

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE COUNCIL OF THE CITY  
OF SANTA BARBARA AMENDING TITLE 9 TO ADD  
CHAPTER 9.160 TO REGULATE EXPANDED  
POLYSTYRENE FOOD CONTAINERS AND  
PRODUCTS**

**Section 1. Findings.**

A. The City of Santa Barbara ("City") pursuant to its police powers has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

B. The City is required under state and federal law to implement policies and programs to protect unique coastal resources and environmentally sensitive habitat areas (California Coastal Act), reduce the amount of waste generated in the community that goes to landfills (AB 939), and prevent storm water runoff from polluting creek and ocean waters (National Pollutant Discharge Elimination System Permit Program and the State Municipal Storm Water Permitting Program); and

C. The Santa Barbara community is attractive to residents, businesses, and visitors due to a local economy and quality of life that is centered on a clean and healthy environment, including but not limited to, parks, public open spaces, creeks, estuary, tidelands and the ocean; and

D. The City Council received testimony and other information documenting the fact that EPS products often find their way into the local environment since EPS breaks down into smaller pieces and is so light that it floats in water and is easily carried by the wind, even when it has been disposed of properly; and

E. Numerous studies have documented the prevalence of EPS debris in the environment, including in storm drains and on beaches, negatively impacting the local environment and creating clean-up costs for the City; and

F. EPS can contain potentially harmful constituents such as phthalates, bisphenol A, styrene, vinyl chloride and flame retardants. Research is being conducted to determine whether water leaches these constituents out of plastic products, presenting a threat to the health of humans and wildlife. For example, styrene is a known hazardous substance and a suspected carcinogen and neurotoxin. Medical evidence and the Food and Drug Administration suggest that styrene may penetrate into food and drink stored in polystyrene containers which could potentially threaten the health of humans and wildlife; and

G. Recycling of EPS is currently not available through the City's franchise waste hauler or anywhere in the region and it is not financially feasible for the City to develop such a program; and

H. There are alternatives to EPS food containers available; and

I. It is in the City's interest to establish programs and services that reduce the amount of litter in the environment, in particular beach litter and marine pollution, which increase the quality of life from the City of Santa Barbara residents and visitors and protect local wildlife habitat.

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

**SECTION 2.** Title 9 of the Santa Barbara Municipal Code is amended to add Chapter 9.160 to read as follows:

**9.160.010 Title.**

The title of this Chapter shall be "Regulating Expanded Polystyrene Food Containers and Products."

**9.160.020 Purpose.**

The purpose of these provisions is to promote:

A. The protection of the City's unique waterways and coastal resources including beaches, tidelands, creeks and riparian habitat.

B. To protect the public health, safety and general welfare.

C. Compliance with federal, state, and local laws regarding water quality and waste diversion.

D. A reduction in the amount of waste/debris in city parks, public open spaces, creeks, tidelands and the ocean, and the amount of material going to landfills.

**9.160.030 Definitions.**

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. **ASTM standard.** The standards of the American Society for Testing and Materials (ASTM) international standard D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.

B. **Biodegradable.** A material that is compostable (separately defined) or the ability of organic matter to break down from a complex to a more simple form through the action of bacteria or to undergo this process.

C. **City facility.** Any building, structure or vehicle owned and operated by the City, its agents, agencies, and departments.

D. **City contractor.** Any person or entity that enters into an agreement with the City to furnish products or services to or for the City.

E. **Compostable.** Materials that have the ability to break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch). Compostable disposable food containers must meet ASTM standards for compostable materials.

F. **Disposable food container.** A term interchangeable with "to go" packaging and "food packaging material" and means all containers that are used to hold prepared food or drinks. Disposable food containers include clamshells, bowls, plates, trays, cartons, and cups that are intended for single use, including, without limitation, food containers for takeout foods and/or leftovers from partially consumed meals prepared by food providers. This does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

G. **Events promoter.** An applicant for any event permit issued by the City or any City employee(s) responsible for any City-organized event.

H. **Expanded polystyrene (EPS).** Blown expanded and extruded polystyrene 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). Expanded polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, ice chests, shipping boxes and packing peanuts.

I. **Expanded polystyrene products.** Any item such as coolers, ice chests, cups, bowls, plates, clamshell containers, shipping boxes, or any other merchandise made from expanded polystyrene that is not wholly encapsulated or encased by a more durable material.

J. **Food provider.** Any person located within the City that is a retailer of prepared food or beverages for public consumption including, but not limited to, any store, supermarket, delicatessen, restaurant, shop, caterer or mobile food vendor.

K. **Person.** An individual, business, event promoter, trust, firm, joint stock company, corporation, nonprofit, including a government corporation, partnership, or association.

L. **Prepared food.** Food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the City. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.

M. **Recyclable.** Materials that can be recycled consistent with the requirements of Chapter 7.16, including, but not limited to, aluminum, tin and bi-metal cans, clear and colored glass containers, high density polyethylene (HDPE), polyethylene terephthalate (PET), clear or rigid polystyrene, corrugated cardboard and mixed paper.

N. **Vendor.** Any store or business which sells or offers goods or merchandise, located or operating within the City, including those referenced in the definition of "food provider."

**9.160.040 Expanded polystyrene disposable food containers prohibited.**

A. It shall be unlawful for any food provider within the City to provide prepared food in or provide separately any disposable food container made from expanded polystyrene, except as exempted in Section 9.160.070.

B. Disposable food containers made from expanded polystyrene are prohibited from use in all City facilities.

C. City contractors in the performance of city contracts and events promoters may not provide prepared food in disposable food containers made from expanded polystyrene.

**9.160.050 Required biodegradable, compostable, or recyclable disposable food containers.**

A. All food providers within the City utilizing disposable food containers shall use biodegradable, compostable or recyclable products.

B. All City facilities utilizing disposable food containers shall use biodegradable, compostable or recyclable products.

C. City contractors and events promoters utilizing disposable food containers shall use biodegradable, compostable, or recyclable products while performing under a City contract or permit.

**9.160.060 Prohibited sales.**

It shall be unlawful for any vendor or events promoter in the City to sell or otherwise provide any expanded polystyrene product which is not wholly encapsulated or encased within a more durable material, except as exempted in Section 9.160.070. This specifically includes, but is not limited to, cups, plates, bowls, trays, clamshells and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, packing peanuts, or other packaging materials.

**9.160.070 Exemptions.**

A. A food provider or other vendor may apply for an exemption from the requirements set forth in Section 9.160.040(A) under the following circumstances:

1. Food Provider - Financial Hardship or Practical Difficulty. The City Finance Director or designee may exempt a food provider from the requirements set forth in Section 9.160.040(A) for up to one-year if the food provider applies for an exemption from the City Finance Director showing, in writing, that this chapter would create an undue hardship or practical difficulty as evidenced by no alternatives being available or such alternatives are not affordable to the food provider.

2. Public Health and Safety. Exemptions to allow for the sale or provision of expanded polystyrene products may be granted by the Finance Director or

designee, if the food provider or vendor can demonstrate, in writing, a public health and safety requirement or medical necessity to use the product.

B. Procedures for Applying for an Exemption.

1. Application Materials. An exemption application shall include all information necessary for the Finance Director or designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The Finance Director or designee may require the applicant to provide additional information.

2. The Finance Director or designee may approve the exemption application in whole or in part, with or without conditions.

3. The Finance Director or designee shall put the decision to grant or deny the exemption in writing and the decision shall be final.

4. An exemption granted under Subsection A shall not be renewed.

C. The following foods or products are exempt from the provisions of this Chapter:

1. Foods prepared or packaged outside the City and sold inside the City.

2. Raw meat, fish and other raw food trays.

3. Products made from expanded polystyrene which are wholly encapsulated or encased by a more durable material. Examples include surfboards, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and coolers encased in hard plastic.

4. Construction products made from expanded polystyrene are exempted from this Chapter if the products are used in compliance with Title 22, Environmental Policy and Construction, and Chapter 22.87, Stormwater Management for Development and Redevelopment Projects, and used in a manner preventing the expanded polystyrene from being released into the environment.

5. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and food providers shall be exempt from the provisions of this Chapter.

6. Expanded polystyrene packaging products which have been received from sources outside the City may be reused in order to keep the products out of the waste stream.

**9.160.080 Penalties and enforcement.**

A. The presence of non-recyclable plastic food containers on the premises of a food provider shall constitute a rebuttable presumption that such packaging is being dispensed.

B. Violations of this Chapter shall be enforced as follows:

1. For the first violation, upon a determination that a violation of this Chapter has occurred, City shall issue a written warning notice to the food provider which will specify the violation and the appropriate penalties in the event to of future violations.

2. Thereafter, any person violating or failing to comply with any of the requirements of this Chapter shall be subject to remedies specified pursuant to Chapters 1.25 and 1.28 of this Code.

3. Each and every sale or other transfer of non-recyclable plastic food packaging shall constitute a separate violation of this Chapter.

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

C. The remedies and penalties provided in this Chapter are cumulative and not exclusive of other remedies and penalties available under other provisions of applicable law.

**SECTION 3.** This ordinance shall take effect on the 31st day following its adoption, but shall not become operative until 2:01 a.m. on January 1, 2019.