



City Clerk

## CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk  
200 East Santa Clara Street  
San José, California 95113  
Telephone (408) 535-1260  
FAX (408) 292-6207

STATE OF CALIFORNIA)  
COUNTY OF SANTA CLARA)  
CITY OF SAN JOSÉ)

I, Toni J. Taber, Acting City Clerk & Ex-Officio Clerk of the Council of and for the City of San José, in said County of Santa Clara, and State of California, do hereby certify that **Ordinance No. 29298**, the original copy of which is attached hereto, was passed for publication of title on the **27th day of August 2013**, was published in accordance with the provisions of the Charter of the City of San José, and was given final reading and adopted on the **10th day of September 2013** by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA, KHAMIS,  
LICCARDO, NGUYEN, ROCHA; REED.

NOES: NONE.

ABSENT: OLIVERIO.

ABSTAINED: NONE.

VACANT: NONE.

Said ordinance is effective as of **January 1, 2014**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San José, this **13th day of November 2013**.

(SEAL)

TONI J. TABER, CMC  
CITY CLERK & EX-OFFICIO  
CLERK OF THE CITY COUNCIL

**ORDINANCE NO. 29298**

**AN ORDINANCE OF THE CITY OF SAN JOSE  
AMENDING CHAPTER 9.10 OF TITLE 9 OF THE SAN  
JOSE MUNICIPAL CODE TO ADD A NEW PART 17 TO  
PROHIBIT THE USE OF POLYSTYRENE FOAM  
DISPOSABLE FOOD SERVICE WARE BY FOOD  
VENDORS**

**WHEREAS**, plastic debris and in particular expanded polystyrene foam ("EPS") is a distinctive litter concern because it is lightweight, floats, and readily travels from land to inland waterways and out to the ocean where it breaks down into small pieces to be mistaken for food by birds and other marine wildlife; and

**WHEREAS**, EPS disposable food service ware comprises a majority of EPS litter observed in storm drains; and

**WHEREAS**, the proposed phase-out of EPS disposable food service ware would require food vendors to use alternative disposable food service ware that should result in a reduction of EPS litter, reduce the risk of harm to aquatic wildlife, and improve water quality in the San José creeks and the Southern San Francisco Bay; and

**WHEREAS**, on August 27, 2013, prior to taking action on the Ordinance, the City Council reviewed, considered and adopted by separate Council resolution, the proposed Negative Declaration analyzing the regional environmental impacts of the Ordinance to phase-out of EPS disposable food service ware (File NO. PP13-043);

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

**SECTION 1.** Chapter 9.10 of Title 9 of the San Jose Municipal Code is hereby amended by adding a new Part, to be numbered, entitled and to read as follows:

## Part 17

### Polystyrene Foam Disposable Food Service Ware

#### 9.10.3100 Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Part.

- A. "Disposable food service ware" means single-use disposable products used in the restaurant and food service industry for serving prepared food and includes, but is not limited to, plates, trays, cups, bowls, trays, and hinged or lidded containers (clamshells). Disposable food service ware does not include straws, utensils, drink lids, or ice chests.
- B. "Food vendor" means any establishment located in the City of San José that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand. A "food vendor" does not include a food service provider that is associated with either a nonprofit organization with Section 501(c)(3) status under the Internal Revenue Code or a public agency sponsored program.
- C. "National food vendor" means a food vendor that is a chain of franchised or corporate owned establishments located in more than one state.
- D. "Polystyrene foam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). "Polystyrene foam" is commonly made into

disposable food service ware products. "Polystyrene foam" does not include clear or solid polystyrene (oriented polystyrene).

- E. "Prepared food" means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. "Prepared food" does not include (1) any raw, uncooked meat products or fruits or vegetables unless it can be consumed without further preparation; or (2) prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.

**9.10.3110 Polystyrene Foam Disposable Food Service Ware Prohibited**

- A. No national food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2014.
- B. No food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2015.

**9.10.3120 Exemptions to the Polystyrene Foam Disposable Food Service Ware Prohibition**

- A. A national food vendor or food vendor may seek an exemption from the prohibition under Section 9.10.3110 due to a "unique packaging hardship" under Subsection B of this Section or a "financial hardship" under Subsection C of this Section.
- B. The national food vendor or food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a "unique packaging hardship" exemption.

- C. The national food vendor or food vendor must demonstrate both of the following to qualify for a "financial hardship" exemption: (1) a gross income under \$300,000 on their annual income tax filing for the most recent tax year, and (2) with respect to each specific and necessary polystyrene foam disposable food service ware, that there is no feasible alternative that would cost the same or less than the polystyrene foam disposable food service ware.
- D. The national food vendor or food vendor may submit a written application for an exemption on a form provided by the Department of Environmental Services. The Director of Environmental Services or designee ("Director") may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The national food vendor or food vendor must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Director shall be final and is not subject to appeal.

SECTION 2. This ordinance shall be effective on January 1, 2014.

PASSED FOR PUBLICATION of title this 27th day of August, 2013, by the following vote:

AYES: CAMPOS, CHU, HERRERA, KALRA, LICCARDO, NGUYEN,  
OLIVERIO, ROCHA; REED.

NOES: CONSTANT, KHAMIS.

ABSENT: NONE.

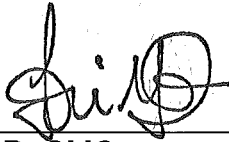
DISQUALIFIED: NONE.



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CHUCK REED  
Mayor

ATTEST:



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TONI J. TABER, CMC  
Acting City Clerk

RECEIVED  
San Jose City Clerk

This space for filing stamp only

2013 SEP -5 AM 9:49

**SAN JOSE POST-RECORD**

95 S. Market St., Ste. 535, SAN JOSE, CA 95113  
Telephone (408) 287-4866 / Fax (408) 287-2544

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SUZANNE GUZZETTA  
SAN JOSE CITY CLERK  
200 E. SANTA CLARA ST.  
SAN JOSE, CA - 95113

SJ#: 2528836

**PROOF OF PUBLICATION**

(2015.5 C.C.P.)

State of California )  
County of SANTA CLARA ) ss

Notice Type: GORSJ - SAN JOSE ORDINANCE (1 PUB)

Ad Description:  
ORDINANCE #29298

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the SAN JOSE POST-RECORD, a newspaper published in the English language in the city of SAN JOSE, county of SANTA CLARA, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of SANTA CLARA, State of California, under date 02/03/1922, Case No. 27844. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

08/30/2013

Executed on: 08/30/2013  
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Signature

CITY OF  
**SAN JOSE**  
CAPITAL OF SILICON VALLEY  
ORDINANCE NO. 29298

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 9.10 OF TITLE 9 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW PART 17 TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS PASSED FOR PUBLICATION of title this 27<sup>th</sup> day of August, 2013, by the following vote:  
AYES: CAMPOS, CHU, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, REED, ROCHA.  
NOES: CONSTANT, KHAMIS.  
ABSENT: NONE.  
DISQUALIFIED: NONE.

CHUCK REED  
Mayor  
ATTEST:

TONI J. TABER, CMC  
Acting City Clerk  
8/30/13

**SJ-2528836#**

