

ORDINANCE NO. 1440

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING CHAPTER 3.5 OF TITLE V OF THE ARCATA MUNICIPAL CODE, TO PROHIBIT THE USE OF EXPANDED POLYSTYRENE DISPOSABLE FOOD SERVICE WARE AND TO ENCOURAGE THE USE OF COMPOSTABLE, RECYCLABLE AND REUSABLE FOOD WARE

TITLE V—SANITATION AND HEALTH CHAPTER 3.5—CARRY-OUT BAG WASTE REDUCTION

The City Council of the City of Arcata does hereby ordain as follows:

Section 1. Title V—Sanitation and Health, Chapter 3.5—Carry-Out Bag Waste Reduction, is hereby amended, as shown by the following where strikethrough denotes deleted text, underscore denotes new text and “* * *” denote omitted and unchanged text, to change the Chapter name, to create a new Article 1 containing existing Sections 5476–5479, and to recodify Sections 5476–5479 to 5476–5476.3 within Article 1:

TITLE V—SANITATION AND HEALTH ~~CHAPTER 3.5—CARRY-OUT BAG WASTE REDUCTION~~ ARTICLE 1—CARRY-OUT BAG WASTE REDUCTION

SEC. 5476. **Findings.**
* * *

SEC. 5477~~5476.1.~~ **Definitions.**
* * *

SEC. 5478~~5476.2.~~ **Carry-Out Bag Regulation.**
* * *

SEC. 5479~~5476.3.~~ **Administration, Enforcement, and Penalties.**
* * *

Section 2. Title V—Sanitation and Health, Chapter 3.5—Waste Reduction, is hereby amended by the addition of Article 2, Food Service Ware Waste Reduction, Sections 5477 through 5477.3, as follows:

ARTICLE 2—FOOD SERVICE WARE WASTE REDUCTION

SEC. 5477. Findings.

The City Council of the City of Arcata finds and declares the following:

A. The City has established waste reduction, greenhouse gas reduction and stormwater pollution prevention goals to conserve resources, reduce GHG emissions, waste, litter and marine pollution to protect public health and safety, the City's natural environment, and wildlife, all of which increase the quality of life for residents and visitors.

B. Effective ways to reduce waste, litter and marine pollution is to encourage the use of reusable, recyclable, and biodegradable packaging materials. Biodegradable products decay, causing less harm to the environment and the landscape of the City than non-biodegradable disposable products.

C. Polystyrene food service ware, often referred to by the trademark term "Styrofoam," is highly durable, buoyant, lightweight and non-biodegradable; is easily windblown, and can become litter even when placed into trashcans. Once in the environment, these wastes persist and detract from the appearance of the area, and pollute waterways and Humboldt Bay longer than many other types of litter.

D. Styrene, a component of polystyrene, is a known hazardous substance that medical evidence and the Food and Drug Administration suggest leaches from polystyrene containers into food and drink; and, is a suspected carcinogen and neurotoxin which potentially threatens human health.

E. The California Integrated Waste Management Board estimates that Californians use 165,000 tons of expanded polystyrene (foam and Styrofoam® products) each year for packaging and food service purposes. A 2004 study by the Waste Management Board ranked the environmental impacts from both the manufacturing and disposal of polystyrene second highest after aluminum in the categories of energy consumption, greenhouse gas emissions and total environmental effect.

F. Prohibiting the use of polystyrene food service ware and replacing it with food service ware that is reusable, biodegradable, compostable or recyclable; and, restricting the use of polystyrene products that are not wholly encapsulated or encased by a more durable material will protect local waterways, Humboldt Bay and will support the City's goal of reducing waste and litter.

SEC. 5477.1. Definitions.

Unless the context requires otherwise, the definitions in this section govern the construction of this Article. The definition of a word applies to any of its variants.

A. "Biodegradable" means capable of being broken down by micro-organisms commonly found in the environment into non-harmful substances or elements within a reasonably short time after disposal.

B. "City Facilities" means any building, structure or vehicle owned or operated by the City of Arcata, its agent, agencies, departments and franchisees.

C. "Compostable" means a product capable of composting and labeled in accordance with California law, or consistent with the timeline and specifications of ASTM D6400 and D6868, without regard to material type.

D. "Customer" means any member of the public obtaining Prepared Food from a Food Provider or Food Vendor.

E. "Event Promoter" means an applicant for any event permit issued by the City.

F. "Food Service Ware" means all food-related single use wrappings, single-use disposable products used in the restaurant and food service industry for serving, transport, storage, or consumption of Prepared Food or Takeout Food and includes, but is not limited to, cups, bowls, plates, trays, cartons, coverings, and hinged or lidded containers (clamshells), Polystyrene foam coolers or ice chests which are not wholly encapsulated or encased within a more durable material; and additionally including packaging for food left over from partially consumed meals prepared by Food Vendors. This definition specifically excludes single-use disposable straws, hot cup lids, plastic knives, forks, spoons, and materials used to package Prepared Food including butchered meat.

G. "Food Provider" means any Food Vendor, business, organization, entity, group or individual, including any Restaurant or Food Establishment, including a motor vehicle or mobile unit based Vendor of Prepared Food located or operating within the City of Arcata or providing food or beverage to the public, and any provider of Prepared Food at organized or special events.

H. "Food Service Establishment" means any store, shop, sales outlet, restaurant or other establishment, other than a restaurant, including but not limited to a grocery store, delicatessen, vehicle or mobile unit based Vendor, drive-in, coffee shop, cafeteria, short-order cafe, luncheonette, grill, sandwich shop, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, Takeout Food place, industrial feeding establishment, catering kitchen, commissary, special event, food market, produce stand, food stand, or similar place in which food or drink is prepared for sale, or for service, on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served or provided to customers and that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5, commencing with Section 7200, of Division 2 of the California Revenue and Taxation Code).

I. "Food Vendor" means any restaurant, Vendor, business, non-profit, organization, entity, group or individual that provides Prepared Food at a retail level, including a Food Service Establishment or a motor vehicle- or mobile unit-based Vendor. Food Vendor includes all establishments that carry a Food Permit from the Humboldt County Department of Environmental Health.

J. "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 and includes "Takeout Food." Prepared Food does not include 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.

K. "Polystyrene" means a thermoplastic petrochemical material utilizing a styrene monomer and processed by various techniques such as fusion of polymer spheres ("expandable bead polystyrene"), injection molding, form molding, and extrusion-blow molding ("extruded foam polystyrene"), blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation). Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

L. "Recyclable" means material that can be sorted, cleansed, and reconstituted 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.

M. "Retail Store" means a store with retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5, commencing with Section 7200, of Division 2 of the California Revenue and Taxation Code).

N. "Takeout Food" means food or beverages requiring no further preparation to be consumed and which generally are purchased to be consumed off the premises or away from the facilities of the retail Food Vendor.

O. "Vendor" means any store or business which sells or offers goods or merchandise, located or operating within the City of Arcata, including "Food Service Establishments," and "Food Providers."

SEC. 5477.2. Prohibited Use of Polystyrene Disposable Food Service Ware.

A. The following prohibitions shall be effective October 1, 2015:

1. Food Vendors, Food Providers, Food Service Establishments, Restaurants, and Retail Stores are prohibited from providing Prepared Food to Customers in Polystyrene Food Service Ware.
2. Polystyrene Food Service Ware shall not be sold or provided by any Vendor or Event Promoter in the City of Arcata, unless it is wholly encapsulated or encased within a more durable material, as exempted in Section 5477.2(B)(4) This specifically includes, but is not limited to, cups, plates, bowls, clamshells and other products intended primarily for food service use, as well as coolers, containers and, ice chests.

3. No Polystyrene Food Service Ware may be used in any City Facilities. All individuals, entities or organizations using City Facilities for public or private events shall comply with the requirements in this Article.
 4. No City department may purchase or acquire Polystyrene Food Service Ware for use at City Facilities, for City events or otherwise in the conduct of City business.
 5. All rental agreements to use any City Facility shall require contracting parties to prevent the use or distribution of Polystyrene Food Service Ware in the City Facility. The agreement shall provide that the contractor's security deposit will be forfeited if the City Manager determines that Polystyrene Food Service Ware was utilized in violation of the rental agreement.
 6. The City may not sponsor or co-sponsor events at which Polystyrene Food Service Ware is used or distributed by Event Promoters, Food Vendors and any other party (including nonprofit organizations) which enters into an agreement with the Event Promoter to sell Prepared Food at or provide service to the event. The City's monetary contribution to such event shall be refunded to the City if the City Manager determines that Polystyrene Food Service Ware was used at the event in violation of this prohibition.
 7. Violation of the requirements set forth in this Article shall subject the Vendor to penalties as set forth in this Article.
- B. The following items or activities are exempt from the prohibitions in this Article:
1. Pre-packaged food that arrives at the premises of the Food Vendor in a container or wrapper and is not removed from the container or wrapper before its sale or distribution (e.g., ramen noodles in a Polystyrene cup or pre-packaged dried fruit or vegetables sold at a grocery store).
 2. City Facilities, Food Providers, City franchisees, contractors and Vendors doing business with the City in situations deemed by the City Manager or his/her designee to be an emergency, and procuring and distributing emergency supplies and services for the immediate preservation of the public health, safety, welfare.
 3. Medical supplies and services.
 4. Products made from Polystyrene that is wholly encapsulated or encased by a more durable material. Examples include surfboards, boats, life preservers, and craft supplies which are wholly encapsulated or encased by

a more durable material, and durable coolers not principally composed of Polystyrene/plastic foam.

5. Construction products made from Polystyrene if the products are used in compliance with the Arcata Municipal Code Title 7, Chapter 5 Stormwater Management and used in a manner that prevents the Polystyrene from being released into the environment.
6. *Waivers.* Any Food Vendor, Food Provider, Food Service Establishment, and Retail Store may petition the Director of Environmental Services for a full or partial waiver of the requirements of this Section if the owner or operator demonstrates that application of this Section would create undue hardship or practical difficulty for the establishment not generally applicable to other similar establishments in similar circumstances.

SEC. 5477.3. Administration, Enforcement, and Penalties.

A. The Director of Environmental Services shall have primary responsibility for enforcement of this Article. The Director is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this Article, including, but not limited to, inspecting the premises of any Food Vendor, Food Provider, Food Service Establishment, Restaurant, and Retail Store to verify compliance.

B. Penalties shall not be enforced for the first two years following the effective date of this Ordinance.

C. Any person who violates this Article shall be considered guilty of an infraction for each offense and subject to those penalties as established by the City Council.

D. Any violation of the Article is subject to the recovery of administrative penalties pursuant to California Government Code, Section 53069.4.

E. The City of Arcata may seek legal, injunctive, or other equitable relief to enforce this Chapter.

F. The remedies and penalties provided in this section are cumulative and not exhaustive, and nothing in this Article shall preclude the City of Arcata from pursuing any other remedy provided by law.

Section 3. This ordinance will preserve and enhance the environment within the City of Arcata and is exempt from the requirements of the California Environmental Quality Act (“CEQA”), as amended, pursuant to Guideline 15061(b)(3) and Guideline 15308 of the CEQA Guidelines. A Categorical Exemption shall be filed pursuant to CEQA Guidelines sections 15061(b)(3) and 15308.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

Section 5. Effective Date. This ordinance will take effect 30 days after its adoption.

DATED: May 20, 2015

ATTEST:

/s/ Bridget Dory
Clerk, City of Arcata

APPROVED:

/s/ Michael Winkler
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of **Ordinance No. 1440**, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California, held on the 20th day of May, 2015, by the following vote:

AYES: WINKLER, PITINO, ORNELAS, PEREIRA, WHEETLEY

NOES: NONE

ABSENT: NONE

ABSTENTIONS: NONE

/s/ Bridget Dory
Clerk, City of Arcata