

ORDINANCE NO. 18-5**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CONCORD
AMENDING THE MUNICIPAL CODE TO ESTABLISH CHAPTER 8.17 FOOD
AND BEVERAGE SERVICE WARE REGULATIONS**

WHEREAS, polystyrene is a petroleum-based, lightweight plastic material commonly used as food and beverage service ware by food and beverage providers within Concord; and

WHEREAS, polystyrene, often referred to by the trademark “Styrofoam,” has also become a problematic environmental pollutant given its non-biodegradable and nearly non-reusable material; and

WHEREAS, polystyrene-based, single-use food and beverage service ware constitutes a substantial portion of the litter within Concord and surrounding communities; and

WHEREAS, effective ways to reduce the negative environmental impacts of disposable food and beverage service ware include reusing or recycling food and beverage service ware and/or using compostable materials made from renewable resources such as paper, cardboard, corn starch, potato starch, and/or sugarcane; and

WHEREAS, on July 13, 2013, the City Council adopted the Citywide Climate Action Plan (“CAP”). The CAP serves as a community document that provides guidance for measuring and monitoring greenhouse gases, while directing policies on how to reduce greenhouse gas emissions. The Plan includes strategies and requirements to reduce energy consumption and increase waste diversion. In anticipation of the State’s 2020 requirement to divert 75-percent of the solid waste generated by businesses and multifamily developments from the landfill, the CAP implementation strategies focus on reducing waste generation and increasing diversion of solid waste from the landfill to a minimum of 75 percent; and

WHEREAS, the City wishes to restrict the use by food and beverage providers of polystyrene-based disposable food and beverage service ware; and

WHEREAS, the adoption of this Ordinance and attached text amendments (collectively referred to as “Amendment,” attached as Exhibit “A,”) to the Concord Municipal Code (including the Development Code) are necessary to ban polystyrene-based food and beverage service ware; and

1 **WHEREAS**, pursuant to the California Environmental Quality Act of 1970, Public Resources
2 Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of
3 the California Code of Regulations (collectively, “CEQA”), establishing a ban on polystyrene food
4 and beverage service ware is categorically exempt under CEQA Guidelines Section 15307 (Action by
5 Regulatory Agency for Protection of Natural Resources) and Section 15308 (Action by Regulatory
6 Agency for Protection of the Environment) in that by enacting a ban, the City is taking action to
7 maintain, restore, enhance and protect natural resources and the environment. In addition, the
8 ordinance is exempt under CEQA Guidelines Section 15061(b)(2), and CEQA Guidelines Section
9 15061(b)(3) as the ordinance does not have the potential to cause a significant effect on the
10 environment. In the alternative, the ordinance is not a “project” for purposes of CEQA Guidelines
11 Sections 15060(c)(2) and 15378, as the ordinance will not result in a direct or reasonably foreseeable
12 indirect physical change in the environment; and

13 **WHEREAS**, the City Council, after giving all public notices required by State Law and the
14 Concord Municipal Code, held a duly noticed public hearing on June 26, 2018, on the proposed
15 Amendment, considered testimony and information received at the public hearing and the oral and
16 written reports from City staff dated July 26, 2018, as well as other documents contained in the record
17 of proceedings relating to the proposed project, which are maintained at the offices of the City of
18 Concord City Clerk’s Office, 1950 Parkside Drive, Concord, CA and declared their intent to approve
19 and adopt the Amendment.

20 **THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:**

21 **Section 1.** The recitals above are true and correct and are incorporated herein by reference.

22 **Section 2.** Pursuant to the California Environmental Quality Act of 1970, Public Resources
23 Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of
24 the California Code of Regulations (collectively, “CEQA”), establishing a ban on polystyrene food
25 and beverage service ware is categorically exempt under CEQA Guidelines Section 15307 (Action by
26 Regulatory Agency for Protection of Natural Resources) and Section 15308 (Action by Regulatory
27 Agency for Protection of the Environment) in that by enacting a ban, the City is taking action to
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1 maintain, restore, enhance and protect natural resources and the environment. In addition, the
2 ordinance is exempt under CEQA Guidelines Section 15061(b)(3) as the ordinance does not have the
3 potential to cause a significant effect on the environment. In the alternative, the ordinance is not a
4 “project” for purposes of CEQA Guidelines Sections 15060(c)(2) and 15378, as the ordinance will not
5 result in a direct or reasonably foreseeable indirect physical change in the environment; **Section 3.**
6 The Amendment is consistent with the General Plan Principle PF-1.5 “Continue Solid Waste
7 Reduction and Recycling Efforts” and Policy PF-1.5.1 “expand reduction and recycling efforts within
8 the City to divert increasingly larger portions of the waste stream from local landfills.”

9 **Section 4.** The Amendment would not be detrimental to the public interest, health, safety,
10 convenience, or welfare of the City, as the proposed Municipal Code Amendment serves to protect the
11 environment by reducing waste, relies on renewable resources, reduces pollution, and serves to
12 implement the Citywide Climate Action Plan.

13 **Section 5.** The City Council has reviewed, considered, and evaluated all of the Amendment
14 Information prior to acting upon Amendment.

15 **Section 6.** The City Council has reviewed, considered, and evaluated all of the Amendment
16 Information prior to acting upon Amendment.

17 **Section 7.** The Concord Municipal Code (including the Development Code) is hereby
18 amended as outlined in Exhibit A, attached hereto and made a part hereof.

19 **Section 8.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this
20 Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of
21 competent jurisdiction, such decision shall not affect the validity of the remaining portions of this
22 Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each
23 section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact
24 that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions
25 thereof be declared invalid or unconstitutional.

26 **Section 9.** The Amendment to the Municipal Code shall take effect on January 1, 2019.

27 **Section 10.** The City Clerk shall either (a) have this Ordinance published in the East Bay
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1 Times, a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have
2 a summary of this Ordinance published twice in the East Bay Times, a newspaper of general
3 circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption. In
4 the event a summary of said Ordinance is published in lieu of the entire Ordinance, a certified copy of
5 the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior
6 to its adoption and within fifteen (15) days after its adoption, including the vote of the
7 Councilmembers.

8 **Section 11.** The documents and other materials that constitute the record of proceedings upon
9 which the City Council based its determination are located in and may be obtained from the City of
10 Concord Planning & Housing Division, 1950 Parkside Drive, Concord, CA 94519.

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12 _____
Edi E. Birsan
Mayor

13 ATTEST:

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15 By: _____
Joelle Fockler
16 City Clerk

17 (Seal)
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1 Ordinance No. 18-5 was duly and regularly introduced at a regular meeting of the City Council
2 of the City of Concord held on June 26, 2018, and was thereafter duly and regularly passed and
3 adopted at a regular meeting of the City Council held on August 14, 2018, by the following vote:

4 **AYES:** Councilmembers -

5 **NOES:** Councilmembers -

6 **ABSTAIN:** Councilmembers -

7 **ABSENT:** Councilmembers -

8 **I HEREBY CERTIFY** that the foregoing is a true and correct copy of an ordinance duly and
9 regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

10
11 By: _____
12 Joelle Fockler
13 City Clerk

14 Exhibits:

15 A. Chapter 8.17 "Food & Beverage Service Ware Regulations"
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TITLE 8 HEALTH & SAFETY

Chapter 8.17 Food & Beverage Service Ware Regulations

Sections:

- 8.17.010 Title.
- 8.17.020 Effective date.
- 8.17.030 Findings.
- 8.17.040 Purpose.
- 8.17.050 Definitions.
- 8.17.060 Prohibited food and beverage service ware.
- 8.17.070 Required food and beverage service ware.
- 8.17.080 Excluded food and beverage service ware.
- 8.17.090 Excluded non-food based retail items.
- 8.17.100 Excluded food distribution.
- 8.17.110 Excluded prepackaged food and beverages.
- 8.17.120 Interpretations.
- 8.17.130 Temporary ban exemption.
- 8.17.140 Enforcement and violations.
- 8.17.150 Severability.

8.17.010 Title.

This chapter shall be known as the Concord Food & Beverage Service Ware Regulations Ordinance. The City of Concord hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the city.

8.17.020 Effective date.

This chapter shall become effective on January 1, 2019.

8.17.030 Findings.

The City Council finds and determines that:

- (a) Polystyrene foam food and beverage service ware is a distinctive litter concern because it is lightweight, easily blown into streets and waterways, and floats in water until it reaches the San Francisco Bay and Pacific Ocean;
- (b) Polystyrene foam food and beverage service ware breaks apart easily into small pieces, is difficult to collect, and is often mistaken as food by birds, fish, and wildlife;
- (c) Polystyrene foam food and beverage service ware does not biodegrade and pollutes waterways and harms wildlife;
- (d) Polystyrene foam food and beverage service ware is made from a non-renewable resource, but containers made from alternative materials that are reusable, recyclable, or compostable are readily available;
- (e) The proposed ordinance requiring food and beverage providers to use alternative food and beverage service ware is intended to reduce the risk of harm to wildlife and improve water quality in the Concord waterways, as required by the Municipal Stormwater Permit.

Accordingly, the City Council does find and declare that it should restrict the use of polystyrene foam food and beverage service ware by food and beverage providers. The City has a substantial interest in protecting its residents and the environment from negative impacts from polystyrene foam food and beverage service ware.

8.17.040 Purpose.

It is the intent of the City of Concord in enacting Chapter 8.17 to eliminate the use of polystyrene foam food and beverage service ware and to require the use of reusable, recyclable, or compostable service ware by all food and beverage providers in Concord.

8.17.050 Definitions.

The following definitions apply to this chapter:

“ASTM Standard” means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.

“Biodegrade or Biodegradable” means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

“City facilities” means any building, structure or vehicle owned or operated by the City of Concord, its agents, agencies, departments or franchisees.

“Compostable” means that all materials in the product or package will biodegrade or otherwise become part of usable compost (e.g., soil conditioning material, mulch) in an appropriate composting program or facility. Compostable disposable food service ware includes ASTM standard bio-plastics (plastic-like) products that are clearly labeled so that any compost collector and processor can easily distinguish the ASTM-Standard Compostable plastic from non-ASTM-standard compostable plastic.

“Food and beverage providers” means any vendor, business, store, organization, or group, including any full service restaurant, limited service restaurant, supermarket, cafeteria, catering truck or vehicle, sidewalk or other outdoor vendor, caterer, or other retail food establishments, located or operating within Concord that sells, vends, or serves non-prepackaged food or beverages regardless of whether there is a charge for the food or beverage. Applicable food and beverage providers include but are not limited to: childcare facilities, hospitals, after-school programs, catering companies, City facilities, private schools, charter schools, and retail food businesses.

“Food and beverage service ware” refers to all single-use disposable containers and other products used for selling, vending, or serving food or beverages and includes but is not limited to: cups, bowls, plates, serving trays, cartons, hinged or lidded containers (clamshells), straws, splash sticks, stir sticks, soup lids, drink lids, utensils, egg cartons, liquid cartons, and raw meat trays.

"*Polystyrene foam*" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of expanded polystyrene insulation) 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-blow molding (extruded foam polystyrene). Polystyrene foam is commonly made into disposable food service ware products. Polystyrene foam does not include clear or solid polystyrene (oriented polystyrene).

"*Polystyrene foam food and beverage service ware*" refers to all single-use disposable containers and other products used for selling, vending, or serving food or beverages and includes, but is not limited to cups, bowls, plates, serving trays, and hinged or lidded containers (clamshells) that are made from expanded or extruded polystyrene, visible in foam appearance. The expanded or extruded polystyrene foam items may have a #6 resin code. Polystyrene foam food service ware does not include: straws, splash sticks, stir sticks, soup lids, drink lids, utensils, tablecloths, egg cartons, liquid cartons, and raw meat trays for the purposes of the ordinance.

"*Prepackaged*" means food or beverages that are properly labeled and arrive at the premises of the food seller, vendor, or server in a container or wrapper in which the food or beverage is wholly encased, enclosed, contained or packaged and is not removed from such container or wrapper (other than an outer container or wrapper that encloses multiple units of food) before its sale or provision at the premises. Prepackaged food and beverages may be sold, vended, or served in the same container (e.g., ramen noodles in a foam cup).

"*Raw meat trays*" means trays used for packaging raw meat, poultry, seafood, or other similar protein intended to be cooked or prepared off-site.

"*Recyclable*" means material that can be sorted, cleansed, and reconstituted using the City of Concord's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

"*Restaurant, full service*" means a restaurant that prepares food, may include alcoholic drinks, and serves seated customers who select food from a menu. Take-out service is optional and may not be available.

"*Restaurant, limited service*" means an establishment that prepares food or sells packaged food for on-site consumption, take-out, or delivery. Typically customers self-serve or are served partially. This classification includes cafeterias, delicatessens, fast-food restaurants, sandwich shops, pizza parlors, snack bars, take-out restaurants, and catering businesses or bakeries that have a storefront restaurant component.

"*Retail sales, general*" means an establishment that sells or rents goods for consumer or household use. Examples include appliances and electronics stores, department stores, office and stationery supplies, bookstores, clothing and apparel, pet stores, specialty food stores selling pre-made or packaged food for off-site consumption (e.g., candy stores, wine shops), sporting goods, toy stores, and video rental.

"*Reusable*" means all materials in the product or package will be used more than once in its same form by the food seller, vendor, server or other reuse programs. Reusable foodware includes: food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor by the customer that is provided take-out containers. Reusable also includes durable containers, packages or trays used on premises or returnable containers brought back to the food vendor.

"*Reusable food ware*" means all containers, bowls, plates, trays, cartons, cups, and other items that are designed for prolonged use, including, but not limited to, ceramic, glass, porcelain, and metal food and beverage ware.

"*Wholesaling, distribution*" means an establishment engaged in buying and selling merchandise to retailers; contractors, industrial, commercial, institution, farm, or professional business users; to other wholesalers or companies. Examples of these establishments include agents, merchandise or commodity brokers, and commission merchants, assemblers, buyers, and associations engaged in the marketing of products, merchant wholesalers stores selling electrical, plumbing, heating, and air conditioning supplies and equipment. Also includes storage, processing, packaging, and shipping facilities for mail order and electronic commerce retail establishments.

8.17.060 Prohibited food and beverage service ware.

- (a) Except as provided in this chapter, all food and beverage providers are prohibited from providing food or beverages to customers on or in food and beverage service ware made from foam polystyrene, regardless of whether there is a charge for the food or beverage service ware. (i) The ban shall apply to all polystyrene foam food and beverage service ware used to sell, vend or serve food and beverages. Examples include: cups, bowls, plates, serving trays, and hinged or lidded containers ("clamshells") that are made from expanded polystyrene ("EPS"), visible in foam appearance. The polystyrene foam items may have a #6 resin code. Table 8.17.080 lists food and beverage service ware included in the ban.
- (b) Except as provided in this chapter, all city facilities and city facility users are prohibited from using polystyrene foam food or beverage service ware and all city departments and agencies will not purchase or acquire polystyrene foam food or beverage service ware for use at city facilities or events.
- (c) Except as provided in this chapter, all city franchisees, contractors, vendors, and caterers doing business with the city shall be prohibited from using polystyrene foam food or beverage service ware in city facilities or at city events within the City of Concord.

8.17.070 Required food and beverage service ware.

Food and beverage providers are required to use food or beverage service ware that is readily reusable, recyclable, or compostable that meets the needs of their individual businesses, except that food and beverage service ware items specifically excluded pursuant to Section 8.17.080, 8.17.90, 8.17.100, and 8.17.110 can be made from any materials and are not included in the ban.

8.17.080 Excluded food and beverage service ware.

Polystyrene foam food service ware used to vend or serve food and beverages shall be excluded from the ban, as demonstrated in Table 8.17.080, below.

<u>Table 8.17.080</u>		
<u>Food & Beverage Service Ware</u>	<u>Included</u>	<u>Excluded</u>
Cups	X	
Bowls	X	
Plates	X	
Clamshells	X	
Serving trays	X	
Straws		X
Splash sticks		X
Stir sticks		X
Drink lids		X
Soup lids		X
Utensils		X
Egg cartons		X
Liquid cartons		X
Raw meat trays		X

8.17.090 Excluded non-food retail items.

Retail items containing polystyrene foam that are sold in bulk or individually to customers and are not used to sell, vend, or serve food or beverages at the time of sale are not included in the ban. Table 8.17.090 lists retail non-food and beverage based service ware items excluded from the ban.

Table 8.17.090		
<u>Non-Food & Beverage Based Service Ware</u>	<u>Included</u>	<u>Excluded</u>
Foam ice chest		X
Packaging peanuts		X
Table cloths		X
Packaged polystyrene foam food service ware (cups, plates, bowls, clamshells(for bulk or individual sale		X

8.17.100 Excluded food distribution.

Distributers who package food and beverages as part of a wholesaling and distribution business, selling food and drinks to retailers, contractors, industrial, commercial, institution, farm, or professional business are not included in the ban.

8.17.110 Excluded prepackaged foods and beverages.

This exclusion would allow applicable food providers to sell, vend, or serve food and beverages that are prepackaged using polystyrene foam food service ware if packaged outside of the Concord City limits.

8.17.120 Interpretations.

Where this section is either not clear on whether or not a specific food service ware item is allowed or in the event that an interpretation is requested, the Planning Manager or designee may issue a written interpretation regarding whether or not a specific item, food provider, inclusion, exclusion or exemption applies.

8.17.130 Temporary ban exemption.

Food and beverage providers may be temporarily exempt from this chapter if the City Manager or designee deems that a temporary exemption is appropriate in order to address an emergency or to maintain health, safety, and public peace.

8.17.140 - Enforcement and violation.

- (a) As set forth in Section 1.05.200 of this Code, any violation of this Chapter or regulation promulgated under this Chapter is a misdemeanor punishable pursuant to Section 1.05.230. In the discretion of the City Attorney, misdemeanor violations may be chargeable as infractions pursuant to Penal Code Section 19.6. An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him unless he is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail.

- (b) In addition to the penalties herein provided, any violation of this Chapter or regulation promulgated under this Chapter hereby declared to be a public nuisance under Section 8.25.020 of this Code and subject to the remedies enumerated in Section 1.05.210 and/or Section 1.05.230 of this Code.
- (c) Any violation of this Chapter shall constitute a separate offense for each day the violation occurs or persists pursuant to Section 1.05.210, and may be subject to an administrative citation and fine(s), as provided for in Section 8.25.070 of this Code.
- (d) These penalties and remedies are cumulative, and are in addition to any other penalties and remedies available to the City.

8.17.150 Severability.

If any part of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter.