

## ARTICLE 11

### POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE PROHIBITED; RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE REQUIRED

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## ARTICLE 11

### POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE PROHIBITED; RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE REQUIRED

SEC. 5-11.00 DEFINITIONS. For the purposes of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended.

- a. **ASTM-Standard.** 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.
- b. **Biodegrade/Biodegradable.** Biodegrade or Biodegradable means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.
- c. **City Facility.** City Facility means any building, structure, land or park owned or operated by the City of Hayward, its agents and departments and includes City buildings, structures, parks, recreation facilities or property.
- d. **City Facility Users.** City Facility Users means all persons, societies, associations, organizations or special events promoters who require a permit to reserve or rent a City Facility or a permit or contract to use a plaza, sidewalk, or roadway, as further described in Hayward Municipal Code Chapter 3, Public Safety, Article 5, Section 3-5.10 Temporary Use of Sidewalk or Roadway. City Facility Users also includes concession contracts with the City, City-managed concessions, City-sponsored events and food services provided at City expense.
- e. **Compostable.** Compostable means that all materials in the product or package will Biodegrade or otherwise become part of usable compost (e.g., soil conditioning material, mulch) in an appropriate composting program or facility. Compostable Disposable Food Service Ware includes ASTM-Standard bio-plastics (plastic-like) products that are clearly labeled so that any compost collector and processor can easily distinguish the ASTM-Standard Compostable plastic from non-ASTM-Standard Compostable plastic.
- f. **Disposable Food Service Ware.** Disposable Food Service Ware means a product used by a Food Vendor for serving or transporting prepared and ready-to-consume food or beverages which is commonly disposed of after a single use. Disposable Food Service Ware includes, but is not limited to, plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single-use disposable straws, utensils or hot cup lids.
- g. **Food Vendor.** Food Vendor means any establishment located within the City of Hayward, or any establishment which provides Prepared Food or beverages for public consumption within the City of Hayward, including but not limited to any

store, supermarket, delicatessen, restaurant, retail food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, sidewalk or other outdoor vendor, or caterer.

- h. **Polystyrene Foam.** Polystyrene Foam means a thermoplastic petrochemical material utilizing the styrene monomer, which may be marked with resin symbol #6, processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene), sometimes referred to as Styrofoam™, a Dow Chemical Company trademarked form of polystyrene foam insulation. In food service, Polystyrene Foam is generally used to make cups, bowls, plates, trays, and clamshell containers intended for a single use.
- i. **Prepared Food.** Prepared Food means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique by Food Vendor. Prepared Food does not include uncooked meat, fish, poultry, or eggs unless provided for consumption without further food preparation, such as sushi. Prepared Food may be eaten either on or off the premises, also known as “take-out food.”
- j. **Recyclable.** Recyclable means any material that is accepted by the City recycling program, including, but not limited to, paper, glass, metal, cardboard, and plastic that can be recycled, salvaged, processed, or marketed by any means other than landfilling or burning, whether as fuel or otherwise, so that they are returned to use by society. Recyclable plastics include any plastic which is identified as recyclable by the City in the City’s municipal recycling program. For purposes of this Article, recyclable plastic does not include Polystyrene Foam labeled with resin symbol #6.
- k. **Special Events Promoter.** Special Events Promoter means an applicant for any special events permit issued by the City or by any City employee(s) responsible for any organized special event within the City of Hayward.

**SEC. 5-11.01 PROHIBITED USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE.**

- a. Except as provided by Section 5-11.03, all Food Vendors are prohibited from providing Prepared Food in Disposable Food Service Ware made from Polystyrene Foam.
- b. Except as provided by Section 5-11.03, all City Facility Users are prohibited from using Disposable Food Service Ware made from Polystyrene Foam.

**SEC. 5-11.02 REQUIRED USE OF RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE.**

- a. All Food Vendors using any Disposable Food Service Ware shall use a suitable Recyclable or Compostable product.
- b. All City Facility Users shall use a suitable Recyclable or Compostable product for Disposable Food Service Ware.

#### SEC. 5-11.03 EXCEPTIONS.

- a. Foods prepackaged outside the limits of the City of Hayward are excluded from the provisions of this Article, but the purveyors of foods prepackaged outside of the limits of the City of Hayward are encouraged to follow these provisions as it is the City's policy goal to eliminate the use of Polystyrene Foam Disposable Food Service Ware.
- b. Coolers and ice chests that are intended for reuse are excluded from the provisions of this Article.
- c. The City Manager may except a Food Vendor or City Facility User from the requirements set forth in Section 5-11.02 for a period of time to be determined by the City Manager on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the Food Vendor or City Facility User not generally applicable to other persons in similar circumstances.
- d. Food Vendors and City Facility Users seeking an exception from the requirements of this Article shall include all information on the application for exception to allow the City to make its decision, including but not limited to, documentation showing factual support for the claimed exception. The City Manager shall confirm the decision to grant or deny each exception in writing and may approve an exception request in whole or in part. The decision of the City Manager shall be final.
- e. Emergency supplies or services procurement. City Facility Users and Food Vendors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

SEC. 5-11.04 ADMINISTRATIVE RULES AND REGULATIONS. The City Manager may make such rules and regulations, consistent with the provisions of this Article, as may be necessary or desirable to supplement or clarify such provisions or aid in their enforcement.

#### SEC. 5-11.05 ENFORCEMENT AND PENALTIES.

- a. The City Manager or his/her designee shall have primary responsibility for enforcement of this Article. If the City Manager or his/her designee determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the Food Vendor that a violation has occurred. Subsequent violations of this Article by a Food Vendor shall be subject to the enforcement and penalties set forth below.
- b. Each and every sale or other transfer of Disposable Food Service Ware made from Polystyrene Foam shall constitute a separate violation of this Article.
- c. Any violation of this Article that occurs after the issuance of a written warning to a Food Vendor is subject to civil and administrative enforcement, punishable by a civil fine established by resolution of the City Council. Any citation issued for a violation of this Article shall give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 1, Article 7 of the Hayward Municipal Code.

- d. The City Attorney may seek legal, injunctive or other equitable relief to enforce this Article.
- e. The remedies provided herein are cumulative and not exclusive.

SEC. 5-11.06 CONSTRUCTION AND PREEMPTION. This Article and any of its provisions shall be null and void upon the adoption of any state or federal law or regulation imposing the same, or essentially the same, limits on the use of prohibited products as set forth in this Article. This Article is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-City or interstate commerce. It shall be construed with that intent.