

ORDINANCE NO. 182

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY AMENDING TITLE 8 OF THE SCOTTS VALLEY MUNICIPAL CODE BY ADDING CHAPTER 8.01 ENTITLED "ENVIRONMENTALLY ACCEPTABLE FOOD PACKAGING"

Whereas, the City of Scotts Valley has a duty to protect its natural environment, its economy, and the health of its citizens.

Whereas, eliminating the use of polystyrene foam and other non-compostable, non-biodegradable, and non-recyclable food packaging items will maximize the operating life of landfills and will lessen the economic and environmental costs of managing waste.

Whereas, discarded food and beverage packaging constitutes a significant and growing portion of the City's waste stream. Laws, policies and regulations pertaining to disposable food service ware are a vital component in the City's efforts to reduce the amount of disposed waste.

Whereas, eliminating all non-biodegradable, non-returnable, and non-recyclable food packaging material from all establishments within the City of Scotts Valley will protect the City's environment from contamination and degradation.

Whereas, take-out food packaging that is biodegradable, compostable, and recyclable is the most responsible and sustainable choice for the City's economy, its citizenry and its environment. When products are recycled, natural resources are spared, less energy is used for the production of new products, and premium landfill space is preserved. When biodegradable products are turned into compost they can reduce water use and lessen the need for fertilizer.

Whereas, biodegradable take-out packaging such as cups, plates, and clamshell containers are now made from paper, sugarcane stalk, corn bi-products, and potato starch. As these products degrade, they pose less of a danger to the environment and are not a permanent blight on the landscape. These products are available locally.

Whereas, disposable food service ware made from expanded polystyrene foam (commonly called Styrofoam) is not biodegradable, returnable, or recyclable. Polystyrene foam breaks into smaller pieces and because it is lightweight, may be picked up by the wind even when it has been disposed of properly.

Whereas, as litter, polystyrene foam is highly durable, persisting longer than any other type of litter. There is a prevalence of polystyrene foam packaging littering City parks and public places, streets and roads, storm drains and waterways. This litter ultimately floats, or is blown, into local creeks and into the Monterey Bay. This litter creates a financial cost to City residents and an environmental cost to natural resources.

Whereas, marine animals and birds often confuse polystyrene foam with pieces of food, and when ingested, it can impact their digestive tracts, often leading to death.

Whereas, polystyrene foam is manufactured from petroleum, a non-renewable resource.

Whereas, there is scientific evidence that styrene leaches from polystyrene foam containers into food and drink. The Environmental Protection Agency (EPA) has found that there are short- and long-term adverse health effects associated with exposure to styrene.

Whereas, it is not economically feasible at this time, to recycle polystyrene foam in Santa Cruz County.

Whereas, prohibiting the use of polystyrene foam take-out food packaging and replacing it with biodegradable, compostable or recyclable food service products will further protect local waterways, the Monterey Bay National Marine Sanctuary, City residents and visitors, and will support the City's goal of reducing waste and litter for a cleaner environment for generations to come.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 8 of the Scotts Valley Municipal Code is hereby amended by adding Chapter 8.01 entitled "Environmentally Acceptable Food Packaging" to read as follows:

"CHAPTER 8.01 Environmentally Acceptable Food Packaging"

- 8.01.010 Definitions
- 8.01.020 Prohibited Disposable Food Service Ware
- 8.01.030 Required Biodegradable/Compostable or Recyclable Disposable Food Service Ware
- 8.01.040 Implementation: City Contracts and Leases
- 8.01.050 Exemptions
- 8.01.060 Enforcement and Notice of Violation
- 8.01.070 Penalties and Fines for Violations

8.01.010 DEFINITIONS

Unless otherwise expressly stated, whenever used in this chapter the following terms shall have the meanings set forth below:

(a) "Affordable" means that a biodegradable, compostable or recyclable product may cost up to 15 percent more than the purchase cost of the non-biodegradable, non-compostable or non-recyclable alternative(s).

(b) "ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.

(c) "Biodegradable" means 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.

(d) "City of Scotts Valley Facility" means any building, structure, property or vehicle owned and operated by the City of Scotts Valley, its agents, agencies, and departments.

(e) "City of Scotts Valley Contractor" means any person or entity that has a contract with the City of Scotts Valley for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be purchased at the expense of the City of Scotts Valley, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the City of Scotts Valley.

(f) "Compostable" means all the materials in the product or package will break down, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic.

(g) "Disposable Food Service Ware" is interchangeable with "to go" packaging and "food packaging material" and includes: all containers, clamshells, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, napkins and other items designed for one-time use for prepared foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by food providers.

(h) "Food Provider" means any vendor, business, organization, entity, group or individual, including retail food establishments, located in the City of Scotts Valley that offers food or beverage to the public.

(i) "Person" means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.

(j) "Polystyrene Foam" means blown polystyrene, and expanded and extruded foams (sometimes called Styrofoam™) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

(k) "Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the City of Scotts Valley. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail establishment.

(l) "Recyclable" means any material that is accepted by the City of Scotts Valley recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs.

(m) "Retail Food Establishment" means all sales outlets, stores, shops, vehicles or other places of business located within the City which operate primarily to sell or convey foods or beverages directly to the ultimate consumer, which foods or beverages are predominantly contained, wrapped or held in or on packaging. Retail food establishment shall include, but not be limited to, any place

where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, short-order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out prepared food place, industrial feeding establishment, catering kitchen, mobile food preparation unit, commissary, special event, grocery store, public 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 for the public and any organization, group or individual which provides food as part of its service.

8.01.020 POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE PROHIBITED

- a) Food providers within the City of Scotts Valley may not provide prepared food in any disposable food service ware that contains polystyrene foam.
- b) The City shall not provide disposable food service ware that contains polystyrene foam for use in any City of Scotts Valley facility.
- c) City of Scotts Valley contractors in the performance of City contracts and anyone renting City facilities may not provide prepared food in disposable food service ware that contains polystyrene foam.

8.01.030 REQUIRED BIODEGRADABLE, COMPOSTABLE, OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE.

- a) All food providers within the City of Scotts Valley utilizing disposable food service ware shall use biodegradable, compostable or recyclable products, unless there is no affordable alternative available as determined by the Director of Public Works (see definition of "Affordable" and Section 8.01.050 Exemptions). Food providers may charge a "take-out fee" to cover the difference in cost.
- b) All City of Scotts Valley facilities utilizing disposable food service ware shall use products that are biodegradable, compostable or recyclable.
- c) City of Scotts Valley contractors in the performance of City contracts and anyone renting City facilities utilizing disposable food service ware shall use biodegradable, compostable, or recyclable products while performing under a City of Scotts Valley contract or using City facilities.

8.01.040 IMPLEMENTATION: CITY CONTRACTS AND LEASES.

- a) The Public Works Director/City Engineer is authorized to promulgate regulations, guidelines and forms and to take any and all other actions reasonable and necessary to enforce this Chapter.
- b) All City contracts, rental agreements and leases, shall contain the following minimum language: "Contractor agrees to comply fully with and be bound by all of the provisions of the Food Packaging Ordinance as set forth in the City of Scotts Valley Municipal Code, Chapter 8.01 including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 8.01 are incorporated herein by reference and made a part of this agreement as though fully set forth. This provision is a material term of this agreement. By

entering into this agreement, the contractor agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.) liquidated damages for the first breach, two hundred dollars (\$200.) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that the City will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by the City because of the contractor's failure to comply with these provisions."

8.01.050 EXEMPTIONS FOR BIODEGRADABLE, COMPOSTABLE OR RECYCLABLE FOOD SERVICE WARE

- a) There are no exemptions that allow for the use of polystyrene foam disposable food service ware.
- b) The Director of Public Works, or the Director's designee, may exempt a food provider from the requirement set forth in section 8.01.030(a) of this ordinance for a one-year period upon the food provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Director of Public Works or the Director's designee shall put the decision to grant or deny a one-year exemption in writing, and the Director's or Director's designee decision shall be final.
- c) An exemption application shall include all information necessary for the Director of Public Works or the Director's designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The Director or the Director's designee may require the applicant to provide additional information.
- d) The Director Public Works or Director's designee may approve the exemption application in whole or in part, with or without conditions.
- e) Foods prepared or packaged outside the City of Scotts Valley and sold inside the City of Scotts Valley are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Scotts Valley are encouraged to follow the provisions of this Chapter.
- f) Polystyrene Foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

8.01.060 ENFORCEMENT AND NOTICE OF VIOLATION

- a) Violations of this ordinance may be enforced in accordance with Title 4.

- b) The Director of Public Works, or the Director's designee, shall be responsible for enforcing this Chapter and shall have authority to issue citations for violations. The Director, or the Director's designee, is authorized to establish regulations or administrative procedures to obtain compliance with this chapter.
- c) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.
- d) The Scotts Valley City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter.
- e) The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.
- f) The City of Scotts Valley in accordance with applicable law, may inspect any vendor or food provider's premises to verify compliance.

8.01.070 PENALTIES AND FINES FOR VIOLATIONS

Violations of this ordinance shall be enforced as follows:

- 1. For the first violation, the Director of Public Works or the Director's designee shall issue a written warning to the food provider specifying that a violation of this chapter has occurred and which further notified the food provider of the appropriate penalties to be assessed in the event of future violations. The food provider will have 30 days to comply.
- 2. The following penalties will apply for subsequent violations of this Chapter:
 - a) A fine not exceeding one hundred dollars (\$100.) for the first violation within 30 days after the first warning. The Director of Public Works or the Director's designee may allow the violator in lieu of payment of the fine, to submit receipts demonstrating the purchase after the citation date, of at least \$100 worth of biodegradable, compostable, or recyclable products appropriate as an alternative disposable food service ware for the items which led to the violation.
 - b) A fine not exceeding two hundred dollars (\$200.) for the second violation within 60 days after the first warning.
 - c) A fine not exceeding five hundred dollars (\$500.) for the third violation within 90 days after the first warning and for each additional 30 day period during which the food provider is not in compliance."

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, phrase, part 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 of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

