

ORDINANCE NO. 4920

ORDINANCE REPEALING AND RE-ENACTING CHAPTER **5.46**
OF THE SANTA CRUZ COUNTY CODE REGARDING
ENVIRONMENTALLY ACCEPTABLE PACKAGING MATERIALS

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Chapter 5.46 of the Santa Cruz County Code is hereby repealed.

SECTION II

The Santa Cruz County Code is hereby amended by adding new Chapter 5.46 to read as follows:

Chapter **5.46**

Section:

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|-----------------|---|
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| 5.46.060 | Exemptions. |
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| 5.46.090 | Severability. |
| 5.46.100 | No conflict with federal or state law. |
| 5.46.110 | Preemption. |

5.46.010 Findings and intent.

The Board of Supervisors finds and declares:

- A. The County of Santa Cruz has a duty to protect **the** natural environment, our economy and the health of its citizens.
- B. Disposable food and beverage packaging and food service ware made from Expanded Polystyrene Foam (commonly called Styrofoam) is not biodegradable, returnable or recyclable. Polystyrene foam easily breaks up into smaller pieces and

because it is lightweight, is carried by the wind even when it has been disposed of properly.

C. As litter, polystyrene foam is highly durable, persisting and detracting the appearance of an area longer than any other type of litter. There is a prevalence of polystyrene foam packaging littering our parks and public places, streets and roads, waterways, storm drains and beaches. This litter ultimately floats, or is blown, into the Monterey Bay. This litter exists at a financial cost to residents and an environmental cost to our natural resources.

D. The County of Santa Cruz is situated at the edge of the Monterey Bay National Marine Sanctuary. Marine animals and birds often confuse polystyrene foam pieces as a food source which, when ingested, can impact the digestive track which often leads to death.

E. The U.S. EPA has stated that the physical properties of polystyrene foam are such that “the material can have serious impacts on human health, wildlife, the aquatic environment and the economy.” According to the U.S. Food and Drug Administration, there is medical evidence to suggest that styrene, a primary component of polystyrene foam, leaches from polystyrene foam containers into food and drink. The general public, especially the non-English speaking community, is not typically warned of any potential hazard from styrene. A 1986 EPA study detected Styrene in the fat tissue of every man, woman and child tested.

F. Discarded food and beverage packaging constitutes a significant and growing portion of the County of Santa Cruz waste stream. Laws, policies and regulations pertaining to food packaging material have become a vital component in the efforts to reduce the amount of disposed waste.

G. It is not economically feasible to recycle polystyrene in Santa Cruz County. Eliminating the use of polystyrene foam and other non-compostable, and non-recyclable food packaging items will maximize the operating life of our landfills and will lessen the economic and environmental costs of waste management for businesses and citizens of Santa Cruz County.

H. Food waste, including food related packaging, makes up more than 30% of the County of Santa Cruz waste stream and the County of Santa Cruz has adopted a policy and program goal of establishing municipal level composting to manage this portion of the waste stream. Countywide composting will help the county to achieve its Zero Waste goal, including 75% landfill diversion by the year 2010. If polystyrene foam is found within compost feedstock, the compost is rendered unmarketable and unusable because the application of such compost degrades the soil.

I. At the present time, over 50 businesses in the County of Santa Cruz engage in organics recycling and it has been demonstrated that the use of biodegradable or compostable food service ware can reduce waste disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill. Compost produced from biodegradable products can be used as a soil amendment for farms, landscaping and gardens thereby moving towards a healthier zero waste system.

J. Biodegradable/compostable and recyclable take-out food packaging such as cups, plates, hinge containers, cutlery and straws are made from organic materials such as paper, sugarcane stalk, corn waste and potato starch. These products are available locally and are competitively priced.

5.46.020 Definitions.

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

A. “Affordable” means purchasable for not more than 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 that a material or substance has to the ability to decompose into natural biological elements as a result of bacterial action.

D. “County Facilities” means any building, structure or vehicles owned or operated by the County of Santa Cruz, its agent, agencies, departments and franchisees.

E. “County Facility Food Provider” means any entity that provides Prepared Food in County Facilities.

F. “County Contractors and Lessees” means any person or entity that has a contract with the County for public works or improvements to be performed, for a franchise, concession or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the County, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the county.

G. “Compostable” means all the materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in the County of Santa Cruz Composting Program. 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 County of Santa Cruz compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic. For the purposes of this ordinance the term biodegradable shall have the same meaning as compostable. This ordinance uses the terms biodegradable and compostable interchangeably and in all cases whether the terms are used separately, in the disjunctive or in the conjunctive they shall always be interpreted and applied consistent with the definition of the term “compostable”.

H. “County” or “County of Santa Cruz” means all that territory within the unincorporated area of the County of Santa Cruz, state of California.

I. “Disposable Food Service Ware” is interchangeable with “to go” packaging and includes all containers, 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. The term “Disposable Food Service Ware” does not include items composed entirely of aluminum or polystyrene foam coolers and ice chests that are intended for reuse.

J. “Food Provider” means any business, organization, entity, group or individual, and including Retail Food Establishments, located in the County that offers food or beverage to the public.

K. “Person” means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.

L. “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 polymer spheres (expandable 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. The term “polystyrene” also include clear or solid polystyrene which is know as “oriented polystyrene.”

M. “Prepared Food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Provider’s premises or within the County of Santa Cruz. For the purposes of this ordinance, Prepared Food does not include packaging for raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises, also known as “takeout food.”

N. “Recyclable” means material that can be sorted, cleansed, and reconstituted using recycling collection programs available in Santa Cruz County for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

O. “Retail Food Establishment” means all sales outlets, stores, shops, vehicles or other places of business located within the county of Santa Cruz 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, 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 or beverage as part of its service or in conjunction with a special event it sponsors.

5.46.030 Prohibited disposable food service.

A. Retail Food Establishments shall not sell, hand out, give away, distribute or otherwise make available for public or customer use Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam.

B. County Facility Food Providers may not provide Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam.

C. County Departments may not purchase, acquire or use Disposable Food Service Ware that contains Polystyrene Foam.

D. County contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam.

5.46.035 Non-food packaging material.

It shall also be a policy goal of the County that business establishments located outside the County of Santa Cruz shall not package any non-food product in any package which utilizes polystyrene foam both block polystyrene or packing peanuts; or purchase, obtain, keep, distribute or sell for home or personal use, or give, or otherwise provide to customers any packaging which utilizes polystyrene foam. The County shall promote and encourage, on a voluntary basis, the elimination of all polystyrene foam packaging.

5.46.040 Required biodegradable/compostable or recyclable disposable food service.

A. All Retail Food Establishments utilizing any Disposable Food Service Ware shall use a Biodegradable/Compostable or Recyclable product, unless there is no Affordable product available as determined by the Director of Public Works in accordance with this subsection and subsection 5.46.060(b). Not later than 30 days before the operative date of this Chapter, and after a public hearing, the Director of Public Works shall adopt a list of available suitable Affordable Biodegradable/Compostable or Recyclable alternatives for each product type. The Director of Public Works shall regularly update the list.

B. All County facilities and departments using any Disposable Food Service Ware shall use Biodegradable/Compostable or Recyclable Disposable Food Service Ware unless there is no Affordable Biodegradable or Compostable product available as determined by the Director of Public Works in accordance with Subsection 5.46.040(a).

C. County contractors and lessees using any Disposable Food Service Ware shall use Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City/County Facilities while performing under a County contract or lease unless there is no Affordable Biodegradable or Compostable product available as determined by the Director of Public Works in accordance with Subsection 5.46.040(a).

5.46.050 Implementation; county contracts and leases.

A. The Public Works Director 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 County contracts 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 Santa Cruz County Code Chapter 5.46 including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 5.46 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 County 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 County 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 County because of contractor's failure to comply with these provisions.

5.46.060 Exemptions.

A. There are no exemptions that allow for the use of polystyrene foam disposable food service ware.

B. The Board of Supervisors may exempt a Food Provider from the requirement of Section 5.46.040 of this ordinance for a one-year period upon showing 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 shall put the decision to grant or deny a waiver in writing and it shall be final.

C. A Food Provider granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

D. An exemption application shall include all information necessary for the County to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The Director may require the applicant to provide additional information to determine facts regarding the exemption application.

E. The Director may approve the exemption application, in whole or in part, with or without conditions.

F. Foods prepared or packaged outside the County and sold inside the County are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the County are encouraged to follow the provisions of this chapter.

G. Polystyrene Foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

5.46.070 Enforcement.

Enforcement of this ordinance shall be as follows:

A. The Director of Public Works, or designee, shall have primary responsibility for enforcement of this ordinance and shall have authority to issue citations for violation of this Chapter. The Director, or designee, is authorized to establish regulations or administrative procedures to obtain compliance with this chapter, including, but not limited to, inspecting any vendor's premises to verify compliance in accordance with applicable law.

B. Anyone violating or failing to comply with any of the requirements of this chapter or of any regulation or administrative procedure authorized by it shall be guilty of an infraction.

C. The County Attorney may seek legal, injunctive, or any other relief to enforce this chapter and any regulation or administrative procedure authorized by it.

D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

E. The County may inspect any food provider's premises to verify compliance with this ordinance.

5.46.080 Violations.

Violations of this ordinance shall be enforced as follows:

A. For the first violation, the Director of Public Works, or the Director's designee, upon determination that a violation of this chapter has occurred, shall issue a written warning notice to the Food Provider specifying that a violation of this chapter has occurred, along with the appropriate penalties in the event of future violations. The vendor will have 30 days to comply.

B. The following penalties will apply for subsequent violations of this Chapter:

1. A fine not exceeding one hundred dollars (\$100.) for the first violation 30 days after the first warning.

2. A fine not exceeding two hundred dollars (\$200.) for the second violation 60 days after the first warning.

3. A fine not exceeding five hundred dollars (\$500.) for the third violation 90 days after the first warning, and for every 30 days not in compliance.

C. Food Providers who violate this ordinance in connection with commercial or non-commercial special events shall be assessed fines as follows:

1. A fine not exceeding two hundred dollars (\$200) for an event of 1 to 200 Persons.

2. A fine not exceeding four hundred dollars (\$400) for an event of 201 to 400 Persons.

3. A fine not exceeding six hundred dollars (\$600) for an event of 401 to 600 Persons.
4. A fine not exceeding one thousand dollars (\$1,000) for an event of 601 or more Persons.

5.46.090 Severability.

The provisions of this chapter are declared to be severable and if any provision, sentence, clause, section or part of this chapter is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this chapter or their application to persons and circumstances.

5.46.100 No conflict with federal or state law.

Nothing in this ordinance shall be interpreted or applied *so* as to create any requirement, power or duty in conflict with any federal or state law.

5.46.110 Preemption.

The provisions of this chapter shall be null and void on the day that California statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent California state or federal administrative agency issues and promulgates regulations, preempting such action by the County of Santa Cruz. The board of supervisors shall determine by ordinance whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

SECTION III

This ordinance shall take effect and be in force six months from the date of adoption.

PASSED AND ADOPTED this 8th day of April, 2008, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES:	SUPERVISORS	Campos, Stone, Beautz, Coonerty and Pirie
NOES:	SUPERVISORS	None
ABSENT:	SUPERVISORS	None
ABSTAIN:	SUPERVISORS	None



 Chair of the Board of Supervisors

Attest: 
Clerk of the Board

APPROVED AS TO FORM:


Dana McRae, County Counsel

- DISTRIBUTION:
- California Public Interest Group
 - Clerk of the Board
 - County Administrative Office
 - County Counsel
 - County Environmental Health Services
 - Public Works, Solid Waste Division
 - Dominican Hospital
 - Each City Manager
 - Ecology Action of Santa Cruz
 - Integrated Waste Management Local Task Force
 - Food and Nutrition Services
 - Local Schools Food Services
 - Santa Cruz Area Chamber of Commerce
 - Santa Cruz Area Restaurant Association
 - Unincorporated Area Chambers of Commerce

