

ORDINANCE 2016-12

AN ORDINANCE OF THE CITY OF ENCINITAS, CALIFORNIA ADDING ENCINITAS MUNICIPAL CODE CHAPTER 11.27 – EXPANDED POLYSTYRENE DISPOSABLE FOOD SERVICE WARE PROHIBITION ORDINANCE

WHEREAS, the City of Encinitas, California (City) has a strong interest in encouraging the protection of natural resources, reducing litter, preventing marine pollution, protecting wildlife that contribute to the beauty and quality of life in Encinitas; and

WHEREAS, in 1991 the City adopted Resolution 91-90 discouraging residents and businesses from purchasing and utilizing polystyrene foam products because of its negative attributes that contribute to the degradation of the environment; and

WHEREAS, Polystyrene is a petroleum based, non-biodegradable plastic material commonly used as disposable food service ware by food vendors operating in the City; and

WHEREAS, there are alternatives to polystyrene-based disposable food service ware for utilization by food serving establishments; and

WHEREAS, the City wishes to prohibit the use by food serving establishments of polystyrene-based disposable food service ware;

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

SECTION ONE:

That Municipal Code Chapter 11.27 is added to read as shown in Exhibit I

SECTION TWO:

This ordinance was introduced on November 9, 2016.

SECTION 3: ENVIRONMENTAL FINDING

The City Council, in their independent judgment, finds that the adoption of the Municipal Code Amendments will be exempt from Environmental Review pursuant to General Rule 15061 (b) (3) since there would be no possibility of a significant effect on the environment because the amendments will not directly result in development; any development as a result of the amended language will be subject to CEQA review and analysis.

PASSED AND ADOPTED this 16th day of November, 2016 by the following vote to wit:

AYES: Blakespear, Kranz, Muir, Shaffer
NAYS: Gaspar
ABSTAIN: None
ABSENT: None

/Kristin Gaspar, Mayor
City of Encinitas

ATTESTATION AND CERTIFICATION:

I hereby certify that this is a true and correct copy of Ordinance 2016-12 which has been published pursuant to law.

/Kathy Hollywood, City Clerk

CHAPTER 11.27 PROHIBITION ON THE USE OF EXPANDED POLYSTYRENE DISPOSABLE FOOD SERVICE WARE **(Exhibit I to Ordinance 2016-12)**

11.27.010 Title. This Chapter shall be known as the “City of Encinitas Expanded Polystyrene Disposable Food Service Ware Prohibition Ordinance”.

11.27.020 Purpose and Intent. The purpose of this Chapter is to establish standards and procedures for environmental waste and litter reduction measures, and promote environmentally sustainable practices throughout the City by prohibiting the use of Expanded Polystyrene Disposable Food Service Ware by Food Providers within the City of Encinitas.

11.27.030 Definitions. For purposes of this Chapter only, the terms below have the following meaning:

- A. “City” means the City of Encinitas.
- B. “City Facility” means any building, structure, property, park, open space, or vehicle, owned, leased or operated by the City, its agents, agencies, departments or franchisees.
- C. “City Contractor” means any person that enters into an agreement with the City to furnish products or services to or for the City.
- D. “City-Sponsored Event” means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.
- E. “Customer” means any person obtaining Prepared Food from a Restaurant or Retail Food Vendor.
- F. “Disposable Food Service Ware” or “Disposables” means single-use, disposable products used for serving or transporting Prepared Food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, or any other container in or on which Prepared Foods are placed or packaged for consumption. This definition excludes single use disposable straws, cup lids, and utensils.
- G. “Event” means an organized recreational activity that includes 25 or more participants.
- H. “Expanded Polystyrene” or “EPS” means polystyrene that has been expanded or “blown” using a gaseous blowing agent into a solid foam. EPS is sometimes called “Styrofoam”, a Dow Chemical Co. trademark form of polystyrene foam insulation.

- I. "Food Provider" means any Person or establishment that provides or sells Prepared Food within the City to the general public to be consumed on the premises or for take-away consumption. Food Provider includes but is not limited to (1) a grocery store, supermarket, delicatessen, restaurant, drive-thru, café, cafeteria, coffee shop, snack shop, public food market, farmers' market, convenience store, or similar fixed place where Prepared Food is available for sale on the premises or for take-away consumption; and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food Provider also includes any organization, group or individual that regularly provides Prepared Food to its members or the general public as a part of its activities or services.
- J. "Person" means any person, business, corporation, or event organizer or promoter; public, nonprofit or private entity, agency or institution; or partnership, association or other organization or group, however organized.
- K. "Polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The Recycle Code for polystyrene is '6' or 'PS,' either alone or in combination with other letters. This definition applies to all Polystyrene Food Service Ware, regardless of whether it exhibits a Recycle Code.
- L. "Prepared Food" means any food or beverage that is (1) ready to consume without any further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a Food Provider using any cooking, packaging or food preparation technique. Prepared Food may be eaten either on or off the Food Provider's premises. For purposes of this ordinance, Prepared Food does not include (1) any raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers' markets and other food vendors.
- M. "Restaurant" means any person or establishment doing business within the City of Encinitas that provides prepared food or beverages for consumption on or off its premises such as a restaurant, café, bakery, grocery or convenience store counter or delicatessen, or catering truck vehicle. "Restaurant" for the purposes of this Chapter, includes mobile food preparation units.

11.27.040 Prohibition of Expanded Polystyrene Food Service Wares.

A. Except as provided by Section 11.27.050, Food Providers are prohibited from providing Prepared Food in Disposable Food Service Ware made of EPS.

B. Except as provided in Section 11.27.050, all City Facilities, City-managed concessions, City-sponsored or co-sponsored events, City permitted events and all franchisees, contractors, and vendors doing business with the City are prohibited from using Disposable Food Service Ware made of EPS within the City.

11.27.050 Exemptions.

Notwithstanding the requirements contained in Section 11.27.040,

A. The following are exempt from the provisions of this chapter:

1. Food prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits.
2. Food provided by School Districts under its official food service program.

B. Food Providers that are obligated to purchase or have purchased EPS Food Service Ware under a contract entered into within the year prior to the operative date of this ordinance are exempt from the provisions of this chapter for six months following its operative date.

C. The City Manager or his/her designee may exempt any Food Provider or Person from the requirements of this Chapter for a one-year period, upon written request by applicant that the conditions of the Chapter would cause an Undue Hardship following the operative date of this ordinance, as follows:

1. A request for an exemption shall be filed in writing with the City Manager or his/her designee and shall include documentation of the reason for the claimed exemption and any other information necessary for the City to make its decision. An exemption application 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 City may require the applicant to provide additional information as necessary to make the required determinations.
2. The City Manager or his/her designee may approve the exemption for a maximum of one (1) year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include but not be limited to situations where:
 - a. There are no reasonable alternatives to Expanded Polystyrene Food Service Ware for reasons that are unique to the applicant; or
 - b. Compliance with the requirements of this chapter would deprive a person of a legally protected right. The exemption may be extended for additional terms of up to one year each, upon a showing of the continuation of the legal right.
3. The City Council may by resolution establish a fee for exemption applications. The application fee shall be an amount sufficient to cover the costs of processing the exemption application.

11.27.060 Enforcement.

A. Any violation of this Chapter shall be enforced through the Administrative Citation Program set forth in Chapter 1.08 of the Encinitas Municipal Code.

B. Each violation of this chapter shall be considered a separate offense.

C. The remedies and penalties provided in this chapter are cumulative and not exclusive and nothing in this shall preclude the City from pursuing any other remedies. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulations or administrative procedure developed pursuant hereto.

D. In addition to any other applicable civil or criminal penalty, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable pursuant to the penalty provisions set forth in Chapter 1.08 of this Code.

11.27.070 Administrative Remedies.

A. Any person violating, causing or maintaining a violation of any provision of this chapter may be issued an administrative citation assessing a civil fine as provided in this section. The procedures for the imposition, enforcement, collection, and administrative review of civil fines shall be in addition to, and not in lieu of, any criminal, civil or other legal remedy established by law and available to the City to address violations of this chapter.

B. Upon a first violation of any provision of this chapter, the City Manager or his/her designee shall issue a written warning Notice of Violation to the offending retail establishment. The warning Notice of Violation shall specify the violation(s), a date by which the violation(s) must be ceased and abated, and the penalties in the event of future violations. If, after the specified correction period following the written warning, the violation is not ceased or abated, the City Manager or his/her designee may issue an administrative citation assessing fines in accordance with this section.

C. Each separate violation following the issuance of a warning Notice of Violation shall be subject to the following administrative fines which shall be cumulative with each day that a violation occurs constituting a separate violation:

1. A fine not exceeding one hundred dollars (\$100) for the first violation following the issuance of a warning notice.
2. A fine not exceeding two hundred dollars (\$200) for the second violation following the issuance of a warning notice.
3. A fine not exceeding five hundred (\$1,000) for each additional violations that occurs following the issuance of a warning notice.

D. Each administrative citation issued for a violation of this chapter shall at a minimum contain the information specified in chapter 1.08.080 of the Encinitas Municipal Code, Administrative Citations, and any person receiving an administrative citation may contest the citation, and shall be entitled to an administrative hearing, pursuant to the procedures set forth in that chapter.

11.27.070 No Conflict with Federal or State Law

Nothing in this chapter is intended to or shall be interpreted as conflicting with any federal or state law or regulation.

11.27.080 Operative Date.

A. This Ordinance shall become operative as to all Food Providers within six (6) months after the effective date.

B. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

11.27.090 Severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional To this end, the provisions of this Ordinance are declared severable.