

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL  
ESTABLISHING SAN RAFAEL MUNICIPAL CODE CHAPTER 10.92 PROHIBITING  
THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD PACKAGING**

**WHEREAS**, the California Integrated Waste Management Board estimates that Californians use 165,000 tons of expanded polystyrene (foam and Styrofoam products) each year for packaging and food services purposes. A 2004 study by the California Integrated Waste Management Board ranked polystyrene's environmental impacts second highest, behind aluminum, in the categories of energy consumption, greenhouse gas emissions, and total environmental effect; and

**WHEREAS**, expanded polystyrene is not biodegradable, taking hundreds of years to deteriorate or breakdown in the environment or a landfill, and currently there is no effective or economically feasible means of recycling this product in Marin County; and

**WHEREAS**, polystyrene foam litter breaks down into smaller, non-biodegradable pieces that pose significant threats to marine and other wildlife from ingestion, and poses an environmental threat to creeks and waterways; and

**WHEREAS**, polystyrene foam litter contaminates the public storm drain systems requiring the expenditure of limited public infrastructure maintenance resources for removal and disposal; and

**WHEREAS**, styrene, which is used in the production of polystyrene foam, is described by the U.S. Environmental Protection Agency as "a suspected toxin to the gastrointestinal tract, kidney and respiratory system, among others," and by the U.S. National Toxicology Program of the US Department of Health and Human Services as a known carcinogen in lab animals and "reasonably anticipated to be a human carcinogen"; and

**WHEREAS**, over sixty jurisdictions in California have adopted ordinances banning the use of polystyrene foam packaging, with local and national businesses successfully replacing polystyrene packaging with affordable, durable, recyclable and/or biodegradable products; and

**WHEREAS**, on April 6, 2009 the City Council of the City of San Rafael adopted the San Rafael Climate Change Action Plan (CCAP), which incorporates programs to achieve reductions in community greenhouse gas (GHG) emissions, including, but not limited to: a) Program LF11, which calls for adoption of a Zero Waste Goal and a Zero Waste Strategic Plan to reduce land filling of waste; and b) Program LF17 which directs the City to investigate options for banning non-recyclable single-use items such as plastic bags and polystyrene takeout food containers; and

**WHEREAS**, the City Council adopted Resolution No. 13212 on July 18, 2011, amending the San Rafael General Plan 2020 to add a new Sustainability Element, which includes a Policy SU-9 for adoption of a Zero Waste goal and implementation of programs to reduce material consumption and waste generation, with a subsection SU-9h which specifically calls for banning single-use items such as polystyrene takeout food containers."; and

**WHEREAS**, the City Council on August 1, 2011 adopted a zero-waste resolution, No. 13217, committing itself to taking actions to achieve a waste diversion goal of 80% by 2012 and 94% by 2025; and

**WHEREAS**, it is the desire of City of San Rafael to conserve resources, reduce the amount of GHG emissions, waste, litter and marine pollution and to protect the public health and welfare as well as to protect wildlife, all of which activities increase the quality of life for San Rafael residents and visitors;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:**

**DIVISION 1: Findings**

The City Council finds as follows:

1. The proposed ordinance to ban the use of polystyrene foam disposable food packaging is consistent with the policies and programs of the San Rafael General Plan 2020, including Conservation Element Policy CON-17 (Resource-Efficient Organizations and Businesses), Policy CON-21 (Waste Reduction/Recycling), Program CON-21a (Recycling), Program CON-21e (Recycling), and Sustainability Element Policy SU-9 (Zero Waste) and Program SU-9i (Commercial and Multi-Family Recycling) in that the ban of use of these products will result in greater use of recyclable and biodegradable materials, which would also result in a reduction in the waste stream.
2. The public health, safety and general welfare will not be adversely impacted by the proposed ordinance to ban polystyrene foam disposable food packaging. Rather, the public health, safety and general welfare will be enhanced and further protected as the ban for use of this material would reduce land-filling of waste products, reduce long-lasting litter and reduce public clean-up costs.

**DIVISION 2: New Chapter 10.92**

New Chapter 10.92 (Prohibition on Use of Polystyrene Foam Disposable Food Packaging) of Title 10 (Business) of the San Rafael Municipal Code is hereby added to read as follows:

**Chapter 10.92 Prohibition on Use of Polystyrene Foam Disposable Food Packaging.**

**Sections:**

- 10.92.010 Definitions**
- 10.92.020 Prohibited Polystyrene Foam Disposable Food Packaging**
- 10.92.030 Exemptions**
- 10.92.040 Enforcement and Penalties**

**10.92.010 Definitions**

For purposes of this Chapter, the following definitions shall apply:

- A. "Customer" means any person obtaining prepared food from a retail food vendor.
- B. "Disposable food packaging" means any plates, bowls, trays, cartons, cups, lids, sacks, hinged or lidded containers that are designed for one-time use and are used in the transport, storage or consumption of prepared food or takeout food. This includes, but is not limited to, packaging for food left over from partially consumed meals prepared at retail food vendors. This definition does not include single-use disposable straws, utensils or hot cup lids.
- C. "Polystyrene Foam" means and includes blown polystyrene and expanded and extruded foams which are thermoplastic petrochemical materials utilizing a styrene monomer and process by any

number of techniques including, but not limited to, fusion of polymer spheres, injection molding, foam molding and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

D. "Prepared Food " means food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises or facilities of the retail food vendor. Prepared food does not include raw, butchered meats, fish and/or poultry not packaged in the city and which are sold from a butcher case or similar appliance. Prepared food may be eaten either on or off the premises or away from the facilities of the retail food vendor. Prepared food includes takeout food.

E. "Takeout food" means food or beverages requiring no further preparation to be consumed and which generally are purchased to be consumed off the premises or away from the facilities of the retail food vendor.

F. "Retail food vendor" means any vendor, business, organization, entity, group or individual that provides prepared food at a retail level, including a food service establishment or a motor vehicle or mobile unit based vendor of prepared food.

#### **10.92.020 Prohibited Polystyrene Foam Disposable Food Packaging**

On and after April 22, 2013, except as otherwise provided in this Chapter, retail food vendors are prohibited from providing prepared food or takeout food to customers in, on or with disposable food packaging, when any part of such packaging includes polystyrene foam.

#### **10.92.030 Exemptions**

- A. The following shall be exempt from the provisions of this Chapter:
1. Foods prepackaged outside the limits of the City of San Rafael,
  2. Coolers and ice chests that are intended for reuse, and
  3. Emergency supplies or services procured by public agencies to be used in an emergency for the immediate preservation of the public peace, health or safety.
- B. The city manager may exempt a retail food vendor from the requirements of this chapter 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 not generally applicable to other persons in similar circumstances. Retail food vendors seeking an exception shall provide a written request setting forth the reasons and documentation showing factual support for the requested exemption.

#### **10.92.040 Enforcement and Penalties**

- A. Enforcement of this chapter shall be the responsibility of the city manager and such code enforcement officials as may be designated by the city manager.
- B. It is unlawful to violate any provision of this Chapter.
- C. A violation of the provisions of this Chapter is subject to enforcement by the provisions of Title 1 (General Provisions), Chapters 1.40, 1.42, 1.44 and 1.46 of this Code, and may be prosecuted as a misdemeanor or infraction as set forth in Section 1.42.010 of this Code.

### **DIVISION 3: CALIFORNIA ENVIRONMENTAL QUALITY ACT**

In considering the adoption of this ordinance, the City Council has reviewed and addressed project compliance with the California Environmental Quality Act (CEQA). The City Council has found and determined that the adoption of this ordinance is exempt from the requirements of the CEQA Guidelines pursuant to Section 15308 (14 Cal. Code §15308) in that it is an action taken for the purpose of protecting the environment.

**DIVISION 4: SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid.

**DIVISION 5: PUBLICATION**

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Council members voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

\_\_\_\_\_  
GARY O. PHILLIPS, Mayor

ATTEST:

\_\_\_\_\_  
ESTHER C. BEIRNE, City Clerk

The foregoing Ordinance No. \_\_\_\_\_ was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, California, held on the \_\_\_ day of \_\_\_\_\_, 2012 and ordered passed to print by the following vote, to wit:

- AYES: Councilmembers:
- NOES: Councilmembers:
- ABSENT: Councilmembers:

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
ESTHER C. BEIRNE, City Clerk