

CITY OF WALNUT CREEK
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WALNUT CREEK
ADDING CHAPTER 7 TO TITLE 5 OF THE WALNUT CREEK MUNICIPAL CODE
PROHIBITING FOOD VENDORS FROM USING POLYSTYRENE BASED
DISPOSABLE FOOD SERVICE WARE

The City Council of the City of Walnut Creek does ordain as follows:

Section 1. Chapter 7 of Title 5 of the Walnut Creek Municipal Code is hereby adopted as follows:

Chapter 7

POLYSTYRENE-BASED DISPOSABLE FOOD SERVICE WARE

Section 5-7.101 Definitions

Section 5-7.102 Prohibited Use of Polystyrene-based Disposable Food Service Ware

Section 5-7.103 Exemptions

Section 5-7.104 Enforcement

5-7.101. Definitions.

For the purposes of this Chapter only, the following words and phrases shall have the meanings defined in this section unless the context clearly requires otherwise:

- a) *City Facilities* mean any building, structure or vehicle owned or operated by the City of Walnut Creek.
- b) *Disposable Food Service Ware* means single use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready to consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers, also known as clamshells. This does not include straws, utensils, or cup lids nor does it include disposable packaging for unprepared foods.
- c) *Food Vendor* means any establishment located in the City of Walnut Creek that sells or otherwise provides Prepared Food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand.
- d) *Polystyrene-based* means and includes expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and process 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), often marked with the symbol #6. The term “polystyrene” also

includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene (EPS)), and clear or solid polystyrene known as oriented polystyrene.

- e) *Prepared Food* means foods or beverages whether hot or cold which are prepared on premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. Prepared Food includes uncooked fruits or vegetables and any “take out” food, or food consumed off the Food Vendor’s premises. Prepared Food does not include any uncooked meat, fish, poultry, or eggs.

5-7.102. Prohibited Use of Polystyrene-Based Disposable Food Service Ware.

- a) No Food Vendor shall sell or otherwise provide Prepared Food in Polystyrene-based Disposable Food Service Ware.
- b) All City Facilities, City-sponsored events, and City permitted events are prohibited from using Polystyrene-based Disposable Food Service Ware. All City departments, agencies, franchises, contractors and vendors doing business with the City shall not purchase or acquire Disposable Food Service Ware made from polystyrene.

5-7.103. Exemptions.

- a) Prepared Foods prepared or packaged outside the City are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City are encouraged to follow the provisions of this Chapter.
- b) Coolers or Ice Chests. Coolers or ice chests that are intended for reuse are exempt from the provisions of this Chapter.
- c) City Facilities, Food Vendors, City franchises, contractors and their vendors doing business with the City shall be exempt from the provisions of this Chapter, in situations deemed by the City Manager to be an emergency or for the immediate preservation of the public peace, health or safety.

5-7.104. Enforcement.

- a) The City Manager or his/her agent has primary responsibility for the enforcement of this Chapter. The City Manager or his/her agent 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, investigating violations, issuing fines, and entering the premises of any Food Vendor during business hours. Other City staff may assist with this enforcement responsibility by entering the premises of a Food Vendor as part of their regular inspection functions and reporting any alleged violations to the City Manager or his/her agent.
- b) If the City Manager or his/her designee determines that a violation of the Chapter has occurred, he/she will issue a written warning notice to the Food Vendor that a violation has occurred and the potential penalties that will apply for future violations.

- c) Any Food Vendor that violates or fails to comply with any of the requirements of this Chapter after written notice has been issued for a previous violation shall be guilty of an infraction punishable as specified in Title 1 of this Code.

Section 3. Statutory Construction & Severability. It is the intent of the City Council of the City of Walnut Creek to supplement applicable state and federal law and not to contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Walnut Creek hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 4. Publication and Effective Date. Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting. This ordinance shall become effective thirty (30) days from the date it is adopted and shall be become operative on December 18, 2014.

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