

ORDINANCE NO. _____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH ADDING CHAPTER 10 TO DIVISION 5 OF THE UKIAH CITY CODE ENTITLED "DISPOSABLE FOOD WARE"

The City Council ordains as follows:

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

- A. While 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.
- B. 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.
- C. The proposed Ordinance is categorically exempt under the California Environmental Quality Act as an activity in protection of the natural resources (Public Resources Code §§ 21083-21084).

Section 2. Chapter 10 of Division 5 of the Ukiah City Code is added to read as follows:

"DISPOSABLE FOOD WARE

Section 4600 Definitions.

As used herein, the following definitions shall apply:

"Biodegradable" means that a material or substance has the ability to decompose into natural biological elements within a reasonable time as a result of bacterial action.

"City" means all that territory within the city limits of the City of Ukiah..

"City Facilities" means any building, structure, or vehicles owned or operated by the City, its agent, agencies, departments and franchisees.

"City Facility Food Provider" means any entity that provides Prepared Food in City facilities.

"City Contractors and Lessees" means 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" 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 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" means 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" means 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(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" 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 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" means any sales outlets, stores, shops, vehicles, or other places of business located within the City which operates primarily to sell or convey foods or beverages directly to the ultimate consumer. Retail food establishment shall include, but is 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.

Section 4601 Prohibited Disposable Food Service Ware.

- (A) Retail Food Establishments and Food Providers may 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) City Facility Food Providers may not 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.

Section 4602 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.

Section 4603 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.

Section 4604 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 one year of the first violation, and (3) a fine not exceeding \$500.00 for each additional violation within the same one year period.

C. The City Manager or his/her agent has primary responsibility for the enforcement of this Chapter. Any violation of this Chapter 10 may be enforced through the administrative enforcement procedures in Chapter 12 of Division 3 of this 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 designee.

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