AN ORDINANCE OF THE CITY OF AVALON TO ADD CHAPTER 14 TO TITLE 6 OF THE CITY MUNICIPAL CODE TO PROHIBIT THE USE OF POLYSTYRENE PRODUCTS FOR PREPARED FOOD SERVICE WARE AND TO ESTABLISH THE PENALTIES FOR VIOLATION THEREOF

WHEREAS, the City Council supports the Council goal to pursue environmental sustainability; and

WHEREAS, the City Council desires to conserve resources and reduce greenhouse gas (GHG) emissions, waste, litter, and pollution; and

WHEREAS, a shift to reusable, and compostable alternatives for food service ware is consistent with and will help implement the Council goal to pursue environmental sustainability; and

WHEREAS, despite its lightweight characteristics, polystyrene foam impacts the solid waste stream and environment disproportionately because it is non-biodegradable and persist in the environment; and

WHEREAS, even after polystyrene foam has broken into pieces, its lightweight nature causes it to easily blow out of trash cans and landfills, contributing to litter in wetlands and other habitat areas where it can be ingested by wildlife; and

WHEREAS, most food service ware, with the notable exception of polystyrene foam products, are now accepted for recycling or composting in the City’s recycling program;

NOW, THEREFORE, The City Council of the City of Avalon hereby ordain as follows:

SECTION 1. The City Council hereby adopts the recitals of this Ordinance as true and correct and such recitals are hereby incorporated by reference as though fully set forth in the text of this Ordinance.

SECTION 2. Chapter 14 shall be added to Title 6 of the City of Avalon’s Municipal Code as follows:

CHAPTER 14 ENVIRONMENTALLY ACCEPTABLE FOOD PACKAGING

Sec. 6-14-101 Purpose.

The purpose of this chapter is to prohibit the use of polystyrene food service ware, as set forth herein in order to protect the health and welfare of Avalon citizens and promote environmentally sustainable practices in the City.
Sec. 6-14.102 Definitions.

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

“City Facility” means any building, structure, property, park, open space, or vehicle owned or leased by the City, its agents, agencies, or departments.

“City Contractor” means any person that enters into an agreement with the City to furnish products or services to or for the City.

“City-Sponsored Event” means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.

“Disposable Food Service Ware” or “Disposables” means single-use, disposable products used for serving or transporting Prepared Food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, or any other container in or on which Prepared Foods are placed or packaged for consumption. This definition excludes single-use disposable straws, plastic carry-out bags, cup lids, and utensils.

“Food Provider” means any person or place that provides or sells Prepared Food within the City to the general public to be consumed on the premises or for take-away consumption. Food Provider includes but is not limited to (1) a grocery store, supermarket, restaurant, drive-thru, café, coffee shop, snack shop, public food market, farmers’ market, convenience store, or similar fixed place where Prepared Food is available for sale on the premises or for take-away consumption, and (2) any mobile store, food vendor, caterer, food truck, vending machine, or similar mobile outlet. Food Provider also includes any organization, group or individual that regularly provides Prepared Food to its members or the general public as a part of its activities or services.

“Person” means any person, business, corporation, or event organizer or promoter; public, non-profit or private entity, agency, or institution; partnership, association or other organization or group, however organized.

“Polystyrene” means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The Recycle Code for polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies to all Polystyrene Food Service Ware, regardless of whether it exhibits a Recycle Code.

“Polystyrene Food Service Ware” means Disposable Food Service Ware that contains or utilizes Polystyrene.
“Prepared Food” means any food or beverage that is (1) ready to consume without any further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a Food Provider using any cooking, packaging or food preparation technique. Prepared Food may be eaten either on or off the Food Provider’s premises. Prepared Food does not include (1) any raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers’ markets and other food vendors.

“Recycle Code” means a resin identification code placed on plastics to identify the material composition for separation of different types of plastics for recycling.

Sec. 6-14.103 Requirements.

On and after January 1, 2018:

A. No Food Provider shall distribute or sell Prepared Food in any Polystyrene Food Service Ware at any location within the City.

B. Food Providers that distribute Prepared Food in Disposable Food Service Ware shall (1) distribute only Disposables that exhibit a Recycle Code other than No. 6 or PS, and (2) maintain documentation about the composition of the Disposable Food Service Ware. Documentation may include information from the supplier, manufacturer, or bulk packaging for the Disposables, and any other relevant information demonstrating that the disposable material is not polystyrene.

C. No Person shall distribute or sell Prepared Food in any Polystyrene Food Service Ware at City Facilities that have been rented, leased or are otherwise being used with permission of the City. This subsection is limited to use of City Facilities for which a Person has entered into an agreement with the City to rent, lease or otherwise occupy a City Facility. All facility rental agreements for any City Facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of Polystyrene Food Services Ware while using City Facilities. The facility rental agreement shall also indicate that a violating contractor’s security deposit will be forfeited if the City manager or his/her designee determines that Polystyrene Food Services Ware was used in violation of the rental agreement.

D. No Person shall use or distribute Polystyrene Food Service Ware at City-sponsored events, City-managed concessions and City meetings open to the public. This subsection shall apply to the function organizers, agents of the organizers, City Contractors, Food Providers, and any other Person that enters into an agreement with one or more of the function sponsors to sell or distribute Prepared Food or otherwise provide a service related to the function.

E. The City, its departments, and its City Contractors, agents and employees acting in their official capacity, shall not purchase or acquire Polystyrene Food Services Ware, or distribute it for public use.
F. All Food Providers required by the Code to have a business license shall certify compliance with this chapter on their annual business license renewal application.

G. The City encourages all businesses located within or outside the City limits to avoid using all Polystyrene Foam packaging.

Sec. 6-14.104 Exemptions.

A. The following are exempt from the provisions of this chapter:

1. Food prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits.

2. Food provided by the Long Beach Unified School District under its official food service program.

3. Coolers and ice chests made of Polystyrene intended for reuse.

4. Food brought by individuals for personal consumption to City Facilities, including but not limited to City parks and the beach, provided the City Facility is being used for individual recreation or similar purposes and such facility use is not part of a larger organized event that is otherwise affiliated with the City of Avalon.

B. Food Providers that are obligated to purchase or have purchased Polystyrene Food Service Ware under a contract that was entered into by the Food Provider within the year prior to the operative date of this chapter are exempt from the provisions of the chapter for six months following the operative date of this chapter.

C. The City Manager or his/her designee may exempt any Person from the requirements of Section 6-14.103 following the operative date of this chapter, as follows:

1. A request for an exemption shall be filed in writing with the City Manager or his/her designee and shall include documentation of the reason for the claimed exemption and any other information necessary for the City to make its decision. The City may require the applicant to provide additional information as necessary to make the required determination.

2. The City Manager or his/her designee may approve the exemption for a maximum of one (1) year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include but not limited to situations where:

   a. There is no reasonable alternative to Polystyrene Food Service Ware for reasons that are unique to the applicant; or
b. Compliance with the requirements of this chapter would deprive a person of a legally protected right. The exemption may be extended for additional terms of up to one (1) year each, upon a showing of the continuation of the legal right.

3. The City Manager’s written decision on the exemption is effective within ten (10) days of the decision. Decisions of the City Manager may be appealed by the Person applying for the exemption to the City Council. Appeals shall be filed in writing with the City Clerk within ten (10) days of the decision and shall be accompanied by a fee set by resolution of the City Council. Notice of hearing shall be given to the applicant at least ten (10) days prior to the hearing. The City Council shall make its decision within sixty (60) days of receiving the appeal.

Sec. 6-14.105 Penalties.

A. Any person convicted of a violation of this chapter is guilty of an infraction, which is punishable pursuant to the penalty provisions set forth as follows:

- **First Offense:** a written warning notice will be given with thirty (30) days to comply;
- **Second Offense:** within a six (6) month period shall be subject to a fine not exceeding one hundred dollars ($100);
- **Third Offense:** within a one (1) year period from the second offense shall be subject to a fine not exceeding two hundred dollars, ($200);
- **Subsequent Offenses:** occurring within one (1) year from the second offense or Ongoing Offenses shall be subject to a fine(s) not exceeding five hundred dollars ($500) for each additional violation within one (1) year of any prior violation

B. The penalties provided herein are in addition to all other remedies authorized by law and the enumeration of certain penalties shall not preclude the application of other remedies or penalties not herein enumerated.

**SECTION 3.** CEQA Finding. The Ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Environmental Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant negative effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for the protection of the environment because it will strengthen the City’s regulations regarding the distribution and sale of polystyrene products. Thus, this Ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

**SECTION 4.** Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk’s office.
located at 410 Avalon Canyon Road, Avalon, CA 90704. The custodian of these records is the City Clerk.

SECTION 5. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council of the City of Avalon hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 7. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Avalon.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Avalon, California, at a regular meeting of the City Council held on the 20 day of June, 2017, by the following vote:

AYES: 
NOES: 
ABSENT: 
ABSTAIN: 

City of Avalon 
Ann H. Marshall, Mayor 

ATTEST: 

Denise A. Radde, City Clerk 

APPROVED AS TO FORM: 
BEST BEST & KRIEGER LLP 

Scott H. Campbell, City Attorney