

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
ADDING ARTICLE V TO CHAPTER 16 OF THE MOUNTAIN VIEW
CITY CODE RELATED TO USE OF POLYSTYRENE FOAM
FOOD SERVICE WARE BY FOOD PROVIDERS

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. CEQA Review. On August 27, 2013, the City of San Jose, acting as the Lead Agency under the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq.* for 13 participating cities and towns in Santa Clara County, including the City of Mountain View, adopted a Negative Declaration after conducting an Initial Study that analyzed the impacts of the prohibition of polystyrene foam food service ware if adopted in the 13 participating cities and towns throughout the County of Santa Clara. The Initial Study and Notice of Intent to Adopt a Negative Declaration were circulated by the City of San Jose for public review and comments. During the public review and comment period, the City of Mountain View, as a responsible agency, participated in the CEQA process as required by Title 14 of the California Code of Regulations, Section 15096. The Negative Declaration was adopted by the City of San Jose pursuant to CEQA and the CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.* It is incorporated by reference herein.

Pursuant to Section 15096 of the CEQA Guidelines, the City of Mountain View is a responsible agency for adoption of this ordinance within the City of Mountain View. Upon independent review of the Initial Study and Negative Declaration prepared by the City of San Jose, and all the evidence before it, the City Council makes the following findings:

1. The Initial Study and Negative Declaration are complete, correct, adequate, and prepared in accordance with CEQA, 14 California Code of Regulations, Section 15000 *et seq.* ("CEQA Guidelines"), and the public comment period; and
2. On the basis of the Initial Study, Negative Declaration, and public comment received by both the City of San Jose and the City of Mountain View, there is no substantial evidence that the project as proposed will have a significant effect on the environment; and

3. After reviewing the foregoing, the City Council has determined that no evidence or circumstances exist that would require the preparation of additional environmental documents; and

4. Adoption of this ordinance and analysis of the Initial Study and Negative Declaration reflect the independent judgment of the City Council of the City of Mountain View; and

5. None of the conditions listed in CEQA Guidelines, Section 15162(a), are applicable to adoption of this ordinance, and adoption of this ordinance is an activity that is part of the project examined by the City of San Jose's Initial Study and Negative Declaration and is within the scope of the project described therein; and

6. The City Council of the City of Mountain View approves and adopts the Negative Declaration for the proposed ordinance to prohibit the use of polystyrene foam food service ware within the City of Mountain View, which is on file with the City Clerk; and

7. A Notice of Determination shall be filed pursuant to CEQA Guidelines, Sections 15094 and 15096.

Section 2. Article V is hereby added to Chapter 16, "Use of Polystyrene Foam Food Service Ware by Food Providers," as follows:

"ARTICLE V.

USE OF POLYSTYRENE FOAM FOOD SERVICE WARE BY FOOD PROVIDERS.

SEC. 16.90. Findings and purpose.

The city council finds and determines that:

a. Polystyrene foam food service ware is a distinctive litter concern because it is lightweight, easily windblown into streets and waterways, and floats in water until it reaches the San Francisco Bay and ocean.

b. Polystyrene foam food service ware breaks apart easily into small pieces, is difficult to collect and control litter, and is often mistaken as food by birds, fish and wildlife.

c. Polystyrene foam food service ware does not biodegrade and pollutes waterways and harms wildlife.

d. Polystyrene foam food service ware is made from a nonrenewable resource, but containers made from alternative materials that are recyclable and compostable are readily available.

e. The proposed ordinance requiring food providers to use alternative food service ware is intended to reduce the risk of harm to wildlife and improve water quality in Mountain View waterways as required by the Municipal Stormwater Permit.

The city council of Mountain View does, accordingly, find and declare that it should restrict the use of expanded polystyrene foam food service ware by food providers. The city has a substantial interest in protecting its residents and the environment from negative impacts from expanded polystyrene foam food service ware.

SEC. 16.91. Definitions.

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

a. “Food service ware” means single-use disposable products used in the restaurant and food service industry for serving or consuming prepared food and includes, but is not limited to, cups, bowls, plates, trays, cartons, and hinged or lidded containers (clamshells), and includes polystyrene foam coolers or ice chests which are not wholly encapsulated or encased within a more durable material. Food service ware does not include straws, utensils, or drink lids.

b. “Food provider” means any establishment, vendor, business, organization, entity, group or individual located or operating in the City of Mountain View that offers prepared food or beverages, regardless of whether there is a charge for the food or beverage: (1) to the public for consumption on or off its premises; (2) as a catered event; and/or (3) at cafeterias of schools and places of employment, whether or not such establishments are open to the general public. “Food provider” includes, but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, delicatessens, fraternal clubs serving the public, mobile food vendors, vehicles or carts, or roadside stands.

c. “Polystyrene foam” means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form 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).

d. "Prepared food" means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises for consumption, including, but not limited to, ready-to-eat, dine-in, take-out or complimentary food or beverage. "Prepared food" does not include: (1) raw eggs and raw, butchered meat, fish or poultry that is sold from a butcher case or a similar retail appliance; or (2) prepackaged food that is delivered to the food provider wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food provider in the same container or packaging.

e. "Vendor" means any store, business, organization, or entity that sells or offers goods or merchandise, located or operating within the City of Mountain View.

SEC. 16.92. Polystyrene foam food service ware prohibited.

a. On or after July 1, 2014, no food provider shall sell or otherwise provide prepared food using polystyrene foam food service ware.

b. On or after July 1, 2014, polystyrene foam food service ware shall not be sold or provided by any vendor in the City of Mountain View.

SEC. 16.93. Exemptions.

The following is exempt from the provisions of this Article:

Polystyrene foam food service ware may be used if the food provider demonstrates, in writing, to the satisfaction of the public works director or his or her designee, that compliance with the provisions of this Chapter will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.

a. An undue economic hardship could include, but is not limited to: overstocked supplies that cannot be returned to the distributor or used at another store outside the city; or unique packaging needs for which no suitable packaging alternative exists.

b. The public works director shall issue a written decision to grant or deny an exemption and may exempt the food provider until July 1, 2015, or not more than one (1) year from the date of the demonstration, whichever date is earlier. The director's decision shall be final and is not subject to appeal."

Section 2. Severability. If any provision of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the City Council that such invalid provision be severed from the remaining provisions of the ordinance.

Section 3. It is the intent of the City Council of the City of Mountain View to supplement State and Federal law and not to duplicate or contradict such law, and this ordinance shall be construed consistently with that intention. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. Effective Date. This ordinance shall be effective on July 1, 2014.

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