

ORDINANCE NO. _____

**ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS ADDING
CHAPTER 9.42 TO TITLE 9 OF THE MENDOCINO COUNTY CODE ENTITLED
"DISPOSABLE FOOD WARE"**

WHEREAS, The County of Mendocino has a duty to protect the natural environment, our economy and the health of its citizens; and

WHEREAS, disposable food and beverage packaging is likely to become litter because it is removed from the place of sale for immediate consumption, and, many takeout food ware items such as cups, hinged containers, plates, and bags are commonly found in roadside litter; and

WHEREAS, the U.S. Environmental Protection Agency has stated that the physical properties of polystyrene foam are such that "the material can have serious impacts on human health, wildlife, the aquatic environment and the economy," and, according to the U.S. Food and Drug Administration, there is medical evidence to suggest that styrene, a primary component of polystyrene foam, leaches from polystyrene foam containers into food and drink; and

WHEREAS, disposable food and beverage packaging made from expanded polystyrene foam, is not biodegradable, recyclable for practical purposes, or returnable; and

WHEREAS, polystyrene foam is highly durable and more persistent in the environment than other forms of litter; creates visual blight; and ultimately floats, or is blown, into waterways where it harms living species; and

WHEREAS, the State of California's Ocean Protection Council has urged a prohibition on "single-use products that pose significant ocean litter impacts where a feasible and less damaging alternative is available;" and

WHEREAS, it is not economically feasible to recycle polystyrene foam takeout food ware in Mendocino County and no local recycling programs accept it. Recycling is possible, however, for some disposable food ware made from materials other than polystyrene foam; and

WHEREAS, polystyrene foam is also commonly used as a cushioning material for shipments in boxes and packages, and this material can escape into the environment. Alternative cushioning materials are available and should be used where feasible; and

WHEREAS, biodegradable disposable food packaging for cups, plates, hinge containers, cutlery and straws are made from organic materials such as paper, sugarcane fiber, corn waste and potato starch. These products are readily available in Mendocino County; and

WHEREAS, major takeout food vendors have voluntarily given up the use of polystyrene foam disposable food ware but other retailers continue to use them in the County of Mendocino; and

WHEREAS, the elimination of polystyrene foam disposable food ware and its replacement with biodegradable alternatives would lessen the visual blight and environmental harm from litter in the County of Mendocino.

NOW, THEREFORE, the Board of Supervisors ordains as follows:

Section 1. Legislative Findings. The Board of Supervisors hereby finds as follows:

- A. While disposable food ware regulation is a matter of statewide interest and concern that is best applied uniformly throughout the state, in the absence of statewide regulation, it is in the best interests of the County and its residents for the County to regulate disposable food ware as described herein.
- B. The regulation of disposable food ware as proposed herein promotes the general health and welfare of the public by reducing the amount of waste, litter and marine pollution that are attributable to disposable food ware.
- C. The proposed Ordinance is categorically exempt under the California Environmental Quality Act as an activity in protection of the natural resources (Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code).

Section 2. Chapter 9.42 of Title 9 of the Mendocino County Code is added to read as follows:

"DISPOSABLE FOOD WARE

Section 9.42.010 Definitions.

As used herein, the following definitions shall apply:

"Biodegradable" means that a material or substance has the ability to decompose into natural biological elements within a reasonable time as a result of bacterial action.

"County" means all that unincorporated territory within the County of Mendocino.

"County Facilities" means any building, structure, or vehicles owned or operated by the County of Mendocino, its agent, agencies, departments and franchisees.

"County Facility Food Provider" means any entity that provides Prepared Food in County facilities.

"County Contractors and Lessees" means any person or entity that has a contract with the County for public works or improvements to be performed, for a franchise, concession or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the County or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the County.

"Disposable Food Service Ware" or "Takeout Food Ware" includes all containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, napkins, and other items designed for one-time use for prepared foods, including without limitation,

service ware for food that may be removed from the premises for consumption elsewhere. The term "Disposable Food Service Ware" does not include items composed entirely of aluminum or glass, California Redemption Beverage Containers, or polystyrene foam coolers and ice chests that are intended for reuse.

"Food Provider" means any business, organization, entity, group or individual, including Retail Food Establishments, located in the unincorporated sections of the County that offers food or beverage to the public.

"Polystyrene Foam" means blown polystyrene and expanded and extruded foams which are thermoplastic, petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres(expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding. Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.

"Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the Food Provider's premises or within the unincorporated sections of the County for individual customers. For purposes of this Ordinance, Prepared Food includes takeout food but does not include packaged raw, butchered meats, fish, and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises.

"Retail Food Establishment" means any sales outlets, stores, shops, vehicles, or other places of business located within the County which operates primarily to sell or convey foods or beverages directly to the ultimate consumer. Retail food establishment shall include, but is not limited to, any place where food is prepared, mixed, cooked, based, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, delicatessen, sandwich shop, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, takeout prepared food place, industrial feeding establishment, catering kitchen, commissary, grocery store, public food market, produce stand, food stand or similar place in which food or drink is prepared for sale or for service; and any organization or individual which provides food or beverage as part of its service or in conjunction with a special event it sponsors.

Section 9.42.020 Prohibited Disposable Food Service Ware.

- (A) Retail Food Establishments and Food Providers may not sell, hand out, give away, distribute, or otherwise make available for public or customer use Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam.
- (B) County Facility Food Providers may not provide Prepared Foods in Disposable Food Service Ware that contains Polystyrene Foam.
- (C) County Departments may not purchase, acquire, or use Disposable Food Service Ware that contains Polystyrene Foam.

- (D) County Contractors and Lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in County facilities and while performing under a County contract or lease.

Section 9.42.030 Non-food Packaging Material.

It is the policy of the County to promote and encourage, on a voluntary basis, the use of alternatives to Polystyrene Foam in non-food applications such as cushioning in shipping boxes or packages.

Section 9.42.040 Biodegradable Disposable Food Service Ware.

It is the policy of the County to promote and encourage, on a voluntary basis, the use of biodegradable Disposable Food Service Ware by Retail Food Establishments in order to lessen the environmental harm of Disposable Food Service Ware that becomes litter.

Section 9.42.050 Enforcement and Penalties.

- (A) The Mendocino County Environmental Health Director or designee shall have primary responsibility for enforcement and shall have the authority to issue citations for violations of this Chapter. The Director, or his/her designee, shall issue a written warning for the first violation, and shall levy a fine not exceeding \$100.00 for the second violation within one year of the first warning, and shall levy a fine not exceeding \$500.00 for each subsequent violation.
- (B) Any "Food Provider" as defined herein, violating or failing to comply with the requirements of this Chapter shall be guilty of an infraction. If charged as an infraction, upon conviction thereof, said individual or entity shall be punished for the first offense by a fine of not more than \$100.00 for a first violation; not more than \$500.00 for each subsequent violation in the first year.
- (C) The County Counsel may seek legal, injunctive, or any other relief to enforce this Chapter.
- (D) The Mendocino County Environmental Health Director or designee may inspect any Retail Food Establishment premises to verify compliance with this Ordinance.

Section 9.42.060. Hardship Waiver

Any person may seek a waiver from the requirements of Section 9.42.020 of this Chapter by filing a request on a form specified by the Environmental Health Director, or his/her designee. The Director, or designee, may waive any specific requirement of Section 9.42.020 of this Chapter for a period of up to one year if the person seeking the waiver has demonstrated that strict application of the specific requirement would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Environmental Health Director's (or designee's) decision to grant or deny a waiver shall be in writing and shall be final.

Section 9.42.070 Effective Date.

This Ordinance shall go into full force and effect March 1, 2015.

Section 9.42.080 Severability.

If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter."

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2014, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
 Clerk of the Board

Deputy

APPROVED AS TO FORM:
DOUGLAS L. LOSAK
Acting County Counsel

JOHN PINCHES, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
 Clerk of the Board

Deputy