

ORDINANCE No. NS – 517.80

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
ADDING CHAPTER XIX TO DIVISION B11
OF THE COUNTY OF SANTA CLARA ORDINANCE CODE
RELATING TO RESTRICTION OF EXPANDED POLYSTYRENE FOOD AND
BEVERAGE CONTAINERS**

Summary

This ordinance restricts the distribution of expanded polystyrene food and beverage containers used to contain prepared food and beverages for eat-in or take-out at food vendors in unincorporated Santa Clara County.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

Division B11 of Title B of the County of Santa Clara Ordinance Code is amended by adding a new Chapter XIX to be numbered and titled and to read as follows:

CHAPTER XIX. EXPANDED POLYSTYRENE RESTRICTION

Section B11-525. Findings and Intent.

The Board of Supervisors of the County of Santa Clara does hereby find the following:

- a) Expanded polystyrene food and beverage containers contribute to environmental problems, including litter on roadways and in aquatic environments.
- b) Expanded polystyrene food and beverage containers provided by restaurants, markets and convenience stores impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.
- c) The use and distribution of expanded polystyrene food and beverage containers at restaurants, markets and convenience stores is detrimental to the environment, public health and welfare.
- d) Restricting the distribution of EPS food and beverage containers will reduce environmental impacts particularly on roadways and in aquatic environments.

This chapter is adopted to require restaurants, markets and convenience stores to discontinue the use and distribution of expanded polystyrene food and beverage containers.

Section B11-526. Definitions.

For the purposes of this chapter, the following words shall have the following meanings:

- a. *Administrator* means the Director of the County of Santa Clara's Department of Agriculture and Environmental Management or his or her designee.
- b. *Disposable Food Service Ware* means a product used by a Food Vendor for serving or transporting Prepared Food which is commonly disposed of after a single use. Disposable Food Service Ware includes, but is not limited to, plates, cups, bowls, trays and hinged or lidded containers.
- c. *Expanded Polystyrene Foam* means a thermoplastic petrochemical material utilizing the styrene monomer, marked with recycling symbol No. 6, processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene), sometimes referred to as Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation. In food service, expanded polystyrene is generally used to make cups, bowls, plates, trays, and clamshell containers.
- d. *Food Vendor* means any establishment located within unincorporated Santa Clara County, that sells prepared food or beverages for public consumption including but not limited to any store, supermarket, delicatessen, restaurant, shop, cafeteria, caterer, catering truck or other mobile vendor, sidewalk or other vendor or snack bars. Food Vendor does not include social and service organizations, board and care homes, skilled nursing facilities, hospitals, child care centers, fraternity/sorority houses or establishments where food service is included as part of a room and board agreement.
- e. *Prepared Food* means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique by a Food Vendor. Prepared Food does not include uncooked meat, fish, poultry, produce, or eggs unless provided for consumption without further food preparation, such as sushi. Prepared Food may be eaten either on the premises, also known as "eat-in food," or off the premises, also known as "take-out food."
- f. *Recyclable* means any material that is accepted by the unincorporated Santa Clara County recycling program.

Section B11-527. Prohibited Use of Expanded Polystyrene Foam Disposable Food Service Ware.

- a. Except as provided by Section B11-528, all Food Vendors are prohibited from providing Prepared Food in Disposable Food Service Ware made from Expanded Polystyrene Foam.
- b. All Disposable Food Service Ware used by Food Vendors shall be Recyclable.

Section B11-528. Disposable Food Service Ware and Food Vendor Exceptions.

- a. The following items are excluded from the provisions of Section B11-527:
 - 1. Foods prepackaged outside unincorporated Santa Clara County;
 - 2. Coolers and ice chests that are intended for reuse;
 - 3. Trays used to hold fresh meat, poultry, fish, produce and eggs that require additional preparation prior to consumption, or are not intended for immediate consumption.
- b. Administrator may exempt a Food Vendor from the requirements set forth in Section B11-527 for a period of time to be determined by the Administrator on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the Food Vendor not generally applicable to other persons in similar circumstances. Food Vendors seeking an exemption from the requirements set forth in Section B11-527 shall include all information on an application for exemption to allow the Administrator to make a decision, including but not limited to, documentation showing factual support for the claimed exemption. The Administrator shall confirm the decision to grant or deny each exemption in writing and may approve an exemption request in whole or in part. The decision of the Administrator shall be final.
- c. Food Vendors shall be exempt from the requirements set forth in Section B11-527 in a situation deemed by the Administrator to be an emergency for the immediate preservation of the public peace, health or safety.

Section B11-529. Administrative Rules and Regulations.

Administrator may make such rules and regulations, consistent with the provisions of this chapter, as may be necessary or desirable to supplement or clarify such provisions or aid in their enforcement.

Section B11-530. Compliance Monitoring.

a. Compliance with this chapter shall be monitored by the Administrator. The Administrator may designate any number of additional persons to monitor and facilitate compliance with this chapter.

b. The Administrator or other person designated to enforce the provisions of this chapter shall periodically visit each Food Vendor to determine compliance with all sections of this chapter. Nothing in this paragraph shall create a right of action in any Food Vendor or other person against the County or its agents.

Section B11-531. Penalties for a Violation by a Food Vendor.

a. In addition to any other penalty authorized by law, an administrative fine shall be imposed if the Administrator finds based on a preponderance of the evidence, after the Food Vendor is afforded notice and an opportunity to be heard, that the Food Vendor, or any of the Food Vendor's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter, or has admitted to such a violation.

b. Amount of Fine. Each such violation shall be subject to an administrative fine as follows:

A fine not to exceed \$100.00 for a first violation;

A fine not to exceed \$200.00 for a second violation within one year of the time of the first violation; and

A fine not to exceed \$500.00 for each additional violation within one year of the time of the first violation.

c. Waiver of Penalties for First Violation. The Administrator may waive any penalties for a Food Vendor's first violation of any requirement, condition or prohibition of this chapter, if the Food Vendor admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Administrator's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.

d. Corrections Period. The Administrator shall have discretion to allow a Food Vendor a period of time to correct any violation of any requirement, condition or prohibition of this chapter. If a Food Vendor's violation is corrected within the time allowed for correction, the penalty may be waived by the Administrator under this section. Regardless of a Food Vendor's correction of a violation within the time period allowed by the Administrator, the violation will be considered in determining the penalties for any future violation.

e. Granting a period of time to correct any violation of any requirement, condition or prohibition of this chapter shall not be construed or interpreted to set precedent, or to act as a continuing

waiver, for either the subject Food Vendor or any other Food Vendor charged with a violation of this Chapter.

Section B11-532. Payment of Administrative Fines.

a. When an administrative fine is ordered, the fine shall be paid to the County within 30 days unless the person charged with the administrative fine submits a request for an appeal as set forth in Section B11-534 below.

b. Payment of a fine pursuant to this chapter shall not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the administrative fine.

Section B11-533. Late Payment Charges.

a. Unless otherwise provided in this Code, any person who fails to timely pay, in full, any fine imposed pursuant to the provisions of this chapter, on or before the date that fine is due, shall also be liable for the payment of a late payment charge of ten percent of the amount of the delinquent fine.

b. Any person who fails to timely pay, in full, any fine imposed pursuant to the provisions of this chapter, on or before 30 days after its due date shall also pay a second penalty of ten percent of the delinquent amount.

Section B11-534. Appeals.

a. A decision to impose penalties pursuant to Section B11-531 for a violation of this chapter can be appealed to a hearing officer, subject to the following requirements and procedures. The hearing officer shall be the Administrator, his or her designee, the Office of the County Hearing Officer or another individual selected by the County.

b. All appeals must be in writing, state the grounds asserted for relief and the relief sought, and be delivered via Certified United States Mail to the Administrator or his or her designee within 10 calendar days of receipt of notice of the appealable action. If such an appeal is made, it shall stay enforcement of the appealable action.

c. No later than 15 calendar days after receipt of the appeal, the hearing officer shall set an appeal hearing at the earliest practicable time and shall give notice to the appealing party via First Class United States Mail of the date, time and location of the hearing at least 10 calendar days before the date of the hearing.

d. Neither the provisions of the Administration Procedure Act (Government Code Section 11500 et seq.) nor the formal rules of evidence in civil or criminal judicial proceedings

shall apply to such hearing. At the hearing, the hearing officer may admit any evidence, including witnesses, relevant to the determination of the matter. A record of the hearing shall be made by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

e. The hearing officer may continue the hearing from time to time, in his or her sole discretion, to allow for orderly completion of the hearing.

f. After the conclusion of the hearing, the hearing officer shall issue a written decision, which shall be supported by findings of fact. Notice of the written decision, including findings of facts, and notification of the time period in which judicial review may be sought pursuant to Code of Civil Procedure Section 1094.6, shall be served via First Class United States Mail upon all parties no later than 20 calendar days following the date on which the hearing closed. Any decision rendered by the hearing officer shall be a final administrative decision.

Section B11-535. - Right to Judicial Review.

Any person aggrieved by an administrative decision of a hearing officer on an administrative fine may obtain review of the administrative decision by filing a petition for review with the Superior Court in accordance with the timelines and provisions set forth in California Government Code §53069.4.

Section B11-536. Enforcement.

a. Any violation of this chapter is hereby declared to be a public nuisance.

b. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

c. Violations of this chapter may be remedied by a civil action brought by the County, including but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. For purposes of the civil remedies provided in this chapter, each day on which a violation of this chapter occurs shall constitute a separate violation of this chapter.

d. The District Attorney shall have discretion to prosecute violations of this chapter as infractions or misdemeanors.

e. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

Section B11-537. Construction and Preemption.

This chapter and any of its provisions shall be null and void upon the adoption of any state or federal law or regulation imposing the same, or essentially the same, limits on the use of prohibited products as set forth in this chapter. This chapter is intended to be a proper exercise of the County’s police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its unincorporated boundaries, and not to regulate inter-City or interstate commerce. It shall be construed with that intent.

Section B11-538. Effective Date.

This chapter shall become operable February 1, 2013.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, this ____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

George Shirakawa, President
Board of Supervisors

ATTEST:

Lynn Regadanz
Interim Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

 5-3-2012

Mark Bernal
Deputy County Counsel