

COPY

ORDINANCE NO. 939

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
AMENDING SECTIONS 8.36.020, 8.36.030, 8.36.040, 8.36.050, AND 8.36.070 OF THE
CAPITOLA MUNICIPAL CODE PERTAINING TO THE USE OF POLYSTYRENE FOAM AND
BIODEGRADABLE AND COMPOSTABLE DISPOSABLE FOOD SERVICE WARE**

Section 1. Capitola Municipal Code Sections 8.36.020, 8.36.030, 8.36.040, 8.36.050, and 8.36.070 are hereby amended to read as follows:

8.36.020 Definitions.

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

A. "Affordable" means purchasable by the Food Vendor for same or less purchase cost than the non-Biodegradable, non-Polystyrene Foam alternative.

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.

C. "Biodegradable" means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

D. "Compostable" means all 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 an appropriate composting program or facility, or in a home compost pile or device. Compostable Disposable Food Service Ware includes ASTM-Standard Bio-Plastics (plastic-like products) that are clearly labeled, preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic.

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

F. "Customer" means any person obtaining Prepared Food from a Restaurant or Retail Food Vendor.

G. "Disposable Food Service Ware" means all containers, bowls, plates, trays, cartons, cups, forks, spoons, knives and other items that are designed for one-time use and on, or in, which any Restaurant or Retail Food Vendor directly places or packages Prepared Foods or which are used to consume foods. This includes, but is not limited to, service ware for Takeout Foods and/or leftovers from partially consumed meals prepared at Restaurants or Retail Food Vendors.

H. "Food Vendor" means any Restaurant or Retail Food Vendor located or operating within the City of Capitola.

I. "Polystyrene Foam" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) 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-blow molding (extruded foam polystyrene). Polystyrene Foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

J. "Prepared Food" means Food or Beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Vendor's premises or within the City of Capitola. For the purposes of this ordinance, Prepared Food includes 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".

K. "Restaurant" means any establishment located within the City of Capitola that sells Prepared Food for consumption on, near, or off its premises by Customers. Restaurant for purposes of this Chapter includes Itinerant Restaurants, Pushcarts and Vehicular Food Vendors.

L. "Retail Food Vendor" means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a Restaurant, located within the City of Capitola that sells Prepared Food.

M. "Special Events Promoter" means an applicant for any special events permit issued by the City or any City employee(s) responsible for any City organized special event.

8.36.030 Prohibited food service ware.

A. Except as provided in Section 8.36.050, Food Vendors are prohibited from providing Prepared Food to Customers in Disposable Food Service Ware that uses Polystyrene Foam.

B. All City Facilities are prohibited from using Polystyrene Foam Disposable Food Service Ware and all City Departments and Agencies will not purchase or acquire Polystyrene Foam Disposable Food Service Ware for use at City Facilities.

C. City franchises, special event promoters, contractors and vendors doing business with the City shall be prohibited from using Polystyrene Foam Disposable Food Service Ware in the City of Capitola.

8.36.040 Required biodegradable and compostable disposable food service ware.

A. All Food Vendors using any Disposable Food Service Ware will use Biodegradable or Compostable Disposable Food Service Ware unless they can show a Biodegradable or Compostable product is not available for a specific application or does not exist. A Food Vendor may charge a "take out fee" to customers to cover the cost difference.

B. All City Facilities will use Biodegradable or Compostable Disposable Food Service Ware.

C. City franchises, special events promoter, contractors and vendors doing business with the City will use Biodegradable or Compostable Disposable Food Service Ware unless they can show a Biodegradable or Compostable product is not available for a specific application or does not exist.

8.36.050 Exemptions.

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

B. Food Vendors will be exempted from the provisions of this Chapter for specific items or types of Disposable Food Service Ware if the City Manager or his/her designee finds that a Biodegradable or Compostable alternative does not exist C. To apply for an exemption from the requirement set forth in 8.36.040, a food vendor must submit an application to the City Manager. The application shall include all information necessary for the City Manager or the Managers designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption.

C. Polystyrene Foam coolers and ice chests are not exempt from the provisions of this Chapter.

D. Disposable Food Service Ware composed entirely of aluminum is exempt from the provisions of this Chapter.

E. Emergency Supply and Services Procurement: In a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter.

8.36.070 Violations – Penalties.

A. If the City Manager or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the Food Vendor or special event promoter that a violation has occurred, and be given three (3) months to conform to the provisions of this Chapter.

B. If the Food Vendor has subsequent violations of this Chapter, the following penalties will apply:

1. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
2. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
3. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.

Section 2. This ordinance shall take effect and be in force thirty (30) days after the final adoption.

This ordinance was introduced on the 9th day of April, 2009, and was passed and adopted by the City Council of the City of Capitola on the 23rd day of April, 2009, by the following vote:

AYES: Council Members Graves, Storey, Nicol, Norton, and Mayor Begun
 NOES: None
 ABSENT: None
 ABSTAIN: None

APPROVED: _____

Robert A. Begun

Robert A. Begun, Mayor

ATTEST:

Pamela Greeninger, CMC
 Pamela Greeninger, City Clerk

This is to certify that the above and foregoing is a true and correct copy of Ordinance No. 939 passed and adopted by the Capitola City Council on the 23rd day of April, 2009.

Pamela Greeninger
 Pamela Greeninger, CMC, City Clerk