



# AGENDA REPORT

## **CITY MANAGER'S OFFICE**

**DATE:** January 19, 2009

**TO:** Mayor McLaughlin and Members of the City Council

**FROM:** Jenny Oorbeck, Environmental Manager

**SUBJECT:** FOOD WARE ORDINANCE AMENDMENTS

### **STATEMENT OF THE ISSUE:**

On November 17, 2009, the City Council passed a food ware ordinance that requires Richmond food providers to use compostable disposable food ware beginning July 1, 2010. City Council directed staff to investigate a number of issues related to the food ware ordinance and accompanying food waste collection and processing program. Staff is providing information on these issues and on new developments that warrant ordinance revisions.

### **RECOMMENDATION:**

INTRODUCE an ordinance (first reading) amending Chapter 9.17 of the Municipal Code regarding the use of food ware by Richmond food providers to reflect the following technical revisions:

- a. Require that cutlery be compostable;
- b. Eliminate reference to the term "biodegradable;"
- c. Exempt products for which there is no suitable alternative;

And, as a policy option, consider whether to include as part of the ordinance an exemption for vendors that prove that compliance with the food ware ordinance creates an economic hardship.

### **FINANCIAL IMPACT OF RECOMMENDATION:**

Financial impacts resulting from this recommendation are negligible.

## **DISCUSSION:**

### **Food Ware Ordinance**

On October 20, 2009, City Council directed staff to investigate the following issues for possible future revisions to the food ware ordinance:

- Explore options to assist food providers in lowering costs by taking advantage of food ware bulk purchasing options;
- Consider an exemption for small businesses that would be significantly affected by the ordinance;
- Consider an exemption for nonprofit organizations that use donated expanded polystyrene food ware to serve food on a charitable basis;
- Investigate options for expanded polystyrene recycling.

### **Bulk Purchasing**

Staff considered two options for assisting food providers in lowering costs through purchasing in bulk among food providers:

- 1) Bulk purchasing – the City purchases large quantities of food ware wholesale and allows food providers to purchase food ware from the City at a reduced price, and
- 2) Setting up a buyers' club - a group of food providers commits to sourcing food ware from one food ware vendor so that vendors are guaranteed a certain level of purchases and can therefore reduce prices for members. A club can be coordinated by the City or by the vendors themselves.

Staff does not recommend the bulk purchasing option because of limited staff availability to provide the extensive coordination among food and food ware providers that would be required. Staff site visits showed that small food providers typically operate fairly independently of one another and purchase supplies on an as-needed basis. Storage may be an issue for both the city and the food providers.

If the City were to set up the club, a Request for Proposals (RFP) soliciting one (or several) distributor to supply all participating food providers would be issued. Since there may be low participation in a buyer's club, staff would prefer to encourage and assist food providers in forming buyers' clubs without issuing an RFP for a food ware supplier at the present time. Additionally, most Richmond food providers opt to commute to the retail locations to purchase food ware as needed instead of having food ware delivered.

During site visits and through outreach material, staff can solicit signups for joining a Richmond food providers buyers' club and assist food providers in contacting one another and potential food ware vendors. If food providers express interest and commit to participating in a formal buyers' club, then staff will further investigate buyers' club opportunities and provide further assistance.

## **Exemptions**

Similar to other food ware ordinances in neighboring communities, in preparing the current ordinance, staff considered including an exemption to food providers for whom the ordinance caused undue hardship and for items for which no suitable alternative existed. However, upon further research, staff discovered multiple issues with offering exemptions:

- Cities that have passed food ware ordinances that include an exemption process have received minimal exemption requests from the business community in their jurisdictions.
- Determining what substantiates an undue hardship for a food provider is difficult. The definition of undue hardship is ambiguous and the circumstances and causes of undue hardship may vary widely among food providers making it virtually impossible to create a standard that can be applied universally.
- A sound determination of undue hardship may require city staff's knowledge of amount spent on food ware relative to other business costs, overall business expenses, etc. Many food providers have expressed concern about sharing this level of information with the City as they feel it is proprietary. Even if provided this information, staff would not necessarily have appropriate guidelines or expertise to determine what would substantiate a financial hardship for a food provider.
- By granting an exemption, the City is condoning the use of non-compostable products for certain vendors.

Additionally, at community meetings held in July 2009, stakeholders and community members expressed the following concerns about the City allowing exemptions to the food ware ordinance:

- Allowing exemptions to some businesses and not others would create an unfair business climate.
- Determining whether undue hardship exists and granting exemptions to the requirements of the ordinance on a case by case basis would allow City staff excessive discretion.

Because of these issues and a general lack of support for an exemption process from the business community, staff rejected an exemption clause in the original ordinance and instead provided an extended period of six months for all food providers to comply. Staff believes that there is only one non-profit in Richmond that receives a considerable amount of donated polystyrene food ware. Staff will help this and any other non-profit organizations alert frequent donors about Richmond's ordinance requirements, and will continue to help these organizations recycle clean donated expanded polystyrene food ware.

Attachment 1 is a revised (recommended) foodware ordinance that reflects other recommendations contained in this staff report, but does not include an economic hardship exemption. If City Council prefers to include an exemption process in the ordinance, staff recommends introducing the ordinance (Attachment 2) that includes such a process under section 9.17.030 E. This would grant short-term extensions (6 months) that would require renewal requests in the hope that all polystyrene use can eventually be phased out. If City Council elects to include an exemption process in the ordinance, staff will need prepare criteria for making a determination of “undue hardship” for subsequent Council approval.

### **Expanded Polystyrene Recycling**

Timbron International, Inc. is the only large-scale recycler of expanded polystyrene in the Bay Area. Timbron only accepts clean expanded polystyrene for recycling; this is not a practical option for most food ware because it typically is contaminated with food residue. Republic Services is currently working with Timbron to offer West County residents a drop off recycling program for clean expanded polystyrene at the Integrated Resource Recovery Facility in Richmond. Once the program is in place, staff can aid food providers with the recycling of clean expanded polystyrene food ware that will no longer be allowable under the ordinance.

### **Food Waste Collection**

On October 20, 2009, City Council directed staff to continue to engage in the negotiation process between the West Contra Costa Integrated Waste Management Authority (WCCIWMA) and Republic Services to ensure a food waste collection and processing program for the City of Richmond. Staff participated in subsequent contract negotiations and on December 10, 2009 the WCCIWMA Board voted to move forward with a full organics composting program (to include food waste and compostable food ware) with Republic Services to begin July 1, 2010.

### **New Developments**

Due to recent findings and developments, staff recommends making the following amendments to the food ware ordinance at this time:

- 1. Refer only to “compostable” food ware and eliminate references to “biodegradable” food ware.**

Many food ware products currently exist in the marketplace that are falsely labeled as “biodegradable” or “degradable” even though no ASTM standard specification exists for these terms, and these products may not degrade completely even in a composting environment. An ASTM standard specification exists for the term “compostable.” The sole reference to “compostable” food ware, and the elimination of reference to “biodegradable” food ware, will help eliminate the use of products that are labeled “biodegradable” that decompose incompletely. “Compostable” food ware includes food ware that is certified and labeled BPI (Biodegradable Products Institute) Compostable, paper food ware, and food ware that will decompose consistent with ASTM compostability standards.

**2. *Include forks, spoons and knives also as food ware items that are required to be compostable but not lids and straws.***

The previous version of the ordinance required that all containers, bowls, plates, trays, cartons and cups be compostable. Staff recommends that the ordinance be revised to also require that forks, spoons and knives be compostable because:

- These items are common and persistent sources of litter.
- The availability of compostable forks, spoons and knives has increased in recent months. They are expected to continue to become more available as the number of compostable food ware manufacturers increases, demand increases, and product innovations are achieved.

**Lids and straws**

Lids and straws are also common and persistent sources of litter. Compostable lids and straws exist but are not currently widely available in stores. When compostable lids and straws become more available, staff will recommend an amendment to the ordinance that will require that food providers be required to use only compostable lids and straws.

**DOCUMENTS ATTACHED:**

Attachment 1 – Food Ware Ordinance Amendments not including exemption

Attachment 2 – Food Ware Ordinance Amendments including exemption

## Attachment 1

### ORDINANCE NO. \_\_\_\_\_ N.S.

AN ORDINANCE AMENDING CHAPTER 9.17 OF THE MUNICIPAL CODE OF THE CITY OF RICHMOND RELATED TO THE USE OF FOOD WARE BY RICHMOND FOOD PROVIDERS TO INCLUDE THE FOLLOWING TECHNICAL REVISIONS REGARDING ELIMINATION OF THE USE OF THE TERM "BIODEGRADABLE", INCLUSION OF CUTLERY IN ITEMS REQUIRED TO BE COMPOSTABLE, AND INCLUSION OF AN EXEMPTION FOR FOOD WARE FOR WHICH THERE IS NO SUITABLE ALTERNATIVE

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Now, therefore, the City Council of the City of Richmond does ordain as follows:

#### **SECTION 1 Findings.**

WHEREAS, the City of Richmond has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, expanded polystyrene and plastic are widespread, persistent environmental pollutants; and

WHEREAS, expanded polystyrene and plastic food ware are commonly used by food providers in the City of Richmond;

WHEREAS, expanded polystyrene and plastic constitutes a significant portion of the litter in Richmond's estuary, streets, parks, and public places and the cost of managing this litter is high and rising; and

WHEREAS, small pieces of expanded polystyrene are extremely difficult and costly to clean up, especially in creeks and waterways; and

WHEREAS, expanded polystyrene is a pollutant that breaks down into smaller pieces that are ingested by marine life and other wildlife thus harming or killing them; and

WHEREAS, in some areas of the Pacific Ocean, small plastic pieces outnumber zooplankton by up to six times, which may impact marine life such as filter feeders; and

WHEREAS, plastic particles in the ocean may leach a range of chemicals such as bisphenol A and substances known as polystyrene-based oligomers, which are not found naturally; and

WHEREAS, expanded polystyrene and plastic packaging bans are encouraged by the Regional Water Quality Control Board; and

WHEREAS, several Richmond water bodies are listed as impaired by trash; and

WHEREAS, trash assessments in impaired watersheds identify expanded polystyrene food ware as a common element, and in one case the most predominant number of trash pieces; and

WHEREAS, styrene is a known neurotoxin and possible human carcinogen; and

WHEREAS, styrene, the precursor to polystyrene, is a hazardous substance that has been shown to leach from polystyrene containers into food and drink and to leach in greater quantities when the food or drink are of high temperature or high fat content; and

WHEREAS, the general public is not typically warned of any potential hazard, particularly in immigrant and non-English-speaking communities; and

WHEREAS, due to these concerns, many cities in California have banned expanded polystyrene food ware, and many small businesses and several national corporations have successfully replaced expanded polystyrene and other plastic food ware with compostable products; and

WHEREAS, reusing food ware and using compostable take-out materials made from renewable resources such as paper, corn starch and sugarcane are effective ways to reduce the negative impacts of disposable food ware; and

WHEREAS, the City of Richmond encourages the use of unbleached, non-coated, recycled-content paper food ware and food ware made from sugarcane fiber as the most environmentally preferable alternatives when the use of reusable food ware is not feasible;

WHEREAS, the California Integrated Waste Management Board reports that replacing single-use food ware expanded polystyrene that cannot be effectively recycled with compostable alternatives may provide expanded polystyrene source reduction potential; and

WHEREAS, there are extremely limited local recycling options for expanded polystyrene and plastic food ware,

WHEREAS, expanded polystyrene and plastic products are made from non-renewable resources; and

WHEREAS, aluminum is a valuable material to recycle, has a closed-loop recycling system, and a recycling program for aluminum exists in Richmond; and

WHEREAS, compostable food ware products such as cups, plates, bowls and hinged containers, and cutlery are available in local stores, are increasingly available in the food service market, and are more ecologically sound over their life cycle than expanded polystyrene or plastic; and

WHEREAS, many businesses in Bay Area cities engage in organics recycling and have demonstrated that the use of compostable food ware can reduce disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill; and

WHEREAS, the West Contra Costa Integrated Waste Management Authority is pursuing a green waste processing program that may include collection of food waste and/or compostable food ware for businesses in the City of Richmond; and

WHEREAS, the natural compost product may be used in farms and gardens, thereby moving towards a healthier zero waste system; and

WHEREAS, restricting the use of expanded polystyrene and plastic food ware and replacing non-compostable, non-reusable, or non-recyclable food ware with compostable, reusable, or recyclable food ware products in Richmond will further protect the public health and safety of the residents of Richmond, the natural environment, waterways and wildlife, would advance the

City's goal of Zero Waste by 2040 and fulfill the Urban Environmental Accords, whereby Richmond partnered with other cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of Richmond 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; and

WHEREAS, the City of Richmond supports pending legislation to ban expanded polystyrene food packaging as well as statewide efforts to reduce the prevalence of expanded polystyrene and other plastic litter;

WHEREAS, many food ware products currently exist in the marketplace that are falsely labeled "biodegradable" or "degradable" even though no ASTM standard specification exists for these terms, and these products may not degrade completely in a composting environment;

WHEREAS, AB 1972 prohibits the sale of a product labeled "compostable" unless the product meets the ASTM Standard Specification for Compostable Plastics D6400 or a standard adopted by the California Integrated Waste Management Board as specified, and prohibits the sale of a product that is labeled as "biodegradable," "degradable," "decomposable," or as otherwise specified; and

NOW THEREFORE, the City Council of the City of Richmond does ordain as follows:

## **SECTION 2**

Chapter 9.17 entitled "**Food Ware Ordinance**" is hereby added to the City of Richmond Municipal Code to read as follows:

### **CHAPTER 9.17**

#### **Sections:**

- 9.17.010**        **Definitions.**
- 9.17.020**        **Required Compostable Food Ware.**
- 9.17.030**        **Exemptions.**
- 9.17.040**        **Enforcement and Penalties.**

#### **9.17.010**        **Definitions.**

"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.

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

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

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

"Disposable Food Ware" means all containers, bowls, plates, trays, cartons, cups, forks, spoons, and knives and other items that are designed for one-time use for Prepared Foods, including service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Providers. This term does not include lids or straws. The City Manager or his/her designee may amend this definition as necessary.

"Food Provider" means any vendor, business, organization, entity, group or individual, including any Restaurant or Retail Food Establishment, located or operating within the City of Richmond or providing food or beverage to the public, and any provider of Prepared Food at organized or special events.

"Expanded Polystyrene" 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). Expanded Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

"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. For the purposes of this ordinance, 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, also known as "takeout food".

"Restaurant" means any establishment located within the City of Richmond that sells Prepared Food for consumption on, near, or off its premises by Customers.

"Retail Food Establishment" means any store, shop, sales outlet, or other establishment, other than a Restaurant, including but not limited to a grocery store, delicatessen, mobile food preparation and sale unit, 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 Prepared 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.

"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 ware.

#### **9.17.020 Required Compostable Food Ware**

A. All Food Providers using any Disposable Food Ware for providing Prepared Food to Customers will use Compostable Disposable Food Ware. Food Providers are strongly encouraged to use Reusable Food Ware in place of Disposable Food Ware where practicable. A Food Provider may charge a "take out fee" to customers to cover the cost difference.

B. All City Facilities will use Reusable Food Ware in City facilities and events where practicable. If Reusable Food Ware is not practical for a specific application, the City must use Compostable Disposable Food Ware.

C. City franchisees, contractors and vendors doing business with the City are strongly encouraged to use Reusable Food Ware in place of Disposable Food Ware where practicable. If reusable Food Ware is not practical, City franchisees, contractors and vendors doing business with the City shall use Compostable Disposable Food Ware.

**9.17.030 Exemptions**

A. Prepared Foods prepared or packaged outside the City of Richmond and Prepared Foods prepared and packaged in the City of Richmond for use outside of the City of Richmond are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Richmond are encouraged to follow the provisions of this Chapter.

B. Expanded Polystyrene coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

C. Disposable Food Ware composed entirely of aluminum is exempt from the provisions of this Chapter.

D. Emergency Supply and Services Procurement: In a situation deemed by the City Manager or his/her designee to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Providers, City franchisees, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter.

E. Disposable Food Ware for which there is no suitable alternative is exempt from the provisions of this Chapter.

**9.17.040 Enforcement and Penalties**

A. The City Manager or his/her designee shall have primary responsibility for enforcement of this Chapter. The City Manager or his or her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, entering the premises of any Food Provider to verify compliance.

B. If the City Manager or his/her designee determines that a violation of this Chapter has occurred, he/she shall mail a written warning notice to the Food Provider.

C. Any person who does not correct the violation within thirty (30) days after the warning notice is mailed shall be guilty of a misdemeanor pursuant to section 1.04.100 of the Richmond Municipal Code. All violations are subject to Richmond's administrative citation process, including first tier administrative fines and appeals as set forth in Richmond Municipal Code Chapter 2.62.

D. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

**SECTION 3**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Richmond hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**SECTION 4**

The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

**SECTION 5**

This ordinance shall become effective on July 1, 2010.

I certify that the foregoing was first read at a regular meeting of the City Council of the City of Richmond held on \_\_\_\_\_, 2009 and finally passed and adopted at a regular meeting thereof held on \_\_\_\_\_, 2009 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

[Seal]

Approved:

GAYLE MCLAUGHLIN  
MAYOR

RANDY RIDDLE  
CITY ATTORNEY

## Attachment 2

### ORDINANCE NO. \_\_\_\_ N.S.

AN ORDINANCE AMENDING CHAPTER 9.17 OF THE MUNICIPAL CODE OF THE CITY OF RICHMOND RELATED TO THE USE OF FOOD WARE BY RICHMOND FOOD PROVIDERS TO INCLUDE THE FOLLOWING TECHNICAL REVISIONS REGARDING ELIMINATION OF THE USE OF THE TERM "BIODEGRADABLE", INCLUSION OF CUTLERY IN ITEMS REQUIRED TO BE COMPOSTABLE, AND INCLUSION OF AN EXEMPTION FOR FOOD PROVIDERS FOR WHICH THE ORDINANCE CAUSES UNDUE ECONOMIC HARDSHIP AND FOOD WARE FOR WHICH THERE IS NO SUITABLE ALTERNATIVE

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Now, therefore, the City Council of the City of Richmond does ordain as follows:

#### **SECTION 1 Findings.**

WHEREAS, the City of Richmond has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, expanded polystyrene and plastic are widespread, persistent environmental pollutants; and

WHEREAS, expanded polystyrene and plastic food ware are commonly used by food providers in the City of Richmond;

WHEREAS, expanded polystyrene and plastic constitutes a significant portion of the litter in Richmond's estuary, streets, parks, and public places and the cost of managing this litter is high and rising; and

WHEREAS, small pieces of expanded polystyrene are extremely difficult and costly to clean up, especially in creeks and waterways; and

WHEREAS, expanded polystyrene is a pollutant that breaks down into smaller pieces that are ingested by marine life and other wildlife thus harming or killing them; and

WHEREAS, in some areas of the Pacific Ocean, small plastic pieces outnumber zooplankton by up to six times, which may impact marine life such as filter feeders; and

WHEREAS, plastic particles in the ocean may leach a range of chemicals such as bisphenol A and substances known as polystyrene-based oligomers, which are not found naturally; and

WHEREAS, expanded polystyrene and plastic packaging bans are encouraged by the Regional Water Quality Control Board; and

WHEREAS, several Richmond water bodies are listed as impaired by trash; and

WHEREAS, trash assessments in impaired watersheds identify expanded polystyrene food ware as a common element, and in one case the most predominant number of trash pieces; and

WHEREAS, styrene is a known neurotoxin and possible human carcinogen; and

WHEREAS, styrene, the precursor to polystyrene, is a hazardous substance that has been shown to leach from polystyrene containers into food and drink and to leach in greater quantities when the food or drink are of high temperature or high fat content; and

WHEREAS, the general public is not typically warned of any potential hazard, particularly in immigrant and non-English-speaking communities; and

WHEREAS, due to these concerns, many cities in California have banned expanded polystyrene food ware, and many small businesses and several national corporations have successfully replaced expanded polystyrene and other plastic food ware with compostable products; and

WHEREAS, reusing food ware and using compostable take-out materials made from renewable resources such as paper, corn starch and sugarcane are effective ways to reduce the negative impacts of disposable food ware; and

WHEREAS, the City of Richmond encourages the use of unbleached, non-coated, recycled-content paper food ware and food ware made from sugarcane fiber as the most environmentally preferable alternatives when the use of reusable food ware is not feasible;

WHEREAS, the California Integrated Waste Management Board reports that replacing single-use food ware expanded polystyrene that cannot be effectively recycled with compostable alternatives may provide expanded polystyrene source reduction potential; and

WHEREAS, there are extremely limited local recycling options for expanded polystyrene and plastic food ware,

WHEREAS, expanded polystyrene and plastic products are made from non-renewable resources; and

WHEREAS, aluminum is a valuable material to recycle, has a closed-loop recycling system, and a recycling program for aluminum exists in Richmond; and

WHEREAS, compostable food ware products such as cups, plates, bowls and hinged containers, and cutlery are available in local stores, are increasingly available in the food service market, and are more ecologically sound over their life cycle than expanded polystyrene or plastic; and

WHEREAS, many businesses in Bay Area cities engage in organics recycling and have demonstrated that the use of compostable food ware can reduce disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill; and

WHEREAS, the West Contra Costa Integrated Waste Management Authority is pursuing a green waste processing program that may include collection of food waste and/or compostable food ware for businesses in the City of Richmond; and

WHEREAS, the natural compost product may be used in farms and gardens, thereby moving towards a healthier zero waste system; and

WHEREAS, restricting the use of expanded polystyrene and plastic food ware and replacing non-compostable, non-reusable, or non-recyclable food ware with compostable, reusable, or recyclable food ware products in Richmond will further protect the public health and safety of the residents of Richmond, the natural environment, waterways and wildlife, would advance the City's goal of Zero Waste by 2040 and fulfill the Urban Environmental Accords, whereby Richmond partnered with other cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of Richmond 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; and

WHEREAS, the City of Richmond supports pending legislation to ban expanded polystyrene food packaging as well as statewide efforts to reduce the prevalence of expanded polystyrene and other plastic litter;

WHEREAS, many food ware products currently exist in the marketplace that are falsely labeled "biodegradable" or "degradable" even though no ASTM standard specification exists for these terms, and these products may not degrade completely in a composting environment;

WHEREAS, AB 1972 prohibits the sale of a product labeled "compostable" unless the product meets the ASTM Standard Specification for Compostable Plastics D6400 or a standard adopted by the California Integrated Waste Management Board as specified, and prohibits the sale of a product that is labeled as "biodegradable," "degradable," "decomposable," or as otherwise specified; and

NOW THEREFORE, the City Council of the City of Richmond does ordain as follows:

## **SECTION 2**

Chapter 9.17 entitled "**Food Ware Ordinance**" is hereby added to the City of Richmond Municipal Code to read as follows:

### **CHAPTER 9.17**

#### **Sections:**

- 9.17.010**        **Definitions.**
- 9.17.020**        **Required Compostable Food Ware.**
- 9.17.030**        **Exemptions.**
- 9.17.040**        **Enforcement and Penalties.**

#### **9.17.010**        **Definitions.**

"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.

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

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

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

"Disposable Food Ware" means all containers, bowls, plates, trays, cartons, cups, forks, spoons, and knives and other items that are designed for one-time use for Prepared Foods, including service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Providers. This term does not include lids or straws. The City Manager or his/her designee may amend this definition as necessary.

"Food Provider" means any vendor, business, organization, entity, group or individual, including any Restaurant or Retail Food Establishment, located or operating within the City of Richmond or providing food or beverage to the public, and any provider of Prepared Food at organized or special events.

"Expanded Polystyrene" 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). Expanded Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

"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. For the purposes of this ordinance, 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, also known as "takeout food".

"Restaurant" means any establishment located within the City of Richmond that sells Prepared Food for consumption on, near, or off its premises by Customers.

"Retail Food Establishment" means any store, shop, sales outlet, or other establishment, other than a Restaurant, including but not limited to a grocery store, delicatessen, mobile food preparation and sale unit, 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 Prepared 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.

"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 ware.

### **9.17.020 Required Compostable Food Ware**

- A. All Food Providers using any Disposable Food Ware for providing Prepared Food to Customers will use Compostable Disposable Food Ware. Food Providers are strongly encouraged to use Reusable Food Ware in place of Disposable Food Ware where practicable. A Food Provider may charge a "take out fee" to customers to cover the cost difference.
- B. All City Facilities will use Reusable Food Ware in City facilities and events where practicable. If Reusable Food Ware is not practical for a specific application, the City must use Compostable Disposable Food Ware.
- C. City franchisees, contractors and vendors doing business with the City are strongly encouraged to use Reusable Food Ware in place of Disposable Food Ware where practicable. If reusable Food Ware is not practical, City franchisees, contractors and vendors doing business with the City shall use Compostable Disposable Food Ware.

### **9.17.030 Exemptions**

- A. Prepared Foods prepared or packaged outside the City of Richmond and Prepared Foods prepared and packaged in the City of Richmond for use outside of the City of Richmond are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Richmond are encouraged to follow the provisions of this Chapter.
- B. Expanded Polystyrene coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.
- C. Disposable Food Ware composed entirely of aluminum is exempt from the provisions of this Chapter.
- D. Emergency Supply and Services Procurement: In a situation deemed by the City Manager or his/her designee to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Providers, City franchisees, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter.
- E. The City Manager or his/her designee may exempt a Food Provider from some or all the requirements of this Chapter for a six month period upon showing by the Food Provider and determination by the City that the requirements of this Chapter would cause undue hardship or that no suitable alternative exists for a particular food ware item. The Food Provider shall submit a request for exemption and shall enter into a 30-day period of mediation with the City Manager or his/her designee upon the City's receipt of the exemption request. An exemption request shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The purpose of the mediation shall be to determine whether or not the requirements of this Chapter will cause the Food Provider undue hardship, whether there is no suitable alternative for a particular food ware item, and/or to discuss Compostable Disposable Food Ware options. If a Food Provider is granted an exemption and wishes to have the exemption extended, the Food Provider must re-apply prior to the end of the 6-month exemption period and demonstrate continued undue hardship or continued absence of a suitable alternative. Exemption decisions are effective immediately and final and are not subject to appeal. Extensions may only be granted for intervals not to exceed 6 months.

**9.17.040 Enforcement and Penalties**

A. The City Manager or his/her designee shall have primary responsibility for enforcement of this Chapter. The City Manager or his or her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, entering the premises of any Food Provider to verify compliance.

B. If the City Manager or his/her designee determines that a violation of this Chapter has occurred, he/she shall mail a written warning notice to the Food Provider.

C. Any person who does not correct the violation within thirty (30) days after the warning notice is mailed shall be guilty of a misdemeanor pursuant to section 1.04.100 of the Richmond Municipal Code. All violations are subject to Richmond’s administrative citation process, including first tier administrative fines and appeals as set forth in Richmond Municipal Code Chapter 2.62.

D. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

**SECTION 3**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Richmond hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**SECTION 4**

The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

**SECTION 5**

This ordinance shall become effective on July 1, 2010.

I certify that the foregoing was first read at a regular meeting of the City Council of the City of Richmond held on \_\_\_\_\_, 2009 and finally passed and adopted at a regular meeting thereof held on \_\_\_\_\_, 2009 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

[Seal]

Approved:

GAYLE MCLAUGHLIN  
MAYOR

RANDY RIDDLE  
CITY ATTORNEY

DRAFT