

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1577

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOVATO ESTABLISHING CHAPTER 7-6 OF THE NOVATO MUNICIPAL CODE 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 service purposes. A 2004 study by the Waste Management Board ranked polystyrene's environmental impacts second highest among materials in terms of both manufacturing and disposal, behind aluminum, in the categories of energy consumption, greenhouse gas emissions and total environmental effect; and

WHEREAS, according to the 2004 California Integrated Waste Management Board study, as well as studies published in Materials Science and Technology, expanded polystyrene is not fully 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 polystyrene ; and

WHEREAS, according to the 2004 study by the California Integrated Waste Management Board, a 2009 United Nations Environment Programme Report on Marine Litter, and Environment California, 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, according to the California Integrated Waste Management Board and observations by City staff and volunteers, polystyrene foam litter contaminates the public drainage systems requiring the expenditure of limited public infrastructure maintenance resources for removal and disposal; and

WHEREAS, styrene, which is used in the manufacture of polystyrene foam, is described by the U.S. Environmental Protection Agency as "a suspected toxin to the gastrointestinal tract, kidney and respiratory systems, among others," and by the U.S. National Toxicology Program of the U.S. 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-nine 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 alternatives; and

WHEREAS, whereas the Novato Sanitary District has adopted a waste diversion goal of 80 percent by 2025; and

WHEREAS, it is the desire of the City of Novato to conserve natural resources, to protect wildlife and natural habitat, to reduce waste, litter and marine pollution and to protect the public health and welfare.

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

SECTION 1. FINDINGS. The City Council of the City of Novato hereby finds that:

- A. The proposed ordinance to ban the use of polystyrene foam disposable food packaging is consistent with the policies and programs of the Novato General Plan, including Policies EN-3 (Wildlife Habitat), EN-7 (Water Quality), EN-10 (Wetlands Ecology), EN-12 (Bayland Area Protection) in that the proposed ordinance would reduce the presence and impacts of polystyrene litter in areas of natural habitat.
- B. 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 on use of this material will reduce land-filling of waste products, reduce long-lasting litter throughout the community and natural areas, reduce costs of removal of debris from storm drains and other public clean-up costs.
- C. The proposed Municipal Code amendments are not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15308 in that it is an action taken for the purpose of protecting the environment.

SECTION 2. A new Chapter 7-6 is hereby added to the Novato Municipal Code as follows:

**Chapter 7-6 Prohibition on Use of Polystyrene Foam Disposable Food Packaging**

**Sections:**

- 7-6.1 Definitions**
- 7-6.2 Prohibited Polystyrene Foam Disposable Food Packaging**
- 7-6.3 Exemptions**
- 7-6.4 Enforcement and Penalties**

**7-6.1 Definitions**

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

- a. “Customer” means any person obtaining prepared food from the retail food vendor.
- b. “Disposable food packaging” means any plates, bowls, trays, cartons, cups, lids, and 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 processed 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 a retail food vendor. Prepared food does not include raw meats, fish and/or poultry which are sold from a butcher case or similar appliance. Prepared food includes food eaten either on or off the premises or away from the facilities of the retail food vendor, including 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.

#### **7-6.2 Prohibited Polystyrene Foam Disposable Food Packaging**

On and after January 1, 2014, 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.

#### **7-6.3 Exemptions**

- a. The following shall be exempt from the provisions of this Chapter:
  - 1. Foods prepackaged outside the limits of the City of Novato,
  - 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 exemption shall provide a written request setting forth the reasons and documentation showing factual support for the requested exemption.

#### **7-6.4 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 Chapter 1-6 of this Code.

SECTION 3: Severability:

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional on their face or as applied.

SECTION 4: Publication and Effective Date:

This ordinance shall be published in accordance with applicable provisions of law, by either:

publishing the entire ordinance once in the *Novato Advance*, a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption, or

publishing the title or appropriate summary in the *Novato Advance* at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance, and

This ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

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THE FOREGOING ORDINANCE was first read at a regular meeting of the Novato City Council on the 23<sup>rd</sup> day of April, 2013, and was passed and adopted at a regular meeting of the Novato City Council on the 7<sup>th</sup> day of May, 2013.

AYES:	Councilmembers	Athas, Kellner, Lucan, MacLeamy, Eklund
NOES:	Councilmembers	None
ABSTAIN:	Councilmembers	None
ABSENT:	Councilmembers	None

/Pat Eklund/  
Mayor of the City of Novato

Attest:

/Sheri Hartz/  
City Clerk of the City of Novato

Approved as to form:

/Jeffrey Walter/  
City Attorney of the City of Novato