

**ORDINANCE 2235**

**ORDINANCE OF THE TOWN OF LOS GATOS ADDING ARTICLE III TO CHAPTER 10 OF THE TOWN OF LOS GATOS MUNICIPAL CODE TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE CONTAINER-WARE BY FOOD PROVIDERS**

**THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:**

**SECTION I**

Chapter 10 of the Los Gatos Town Code is amended to add Article III, Section (10.30.010-10.30.040) shall read as fully set forth in Exhibit A.

**SECTION II**

In the event that any part of this ordinance is held to be invalid, the invalid part or parts shall be severed from the remaining portion of the ordinance which shall remain in full force and effect.

**SECTION III**

It is the intent of the Town Council of the Town of Los Gatos to supplement State and Federal law and to not duplicate or contradict such law, and this ordinance shall be construed consistently with that intention. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The Town Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsection, sentences, clauses, or phrases be declared unconstitutional.

**SECTION IV**

On August 27, 2013, the City of San Jose adopted a Negative Declaration (“ND”) based on a Program Initial Study (“IS”) that analyzed the impacts of this expanded polystyrene foam food service container-ware ordinance if adopted in cities throughout the County of Santa Clara as well as neighboring jurisdictions. The ND was adopted pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* (“CEQA”) and the CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.* It is incorporated by reference herein.

Pursuant to Section 15096 of the CEQA Guidelines, the Town of Los Gatos acts as a responsible agency for adoption of this ordinance within the Town of Los Gatos. Upon independent review of the IS/ND and all evidence before it, the Town Council makes the following findings:

1. The Program Initial Study and Negative Declaration (“Initial Study/Negative Declaration”) is complete, correct, adequate, and prepared in accordance with CEQA, 14 California Code of Regulations, Section 15000 *et seq.* (“CEQA Guidelines”), and the public comment period; and
2. On the basis of the Program Initial Study, Negative Declaration, and public comment received by both the City of San Jose and the Town of Los Gatos, there is no substantial evidence that the project as proposed will have a significant effect on the environment; and
3. Adoption of this ordinance and analysis of the IS/ND reflects the independent judgment of the Town Council of the Town of Los Gatos; and
4. None of the conditions listed in CEQA Guidelines, Section 15162(a) are applicable to adoption of this ordinance, and adoption of this ordinance is an activity that is part of the program examined by the Program IS/ND and is within the scope of the project described in the Final Program IS/ND; and
5. A Notice of Determination shall be filed pursuant to CEQA Guidelines, Sections 15094 and 15096.

## SECTION V

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on December 2, 2014 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on December 16, 2014. This ordinance shall be effective on June 1, 2015.

COUNCIL MEMBERS:

AYES: Steven Leonardis, Rob Rennie, Marico Sayoc, Barbara Spector, Mayor Marcia Jensen

NAYS:

ABSENT:

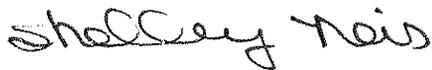
ABSTAIN:

SIGNED:

A handwritten signature in cursive script, appearing to read "Marcia Jensen".

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

A handwritten signature in cursive script, appearing to read "Shelley Reis".

CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**CHAPTER 10**

**ARTICLE III**

**EXPANDED POLYSTYRENE FOAM FOOD SERVICE CONTAINER-WARE**

Sec. 10.30.010	Findings and purpose.
Sec. 10.30.015	Definitions.
Sec. 10.30.020	Implementation Date.
Sec. 10.30.025	Polystyrene Foam Disposable Food Service Ware Prohibited.
Sec. 10.30.030	Exemptions.
Sec. 10.30.035	Administrative Penalty.
Sec. 10.30.040	Severability

**Sec. 10.30.010 Findings and purpose.**

The Town Council finds and determines that:

- A. 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 which may be mistaken for food by birds and other marine wildlife.
- B. EPS disposable food service ware comprises a majority of EPS litter observed in storm drains.
- C. The proposed ban of EPS disposable food service ware would require food providers 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 Town of Los Gatos creeks and Southern San Francisco Bay.

This Council does, accordingly, find and declare that it should prohibit the use of Expanded Polystyrene Foam Food Service Container-Ware.

**Sec. 10.30.015 Definitions.**

*Customer* means any person obtaining prepared food from a food provider.

*Disposable food service ware or food container* means a container or single-use disposable product that is used, or intended to be used, to hold prepared food. *Disposable food service ware or food container* includes, but is not limited to, plates, trays, cups, bowls, and hinged or lidded containers (clamshells), and includes polystyrene foam coolers or ice chests which are not wholly encapsulated or encased within a more durable material. Disposable food service ware does not include straws, utensils or drink lids.

*Food provider* means any establishment, vendor, business, organization, entity, group or individual located or operating in the Town of Los Gatos that offers prepared food or beverages, regardless of whether there is a charge for the food or beverage; (1) to the public for consumption on or off its premises; (2) as a catered event; and/or (3) at cafeterias of private schools and places of employment, whether or not such establishments are open to the general public. *Food provider* includes, but is not limited to, Town-sponsored events, Town-permitted events, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, pubs, coffee shops, convenience stores, liquor stores, supermarkets, delicatessens, fraternal clubs serving the public, itinerant restaurants, mobile food vendors, vehicles or carts, or roadside stands.

*Vendor* means any store or business, organization, or entity that sells or offers goods or merchandise, located or operating within the Town of Los Gatos.

*Polystyrene foam* means the 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).

*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.

**Sec. 10.30.020 Polystyrene Foam Disposable Food Service Ware Prohibited.**

On or after June 1, 2015, any food provider or vendor shall not dispense prepared food to a customer in a polystyrene foam food container or sell polystyrene foam coolers or ice chests which are not wholly encapsulated or encased within a more durable material.

**Sec. 10.30.025 Exemption to the Polystyrene Foam Disposable Food Service Ware Prohibition.**

- 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 seek an exemption from the prohibition under Section 10.10.30.025 due to a “unique packaging hardship” under Subsection B of this Section or a “financial hardship” under Subsection C of this Section.
- C. The food provider must demonstrate that no reasonably feasible alternative exists to a specific and unique polystyrene foam disposable food service ware in order to qualify for a “unique packaging hardship” exemption.

- D. The food provider must demonstrate both of the following to qualify for a “financial hardship” exemption: (1) a gross income under \$300,000 on its 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.
- E. The food provider may submit a written application for an exemption on a form provided by the Department of Parks and Public Works. The Director of Parks and Public Works (“Director”) may require the applicant to submit additional information or documentation to make a determination regarding the exemption requested. 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.

**Sec. 10.30.030                    Administrative Penalty.**

A penalty may be imposed upon findings made by the Town’s code compliance officer that any food provider has provided a “disposable food service ware” or “food container” in violation of this Chapter. The amount of penalty and the penalty procedures applicable to any violation of this Chapter are contained in the Los Gatos Municipal Code, Article III, Section 1.30, entitled “Administrative Citations.”

**Sec. 10.30.040                    Severability.**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed to be a separate, distinct and independent provision and such decision shall not affect the validity of the remaining portion thereof.