peanuts or other packing materials, beach or pool toys, or any other product or merchandise containing polystyrene foam that is not encapsulated or encased by a more durable material.

L. "Restaurant" means any establishment located within the City of Capitola that sells Prepared Food for consumption on, near, or off its premises by Customers. Restaurant for purposes of this Chapter includes Itinerant Restaurants, Pushcarts and Vehicular Food Vendors.

M. "Retail Food Vendor" means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a Restaurant, located within the City of Capitola that sells Prepared Food.

N. "Retail vendor" means any store that sells goods or merchandise located or operating within the City of Capitola.

O. "Special Events Promoter" means an applicant for any special events permit issued by the City or any City employee(s) responsible for any City organized special event."

Section 3. Capitola Municipal Code Section 8.36.030 is hereby amended to read as follows:

"8.36.030 Prohibited food service ware.

A. Except as provided in Section 8.36.050, food vendors are prohibited from providing prepared food to customers in disposable food service ware that uses polystyrene foam.

B. All city facilities are prohibited from using polystyrene foam disposable food service ware and all city departments and agencies will not purchase or acquire polystyrene foam disposable food service ware for use at city facilities.

C. City franchisees, special event promoters, contractors and vendors doing business with the City shall be prohibited from using Polystyrene Foam Disposable Food Service Ware in the City of Capitola."

Section 4. Section 8.36.035 is hereby added to the Capitola Municipal Code to read as follows:

"8.36.035 Prohibited retail sales.

No retail vendor or special event promoter in the City of Capitola may sell, rent or otherwise provide any polystyrene foam product which is not wholly encapsulated or encased within a more durable product, except as exempted in section 8.36.050 below. This specifically includes but is not limited to cups, plates, bowls, clamshells and other products intended primarily for food service use, as well as coolers, containers, ice chests, pool or beach toys, packing peanuts or other packaging materials.

Section 5. Subsection B. of Capitola Municipal Code Section 8.36.040, Required Biodegradable and Compostable Disposable Food Service Ware, is hereby amended to read as follows:

"B. All City Facilities will use Biodegradable or Compostable Disposable Food Service Ware."

Section 6. Subsections D., E., and F. of Capitola Municipal Code Section 8.36.050, Exemptions, are hereby amended to read as follows:

"D. Disposable Food Service Ware composed entirely of aluminum is exempt from the provisions of this Chapter E. Meat trays are exempt from the provisions of this chapter.

F. Products wholly encapsulated or encased by another non-polystyrene product, are exempt from the provisions of this chapter. Examples include surfboards, boats, life preservers, construction materials, craft supplies and durable coolers not principally composed of polystyrene.

G. Emergency Supply and Services Procurement: In a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Vendors, Retail Vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter."

Section 7. Subsections A., B., and C. of Capitola Municipal Code Section 8.36.060, Liability and Enforcement, is hereby amended to read as follows:

A. The City Manager or his/her designee will have primary responsibility for enforcement of this Chapter. The City Manager or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, entering the premises of any Food or retail Vendor to verify compliance.

B. City facilities, food vendors, retail food vendors, retail vendors and restaurants will be given three (3) months from the effective date of this ordinance to comply with the provisions herein.

C. If, after the first three (3) months of the effective date of this ordinance, the City Manager or his/her designee determines that a violation of this chapter occurred, he/she will issue a written warning notice to the retail food establishment that a violation has occurred, specifying a three (3) month time period for the food or retail vendor to conform to the provisions of this Chapter."

Section 8. Capitola Municipal Code Section 8.36.070, Violations - Penalties, is hereby amended to read as follows:

"8.36.070 Violations – Penalties.

A. If the City Manager or his/her designee determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the food or retail vendor or special event promoter that a violation has occurred, and give the offending party three (3) months to conform to the provisions of this Chapter.


B. If the food or retail vendor or special events promoter has subsequent violations of this Chapter, the following penalties will apply:

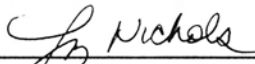
- 1. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
- 2. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
- 3. A fine not exceeding five hundred dollars (\$500.00) for the third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

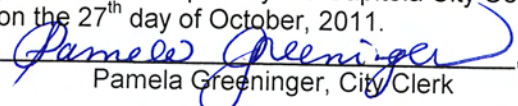
Section 9. This ordinance shall take effect and be in full force thirty (30) days after its final adoption.

This ordinance was introduced on the 22nd day of September, 2011, was passed to a second reading on the 13th day of October, 2011, and was finally passed and adopted by the City Council of the City of Capitola on the 27th day of October, 2011, by the following vote:

AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton
 NOES: None
 ABSENT: None
 ABSTAIN: None

APPROVED: 
 Dennis R. Norton, Mayor

ATTEST: 
 Liz Nichols, Deputy City Clerk

This is to certify that the above and foregoing
 Is a true and correct copy of Ordinance No. 964
 passed and adopted by the Capitola City Council
 on the 27th day of October, 2011.

 Pamela Greeninger, City Clerk MMC