

**ORDINANCE NO. 3005-13**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADDING CHAPTER 5.39 (ENVIRONMENTALLY ACCEPTABLE FOOD CONTAINERS AND SERVICE WARE) OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE SUNNYVALE MUNICIPAL CODE RELATED TO POLYSTYRENE FOOD CONTAINERS AND SERVICE WARE**

WHEREAS, on December 12, 2012, the City Council directed staff to prepare a draft ordinance prohibiting the use of polystyrene foam food containers and service ware; and

WHEREAS, the City of San Jose, acting as the lead agency under the California Environmental Quality Act (CEQA), undertook to prepare environmental documentation for a proposed ordinance prohibiting the use of polystyrene foam food containers and service ware on behalf of all 15 cities in Santa Clara County and the County of Santa Clara;

WHEREAS, the Initial Study and Notice of Intent to Adopt a Negative Declaration were circulated for public review and comments; and

WHEREAS, during the public review and comment period, the City of Sunnyvale, as the responsible agency, participated in the CEQA process as required by Title 14 of the California Code of Regulations, Section 15096; and

WHEREAS, the City of San Jose adopted the Negative Declaration on August 27, 2013; and

WHEREAS, on October 22, 2013, the City Council held a duly-noticed public hearing to consider the Initial Study and Negative Declaration in connection with the City Council's review and approval of the proposed ordinance prohibiting the use of polystyrene foam food containers and service ware in Sunnyvale.

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

**SECTION 1. CEQA REVIEW.**

1. The City Council has reviewed the Negative Declaration for the proposed ordinance to prohibit the use of polystyrene food containers and service ware, and all comments received regarding the Negative Declaration. After reviewing the foregoing, the City Council has determined that no evidence or circumstances exist that would require the preparation of additional environmental documents. Further, the City Council has exercised its independent judgment and has determined that the ordinance will not have a significant impact on the environment.

2. The City Council of the City of Sunnyvale adopts the Negative Declaration for the proposed ordinance to prohibit the use of polystyrene foam food containers and service ware within the City of Sunnyvale, which is on file with the City Clerk.

SECTION 2. CHAPTER 5.39 ADDED. Chapter 5.38 (Environmentally Acceptable Food Containers) of Title 5 (Business Licenses and Regulations) is hereby added to the Sunnyvale Municipal Code as follows:

### **Chapter 5.39**

#### **ENVIRONMENTALLY ACCEPTABLE FOOD CONTAINERS AND SERVICE WARE**

Sections:

- 5.39.010 Definitions
- 5.39.020 Polystyrene foam food containers and service ware prohibited
- 5.39.030 Exemptions
- 5.39.040 Violations

#### **5.39.010. Definitions.**

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

- (a) "Customer" means a person obtaining prepared food from a food provider.
- (b) "Food container" means a container that is used, or is intended to be used, to hold prepared food. "Food container" includes, but is not limited to, a cup, bowl, plate, tray, carton, or clamshell container that is intended for single use.
- (c) "Food provider" means any vendor, business, organization, entity, group or individual operating in the city of Sunnyvale that offers food or beverages to the public for consumption on or off premises, regardless of whether there is a charge for the food. "Food provider" includes, but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, delicatessens, itinerant restaurants, pushcarts, and vehicular food vendors. "Food provider" also includes cafeterias in private schools and places of employment whether or not such establishments are open to the general public.
- (d) "Food service ware" includes plates, bowls, cups, lids, straws, stirrers, forks, spoons, knives, napkins, trays, and other items primarily designed for use in consuming food.

(e) "Polystyrene foam" means a container made of 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), which is used, or is intended to be used, to hold prepared food.

(f) "Prepared food" means any food, including beverages, that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption, including but not limited to ready-to-eat and takeout food.

(g) "Vendor" means any store or business which sells or offers goods or merchandise, located or operating within the City of Sunnyvale.

**5.39.020 Polystyrene foam containers and service ware prohibited.**

(a) On or after April 22, 2014, a food provider shall not dispense prepared food to a customer in a polystyrene foam food container.

(b) On or after April 22, 2015, polystyrene foam food containers and polystyrene foam food service ware shall not be sold or provided by any vendor in the City of Sunnyvale.

**5.39.030 Exemptions.**

The following are exempt from the provisions of this Chapter:

(a) Raw eggs and raw, butchered meat, fish, or poultry that is sold from a butcher case or a similar retail appliance.

(b) A food provider may dispense prepared food to a customer using polystyrene foam containers if that food provider demonstrates, in writing, to the satisfaction of the director of environmental services that compliance with the provisions of this Chapter will impose a unique problem, not generally applicable to other persons in similar circumstances, that will result in an undue economic hardship. The director of environmental services shall put the decision to grant or deny an exemption in writing and may exempt the food vendor pursuant to this subdivision until April 22, 2015, or not more than one year from the date of the demonstration, whichever date is sooner. The Director's decision shall be final.

**5.39.040 Violations.**

(a) The director of environmental services has primary responsibility for enforcement of this chapter. The director of environmental services is authorized to promulgate regulations and to take any and all other actions reasonable and

necessary to enforce this chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any store during business hours.

(b) If the director of environmental services determines that a violation of this chapter has occurred, he or she will issue a written warning notice to the operator of the vendor or food provider that a violation has occurred and the potential penalties that will apply for future violations.

(c) Any vendor or food provider that violates or fails to comply with any of the requirements of this chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.

(d) If a vendor or food provider has subsequent violations of this chapter that are similar in kind to the violation addressed in a written warning notice, the following penalties will be imposed and shall be payable by the operator:

(1) A fine not exceeding one hundred dollars for the first violation after the written warning notice is given;

(2) A fine not exceeding two hundred dollars for the second violation after the written warning notice is given; or

(3) A fine not exceeding five hundred dollars for the third and any subsequent violations after the written warning notice is given.

(e) A fine shall be imposed for each day a violation occurs or is allowed to continue.

(f) All fines collected pursuant to this chapter shall be deposited in the Wastewater Management Fund of the department of environmental services to assist the department with its costs of implementing and enforcing the requirements of this chapter.

(g) Any vendor or food provider who receives a written warning notice or fine may request an administrative review of the accuracy of the determination or the propriety of any fine issued, by filing a written notice of appeal with the director of environmental services no later than thirty days after receipt of a written warning notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses, that the appellant wishes to be considered in connection with the appeal. The appeal will be heard by a hearing officer designated by the director of environmental services. The hearing officer will conduct a hearing concerning the appeal within forty-five days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the city, and will give the appellant ten days prior written notice of the date of the hearing. The hearing officer may sustain, rescind, or modify the written warning notice or fine, as applicable, by written decision. The hearing officer will have the power to waive any portion of the fine in a manner consistent with the

decision. The decision of the hearing officer is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on October 22, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on November 19, 2013, by the following vote:

AYES: GRIFFITH, MOYLAN, WHITTUM, MEYERING, MARTIN-MILIUS, DAVIS

NOES:

ABSTAIN:

ABSENT: SPITALERI

ATTEST:

APPROVED:

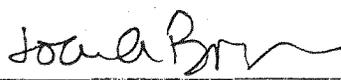
  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor

Date of Attestation: 11/26/2013

(SEAL

APPROVED AS TO FORM:

  
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Joan A. Borger, City Attorney