

ORDINANCE NO. 12-13 N.S.

AN ORDINANCE AMENDING CHAPTER 9.17 OF THE RICHMOND MUNICIPAL CODE TO PROHIBIT THE RETAIL SALE OF POLYSTYRENE FOAM PRODUCTS, REVISE ALLOWABLE FOOD WARE, AND PROVIDE FOR THE ISSUANCE OF AN ADMINISTRATIVE CITATION IMMEDIATELY FOLLOWING A VIOLATION OF THIS ORDINANCE, AND INCLUDE OTHER TECHNICAL REVISIONS

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, reusing food ware and using compostable food ware made from renewable resources help reduce the negative environmental impacts of disposable and non-compostable food service ware; and

WHEREAS, polystyrene foam is a common and persistent environmental pollutant; and

WHEREAS, polystyrene foam is notorious as a pollutant that breaks down into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them; and

WHEREAS, affordable compostable food ware products are increasingly available and are more ecologically sound than polystyrene foam materials; and

WHEREAS, the City of Richmond has a residential organics collection and composting program in place and plans to implement a commercial organics collection and composting program in the near future through which compostable food ware can be disposed and turned into compost; and

WHEREAS, polystyrene foam constitutes a large 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, due to the physical properties of polystyrene, the United States Environmental Protection Agency (EPA) states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy;" and

WHEREAS, styrene, a component of polystyrene, is a known hazardous substance that medical evidence and the Food and Drug Administration suggest leaches from polystyrene containers in food and drink; and

WHEREAS, styrene is a suspected carcinogen and neurotoxin which potentially threatens human health; 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 polystyrene foam food ware; and

WHEREAS, restricting the use of polystyrene foam products in Richmond will protect the public health of Richmond residents, wildlife, the natural environment, and would advance the City's goals of zero waste and hazardous materials reduction; and

WHEREAS, the retail sale of polystyrene foam undermines the goals of the City of Richmond's ordinance prohibiting the distribution of polystyrene foam food ware by food providers; and

WHEREAS, the County and City of Santa Cruz and City of Capitola have successfully adopted ordinances prohibiting the retail sale of polystyrene foam products; and

WHEREAS, compostable utensils are not readily available and affordable to Richmond food providers, and do not break down easily in residential or industrial organics processing systems; and

WHEREAS, the issuance of an administrative citation immediately following a violation of this chapter provides for the best incentive for compliance and is the best use of limited City staff and time.

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

Section 2 Amendment of Chapter 9.17

Chapter 9.17 of the Richmond Municipal Code entitled "Food Ware Ordinance" shall be amended to read as follows:

Chapter 9.17

Sections:

- 9.17.010 - Definitions.
- 9.17.020 - Required Compostable or Recyclable Food Ware.
- 9.17.025 – Prohibited Retail Sales.
- 9.17.030 - Exemptions.
- 9.17.040 - Enforcement and Penalties.

9.17.010 – Definitions.

As used in this chapter, the following words and terms shall have the following meanings:

"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, 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, straws, or utensils. 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.

"Polystyrene Foam" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of Polystyrene Foam 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 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."

"Recyclable" means material that can be sorted, cleansed, and reconstituted using Richmond'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" means any establishment located within the City of Richmond that sells Prepared Food for consumption on, near, or off its premises by customers.

"Retail Establishment" means any commercial establishment that sells perishable and nonperishable goods including, but not limited to, clothing, food and personal items directly to the Customer; and is located within or doing business within the geographical city limits of the City of Richmond.

"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 or Recyclable Food Ware.

(a) All Food Providers using any Disposable Food Ware for providing Prepared Food to customers will use Compostable or Recyclable 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 or Recyclable 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 or Recyclable Disposable Food Ware.

9.17.025 – Prohibited Retail Sales

(a) No Retail Establishment in the City of Richmond may sell, rent or otherwise provide any product which is composed entirely or primarily of Polystyrene Foam, except as exempted in section 9.17.030 below. This specifically includes but is not limited to cups, plates, bowls, clamshells and other products intended primarily for single-use food service, as well as coolers, packing peanuts or other packaging materials.

9.17.030 - Exemptions.

(a) Prepared Foods prepared or packaged outside 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) Disposable Food Ware composed entirely of aluminum is exempt from the provisions of this chapter.

(c) 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.

(d) 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) Within the first six months after the effective date of the ordinance, 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 or Retail Establishment. Any Food Provider or Retail Establishment 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

(c) Six months after the effective date of the ordinance, any Food Provider or Retail Establishment in violation of this chapter shall be immediately 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 Compliance with the California Environmental Quality Act

This 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. 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 ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the ordinance. The Richmond City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid.

Section 5 No Conflict with Federal or State Law

Nothing in this ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

Section 6 Effective Date

This ordinance shall become enforceable on January 1, 2014.

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I certify that the foregoing was first read at a regular meeting of the City Council of the City of Richmond held on June 18, 2013, and finally passed and adopted at a regular meeting thereof held on July 16, 2013, by the following vote:

AYES: Councilmembers Beckles, Butt, Myrick, Rogers, and Mayor McLaughlin.
NOES: Councilmember Bates and Vice Mayor Boozé.
ABSTENTIONS: None.
ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 12-13 N.S.**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 16, 2013.