

**BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG**

**AN ORDINANCE ADDING CHAPTER 6.28  
(DISPOSABLE FOOD WARE) TO TITLE 6  
(HEALTH AND SANITATION) OF THE  
FORT BRAGG MUNICIPAL CODE**

**ORDINANCE NO. 913-2014**

**WHEREAS**, the City of Fort Bragg has a duty to protect the natural environment, our economy and the health of its citizens; and

**WHEREAS**, disposable food and beverage packaging is likely to become litter because it is removed from the place of sale for immediate consumption, and, many takeout food ware items such as cups, hinged containers, plates, and bags are commonly found in roadside litter; and

**WHEREAS**, disposable food and beverage packaging made from expanded polystyrene foam (commonly called Styrofoam, a trademark name) is not biodegradable, recyclable for practical purposes, or returnable; and

**WHEREAS**, polystyrene foam easily breaks up into smaller pieces, and because it is lightweight, is carried by the wind and water, and, as litter, polystyrene foam is highly durable and more persistent than other forms of litter, and, this litter ultimately floats, or is blown, into waterways where it harms living species; and

**WHEREAS**, the U.S. Environmental Protection Agency 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," and, 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; and

**WHEREAS**, the State of California's Ocean Protection Council has urged a prohibition on "single-use products that pose significant ocean litter impacts where a feasible and less damaging alternative is available;" and

**WHEREAS**, it is not economically feasible to recycle polystyrene foam takeout food ware in Mendocino County and no recycling programs accept it. Recycling is possible, however, for some disposable food ware made from materials other than polystyrene foam; and

**WHEREAS**, polystyrene foam is also commonly used as a cushioning material for shipments in boxes and packages, and this material can escape into the environment. Alternative cushioning materials are available and should be used where feasible; and

**WHEREAS**, biodegradable disposable food packaging for cups, plates, hinge containers, cutlery and straws are made from organic materials such as paper, sugarcane fiber, corn waste and potato starch. These products are readily available in Mendocino County; and

**WHEREAS**, major takeout food vendors have voluntarily given up the use of polystyrene foam disposable food ware but other retailers continue to use them in the City of Fort Bragg; and

**WHEREAS**, the elimination of polystyrene foam disposable food ware and its replacement with biodegradable alternatives would lessen the visual blight and environmental harm from litter in the City of Fort Bragg.

**NOW, THEREFORE, the City Council ordains as follows:**

**Section 1.** **Legislative Findings.** The City Council hereby finds as follows:

1. While the City Council recognizes disposable food ware regulation is a matter of statewide interest and concern that is best applied uniformly throughout the state, in the absence of statewide regulation, it is in the best interests of the City and its residents for the City to regulate disposable food ware as described herein.
2. The regulation of disposable food ware as proposed herein promotes the general health and welfare of the public by reducing the amount of waste, litter and marine pollution that are attributable to disposable food ware.
3. The proposed ordinance is categorically exempt under the California Environmental Quality Act as an activity in protection of the natural resources and the environment (CEQA Guidelines Section 15307, CEQA Guidelines Section 15308, and CEQA Guidelines Section 15061(b)(3).

**Section 2.** Chapter 6.28 entitled DISPOSABLE FOOD WARE is hereby added to Title 6 of the Fort Bragg Municipal Code to read as follows:

“CHAPTER 6.28  
DISPOSABLE FOOD WARE

Section

6.28.010	Definitions
6.28.020	Prohibited disposable food service ware
6.28.030	Exemptions
6.28.040	Non-food packaging material
6.28.050	Biodegradable disposable food service ware
6.28.060	Enforcement and penalties
6.28.070	Effective date

#### **§ 6.28.010 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BIODEGRADABLE.** A material or substance that has the ability to decompose into natural biological elements within a reasonable time as a result of bacterial action, or as a result of other living organisms.

**CITY FACILITIES.** Any building, structure or vehicle owned or operated by the City of Fort Bragg, its agents, agencies, departments and franchisees.

**CITY FACILITY FOOD PROVIDER.** Any entity that provides Prepared Food in City facilities.

**CITY CONTRACTORS AND LESSEES.** Any person or entity that has a contract with the City 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 City or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the City.

**DISPOSABLE FOOD SERVICE WARE or TAKEOUT FOOD WARE.** Single use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready to consume food or beverages. This includes but is not limited to 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 food that may be removed from the premises for consumption elsewhere. The term *DISPOSABLE FOOD SERVICE WARE* does not include items composed entirely of aluminum or glass, California Redemption Beverage Containers, or polystyrene foam coolers and ice chests that are intended for reuse.

**FOOD PROVIDER.** Any business, organization, entity, group or individual, including Retail Food Establishments, located in the City that offers food or beverage to the public.

**POLYSTYRENE FOAM.** 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. Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

**PREPARED FOOD.** 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 City for individual customers. For purposes of this Ordinance, Prepared Food includes takeout food but does not include packaged 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.

**RETAIL FOOD ESTABLISHMENT.** All sales outlets, stores, shops, vehicles or other places of business located within the City which operate primarily to sell or convey foods or beverages directly to the ultimate consumer. Retail food establishments shall include, but are not limited to, any place where food is prepared, mixed, cooked, based, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, delicatessen, sandwich shop, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, takeout prepared food place, industrial feeding establishment, catering

kitchen, 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; and any organization or individual which provides food or beverage as part of its service or in conjunction with a special event it sponsors.

#### **§ 6.28.020 PROHIBITED DISPOSABLE FOOD SERVICE WARE.**

A. Retail Food Establishments and Food Providers may not sell, hand out, give away, distribute or otherwise provide Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam.

B. City Facility Food Providers may not hand out, give away, distribute or otherwise provide Prepared Foods in Disposable Food Service Ware that contains Polystyrene Foam.

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

D. City Contractors and Lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City facilities and while performing under a City contract or lease.

#### **§ 6.28.030 EXEMPTIONS**

A. Prepared Foods prepared or packaged outside the City are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City are encouraged to follow the provisions of this Chapter.

B. Coolers or Ice Chests. Coolers or ice chests that are intended for reuse are exempt from the provisions of this Chapter.

C. City Facilities, Food Vendors, City franchises, contractors and their vendors doing business with the City shall be exempt from the provisions of this Chapter, in situations deemed by the City Manager to be an emergency, or for the immediate preservation of the public peace, health or safety.

#### **§ 6.28.040 NON-FOOD PACKAGING MATERIAL.**

It is the policy of the City to promote and encourage, on a voluntary basis, the use of alternatives to Polystyrene Foam in non-food applications such as cushioning in shipping boxes or packages.

#### **§ 6.28.050 BIODEGRADABLE DISPOSABLE FOOD SERVICE WARE.**

It is the policy of the City to promote and encourage, on a voluntary basis, the use of biodegradable Disposable Food Service Ware by Retail Food Establishments in order to lessen the environmental harm of Disposable Food Service Ware that becomes litter.

#### **§ 6.28.060 ENFORCEMENT AND PENALTIES.**

A. Any action to enforce this Ordinance shall be preceded by delivery of a written warning to the Retail Food Establishment where a violation has occurred.

B. The owner(s) of any Retail Food Establishment which violates this Ordinance shall be guilty of an infraction. If charged as an infraction, upon conviction thereof, said owner(s) shall be punished by (1) a fine not exceeding \$100.00 for a first violation, (2) a fine not exceeding \$200.00 for a second violation within the same year, and (3) a fine not exceeding \$500.00 for each additional violation within the same year.

C. The City Manager or his/her agent has primary responsibility for the enforcement of this Chapter. Any violation of this Chapter 6.26 may be enforced through the administrative enforcement procedures in Chapter 6.12 of this Municipal Code. The City Manager, or his or her designee 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, entering the premises of any Food Vendor during business hours, imposing administrative fines in amounts as may be established from time to time by resolution of the City Council. Other City staff may assist with this enforcement responsibility by entering the premises of a Food Vendor as part of their regular inspection functions and reporting any alleged violations to the City Manager or his/her agent.

D. In addition to the administrative enforcement procedures described above, the City Council may authorize the City Attorney to pursue judicial enforcement of this Chapter through a civil action.

E. A violation of any provision of this Ordinance by any person, firm or corporation shall be subject to a civil action in any court of competent jurisdiction, including the small claims court, by the City to recover any damages caused by the violation and a civil penalty of \$1,000 or 10% of actual damages, whichever is higher, for every such violation. For any willful violation, the City may recover treble damages. Nothing in this subsection shall prohibit the filing of an action as authorized herein as a class action. The prevailing party in any action filed pursuant to this subsection shall be entitled to recover its reasonable attorneys' fees to be determined by the court.

#### **§ 6.28.070 EFFECTIVE DATE.**

This Ordinance shall go into full force and effect 180 days after final adoption.

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

**Section 4. Effective Date and Publication.** This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

**The foregoing Ordinance was introduced by Councilmember \_\_\_\_\_ at a regular meeting of the City Council of the City of Fort Bragg held on September 8, 2014, and adopted at a regular meeting of the City of Fort Bragg held on September 22, 2014, by the following vote:**

**AYES:**

**NOES:**

**ABSENT:**  
**ABSTAIN:**

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**Dave Turner,**  
**Mayor**

**ATTEST:**

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**Cynthia M. VanWormer, MMC**  
**City Clerk**

**PUBLISH:** September 11, 2014 and October 2, 2014 (by summary).  
**EFFECTIVE DATE:** October 22, 2014.