

ORDINANCE NO. 2020-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ AMENDING
CHAPTER 6.48, SECTIONS 6.48.015 AND 6.48.025 OF THE MUNICIPAL CODE
PERTAINING TO THE ENVIRONMENTALLY ACCEPTABLE PACKAGING AND
PRODUCTS

BE IT ORDAINED By the City of Santa Cruz As Follows:

Section 1: Section 6.48.010 of the Santa Cruz Municipal Code as hereby amended to read as follows:

6.48.010 FINDINGS AND INTENT

The Santa Cruz City Council finds and declares that:

- (a) The City of Santa Cruz has a duty to protect its natural environment, its economy, and the health of its citizens.
- (b) The City of Santa Cruz borders the Monterey Bay National Marine Sanctuary. This federal preserve supports one of the most diverse and delicate ecosystems in the world. This sanctuary provides habitat for at least 33 species of mammals, 94 species of seabirds, 345 species of fish, and contains the largest kelp forest in the nation.
- (c) Eliminating the use of polystyrene/plastic foam products and other non-compostable, non-biodegradable, and non-recyclable food packaging will maximize the operating life of landfills and will lessen the economic and environmental costs of managing waste.
- (d) In 1989 the City of Santa Cruz adopted an ordinance calling for retail food establishments to voluntarily eliminate polystyrene foam food packaging material by 1992. Since that time the City has provided extensive education and outreach to both businesses and the public explaining the reasons to change to recyclable, biodegradable, and/or compostable packaging. Because the voluntary ordinance had not eliminated the use of polystyrene/plastic foam packaging in the ensuing 18 years, the City found it necessary to adopt mandatory restrictions. In 2007 the Environmentally Acceptable Food Packaging Ordinance was passed, which eliminated the use of polystyrene foam “to-go” containers in the City of Santa Cruz.
- (e) Discarded food and beverage packaging and products made from polystyrene/plastic foam constitute a significant and growing portion of the City’s waste stream. Laws, policies and regulations pertaining to disposable food service ware and polystyrene/plastic foam products are a vital component in the City’s efforts to reduce the amount of disposed waste.
- (f) Eliminating all non-biodegradable, non-returnable, and non-recyclable food packaging material and other polystyrene/plastic foam products from all establishments within the City of Santa Cruz will help protect the City’s environment from contamination and degradation.

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- (g) Take-out food packaging that is biodegradable, compostable, and recyclable is the most responsible and sustainable choice for the City's tourist economy, its citizenry and its environment. When products are recycled, natural resources are spared, less energy is used for the production of new products, and premium landfill space is preserved. When biodegradable products are turned into compost they can reduce water use and lessen the need for fertilizer.
- (h) Biodegradable take-out packaging such as cups, plates, clamshell containers, and cutlery are now made from paper, sugarcane stalk, corn bi-products, and potato starch. As these products degrade, they pose less of a danger to the environment and are not a permanent blight on the landscape. These products are available locally.
- (i) Items made from polystyrene/plastic foam (commonly called Styrofoam) are not biodegradable, compostable, returnable, or recyclable, locally. Polystyrene/plastic foam breaks into smaller pieces and because it is lightweight, may be picked up by the wind even when it has been disposed of properly.
- (j) As litter, polystyrene/plastic foam is highly durable, persisting longer than any other type of litter. There is a prevalence of polystyrene/plastic foam littering City parks and public places, streets and roads, waterways, storm drains and beaches. This litter ultimately floats, or is blown, into the Monterey Bay. This litter creates a financial cost to City residents and an environmental cost to natural resources.
- (k) Marine animals and birds often confuse polystyrene/plastic foam with pieces of food, and when ingested, it can impact their digestive tracts, often leading to death.
- (l) Polystyrene/plastic foam is manufactured from petroleum, a non-renewable resource.
- (m) There is scientific evidence that styrene leaches from polystyrene foam containers into food and drink. The Environmental Protection Agency (EPA) has found that there are short- and long term adverse health effects associated with exposure to styrene.
- (n) It is not economically feasible at this time, to recycle polystyrene/plastic foam in the City of Santa Cruz.
- (o) Prohibiting the use of polystyrene/plastic foam take-out food packaging and replacing it with food service ware that is biodegradable, compostable or recyclable, and, restricting the use of polystyrene/plastic foam products that are not wholly encapsulated or encased by a more durable material will further protect the Monterey Bay National Marine Sanctuary, City residents and visitors, and will support the City's goal of reducing waste and litter for a cleaner environment for generations to come.

Section 2: Section 6.48.015 of the Santa Cruz Municipal Code as hereby amended to read as follows:

6.48.015 DEFINITIONS

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

- a) "Affordable" means that a biodegradable, compostable or recyclable product may cost up to 15 percent more than the purchase cost of the non-biodegradable, non-compostable or non-recyclable alternative(s).
- b) 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 and is consistent with the materials accepted at the composting facility used by the City collection program), if certified by Biodegradable Product Institute, BPI or by another independent third party testing laboratory that certifies products free of intentionally added PFAS and PFOS (poly fluorinated alkyl substance). Regulations issued by the Public Works Director will determine the specific products or product types that are considered compostable for purposes of this ordinance.
- c) "City of Santa Cruz Facility" means any building, structure, recreational area, or vehicle owned and operated by the City of Santa Cruz, its agents, agencies, and departments.
- d) "City of Santa Cruz Contractor" means any person or entity that has a contract with the City of Santa Cruz for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be purchased at the expense of the City of Santa Cruz, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the City of Santa Cruz.
- e) "Compostable" means (1) all the materials in the product or package will break down, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch) in a safe and timely manner and (2) is Natural Fiber-based . Compostable items may include those that are made entirely of Natural Fiber or Natural Fiber-based items that are coated or lined with biologically based polymer, such as corn or other plant sources (e.g., compostable plastics), if certified by Biodegradable Product Institute, BPI or by another independent third party testing laboratory that certifies products free of intentionally added PFAS and PFOS (poly fluorinated alkyl substance). Regulations issued by the Public Works Director will determine the specific products or product types that are considered compostable for purposes of this ordinance.
- f) "Disposable Food Service Ware" is interchangeable with "to go" packaging and "food packaging material" and includes: all containers, clamshells, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, napkins and other items designed for one-time use for prepared foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by food providers.

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- g) “Food Provider” means any vendor, business, organization, entity, group or individual, including food establishments, as defined herein, located in the City of Santa Cruz that offers food or beverage to the public.
- h) “Person” means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.
- i) “Polystyrene/Plastic Foam” means blown expanded and extruded polystyrene (sometimes called StyrofoamTM) or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons, coolers, ice chests, shipping boxes, packing peanuts, and beach or pool toys. The term “polystyrene also includes clear or solid polystyrene which is known as “oriented polystyrene.”
- j) “Prepared Food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the City of Santa Cruz. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.
- k) “Polystyrene/plastic foam products” means any item such as coolers, ice chests, cups, bowls, plates, clamshells, shipping boxes, containers, cutlery, or any other merchandise containing polystyrene/plastic foam that is not wholly encapsulated or encased by a more durable material.
- l) “Recyclable” means any material that is accepted by the City of Santa Cruz recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs.
- m) “Food Establishment” means all sales outlets, stores, shops, vehicles or other places of business located within the City which operate primarily to sell or convey foods, or beverages, which foods or beverages are predominantly contained, wrapped or held in or on packaging. Food establishment shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, short-order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out prepared food place, industrial feeding establishment, catering kitchen, mobile food preparation unit, commissary, event, grocery store, public food market, produce stand, food stand, takeout food delivery service, 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 for the public and any organization, group or individual which provides food as part of its service.

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- n) “Events Promoter” means an applicant for any event permit issued by the City or any City employee(s) responsible for any City-organized event.
- o) “Vendor” means any store or business which sells or offers goods or merchandise, located or operating within the City of Santa Cruz, including those referenced in “Food Establishment,” and “Food Provider.”

Section 3: Section 6.48.025 of the Santa Cruz Municipal Code as hereby amended to read as follows:

6.48.020 POLYSTYRENE/PLASTIC FOAM DISPOSABLE FOOD SERVICE WARE PROHIBITED

- a) Food providers within the City of Santa Cruz may not provide food in any disposable food service ware that contains polystyrene/plastic foam.
- b) Disposable food service ware that contains polystyrene/plastic foam is prohibited from use in all City of Santa Cruz facilities.
- c) City of Santa Cruz Contractors in the performance of City contracts and events promoters may not provide food in disposable food service ware that contains polystyrene/plastic foam.

6.48.025 REQUIRED BIODEGRADABLE, COMPOSTABLE, OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE

- a) All food providers within the City of Santa Cruz utilizing disposable food service ware shall use biodegradable, compostable or recyclable products, unless there is no affordable alternative available as determined by the Director of Public Works (see definition of “Affordable” and Section 6.48.30 Exemptions).
- b) All food providers may only give straws, lids, cutlery, and to-go condiment packages upon request of the customer. Customers must affirmatively request these items separate from food and beverage orders across all point of sale platforms, including but not limited to telephone, web, smart phone and other digital platforms.
- c) All food providers are encouraged to provide a \$.25 credit for customers bringing their own reusable containers for to-go items.
- d) All food service providers are required to charge a “take-out fee” of \$.25 for disposable cups. Sellers may not waive or absorb this fee. The fee must be clearly identified separately on any post-sale receipt. This fee is intended to offset any cost difference of biodegradable, compostable or recyclable food service ware, and remain with the seller.

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- e) All food service providers are encouraged to charge a “take-out fee” of \$.25 for containers, lids, straws, stirrers and/or utensils. This fee is intended to offset any cost difference of biodegradable, compostable or recyclable food service ware.
- f) All City of Santa Cruz facilities utilizing disposable food service ware shall use products that are biodegradable, compostable or recyclable.
- g) City of Santa Cruz contractors, and events promoters utilizing disposable food service ware shall use biodegradable, compostable, or recyclable products while performing under a City of Santa Cruz contract or permit.
- h) Food service providers that have inside dining are encouraged to use reusable food service ware rather than providing disposable ware.

6.48.027 PROHIBITED SALES

No vendor or event promoter in the City of Santa Cruz may sell, rent or otherwise provide any polystyrene/plastic foam product which is not wholly encapsulated or encased within a more durable material, except as exempted in Section 6.48.030. 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, ice chests, shipping boxes, pool or beach toys, packing peanuts, or other packaging materials.

Section 5: Section 6.48.030 of the Santa Cruz Municipal Code as hereby amended to read as follows:

6.48.030 EXEMPTIONS FOR BIODEGRADABLE, COMPOSTABLE OR RECYCLABLE FOOD SERVICE WARE AND OTHER POLYSTYRENE/PLASTIC FOAM PRODUCTS

- a) There are no exemptions that allow for the use of polystyrene/plastic foam disposable food service ware.
- b) The Director of Public Works, or the Director’s designee, may exempt a food provider from the requirement set forth in section 6.48.25(a) of this ordinance for a one-year period upon the food provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Director of Public Works or the Director’s designee shall put the decision to grant or deny a one-year exemption in writing, and the Director’s or Director’s designee decision shall be final.
- c) Exemptions to allow for the sale or provision of polystyrene/plastic foam products may be granted by the Director of Public Works, or Director’s designee, if the vendor can demonstrate in writing a public health and safety requirement or medical necessity to use the product. The Director of Public Works, or Directors designee, shall put the decision to

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grant or deny the exemption in writing and the decision of the Director or Director's designee shall be final.

- d) An exemption application shall include all information necessary for the Director of Public Works or the Director's designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The Director or the Director's designee may require the applicant to provide additional information.
- e) The Director Public Works or Director's designee may approve the exemption application in whole or in part, with or without conditions.
- f) Foods prepared or packaged outside the City of Santa Cruz and sold inside the City of Santa Cruz are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Santa Cruz are encouraged to follow the provisions of this Chapter.
- g) Meat trays are exempt from the provisions of this chapter, only if used for raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.
- h) Disposable food service ware composed entirely of aluminum is exempt for the provisions of this section
- i) Products made from polystyrene/plastic foam which is wholly encapsulated or encased by a more durable material are exempt from the provisions of this chapter. 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.
- j) Construction products made from polystyrene/plastic foam are exempted from this ordinance if the products are used in compliance with Santa Cruz Municipal Code Title 18 Buildings and Construction and Chapter 16.19 Storm water and Urban Runoff Pollution Control and used in a manner preventing the polystyrene/plastic foam from being released into the environment
- k) Emergency Supply and Services Procurement: In a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety, city facilities, food vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter.

6.48.035 ENFORCEMENT AND NOTICE OF VIOLATION

- a) Violations of this ordinance may be enforced in accordance with Chapter 4.14 of this Code.
- b) The Director of Public Works, or the Director's designee, shall be responsible for enforcing this Chapter and shall have authority to issue citations for violations. The Director, or the

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Director's designee, is authorized to establish regulations or administrative procedures to obtain compliance with this chapter.

- c) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.
- d) The Santa Cruz City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter.
- e) The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.
- f) The City of Santa Cruz in accordance with applicable law, may inspect any vendor or food provider's premises to verify compliance.

Section 6: Section 6.48.040 of the Santa Cruz Municipal Code as hereby amended to read as follows:

6.48.040 PENALTIES AND FINES FOR VIOLATIONS

Violations of this ordinance shall be enforced as follows:

1. For the first violation, the Director of Public Works or the Director's designee shall issue a written warning to the food provider or vendor specifying that a violation of this chapter has occurred and which further notifies the food provider or vendor of the appropriate penalties to be assessed in the event of future violations. The food provider or vendor will have 30 days to comply.
2. The following penalties will apply for subsequent violations of this Chapter:
 - a) A fine not exceeding one hundred dollars (\$100.) for the first violation 30 days after the first warning. The Director of Public Works or the Director's designee may allow the violating provider in lieu of payment of the fine, to submit receipts demonstrating the purchase after the citation date, of at least \$100 worth of biodegradable, compostable, or recyclable products appropriate as an alternative disposable food service ware for the items which led to the violation.
 - b) A fine not exceeding two hundred dollars (\$200.) for the second violation 60 days after the first warning.
 - c) A fine not exceeding five hundred dollars (\$500.) for the third violation 90 days after the first warning and for each additional 30 day period during which the food provider or vendor is not in compliance.

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3. Food providers or vendors who violate this Chapter in connection with events authorized by Chapters 10.64 or 10.65 shall be assessed fines as follows:
- a) A fine not to exceed \$200 for an event of 1 to 200 Persons
 - b) A fine not to exceed \$400 for an event of 201 to 400 Persons
 - c) A fine not to exceed \$600 for an event of 401 to 600 Persons
 - d) A fine not to exceed \$1,000 for an event of 600 or more Persons.

Section 7: This ordinance shall take effect and be in force on September 8, 2020. Warnings will take place up to six months after final implementation.

PASSED FOR PUBLICATION this 14th day of January, 2020 by the following vote:

AYES: Councilmembers Watkins, Mathews, Brown, Glover, Krohn; Vice Mayor Meyers; Mayor Cummings.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: _____
Justin Cummings, Mayor

ATTEST: _____
Bonnie Bush, City Clerk Administrator

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PASSED FOR FINAL ADOPTION this 28th day of January, 2020 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Justin Cummings, Mayor

ATTEST: _____
Bonnie Bush, City Clerk Administrator

This is to certify that the above and foregoing document is the original of Ordinance No. 2020-02 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

Bonnie Bush, City Clerk Administrator