

**ORDINANCE NO. 37-09 N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND PROHIBITING THE USE OF EXPANDED POLYSTYRENE DISPOSABLE FOOD WARE AND REQUIRING THE USE OF BIODEGRADABLE OR COMPOSTABLE FOOD WARE BY FOOD PROVIDERS AND CITY FACILITIES**

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Now, therefore, the City Council of the City of Richmond does ordain as follows:

**SECTION 1 Findings.**

WHEREAS, the City of Richmond has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, expanded polystyrene and plastic are widespread, persistent environmental pollutants; and

WHEREAS, expanded polystyrene and plastic food ware are commonly used by food providers in the City of Richmond;

WHEREAS, expanded polystyrene and plastic constitutes a significant portion of the litter in Richmond's estuary, streets, parks, and public places and the cost of managing this litter is high and rising; and

WHEREAS, small, non-biodegradable pieces of expanded polystyrene are extremely difficult and costly to clean up, especially in creeks and waterways; and

WHEREAS, expanded polystyrene is a pollutant that breaks down into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them; and

WHEREAS, in some areas of the Pacific Ocean, small plastic pieces outnumber zooplankton by up to six times, which may impact marine life such as filter feeders; and

WHEREAS, plastic particles in the ocean may leach a range of chemicals such as bisphenol A and substances known as polystyrene-based oligomers, which are not found naturally; and

WHEREAS, non-biodegradable packaging bans are encouraged by the Regional Water Quality Control Board; and

WHEREAS, several Richmond water bodies are listed as impaired by trash; and

WHEREAS, trash assessments in impaired watersheds identify expanded polystyrene food ware as a common element, and in one case the most predominant number of trash pieces; and

WHEREAS, styrene is a known neurotoxin and possible human carcinogen; and

WHEREAS, styrene, the precursor to polystyrene, is a hazardous substance that has been shown to leach from polystyrene containers into food and drink and to leach in greater quantities when the food or drink are of high temperature or high fat content; and

WHEREAS, the general public is not typically warned of any potential hazard, particularly in immigrant and non-English-speaking communities; and

WHEREAS, due to these concerns, many cities in California have banned expanded polystyrene food ware, and many small businesses and several national corporations have successfully replaced expanded polystyrene and other non-biodegradable food ware with biodegradable and/or compostable products; and

WHEREAS, reusing food ware and using compostable and biodegradable take-out materials made from renewable resources such as paper, corn starch and sugarcane are effective ways to reduce the negative impacts of disposable food ware; and

WHEREAS, the City of Richmond encourages the use of unbleached, non-coated, recycled-content paper food ware and food ware made from sugarcane fiber as the most environmentally preferable alternatives when the use of reusable food ware is not feasible;

WHEREAS, the California Integrated Waste Management Board reports that replacing single-use food ware expanded polystyrene that cannot be effectively recycled with compostable alternatives may provide expanded polystyrene source reduction potential; and

WHEREAS, there are extremely limited local recycling options for expanded polystyrene and plastic food ware,

WHEREAS, expanded polystyrene and plastic products are made from non-renewable resources; and

WHEREAS, aluminum is a valuable material to recycle, has a closed-loop recycling system, and a recycling program for aluminum exists in Richmond; and

WHEREAS, biodegradable and compostable food ware products such as cups, plates, bowls and hinged containers, are available in local stores, are increasingly available in the food service market, and are more ecologically sound over their life cycle than expanded polystyrene or plastic; and

WHEREAS, biodegradable and compostable utensils, straws, and lids are increasingly available in the food service market but are not widely available in local stores; and

WHEREAS, many businesses in Bay Area cities engage in organics recycling and have demonstrated that the use of biodegradable or compostable food ware can reduce disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill; and

WHEREAS, the West Contra Costa Integrated Waste Management Authority is pursuing a green waste processing program that may include collection of food waste and biodegradable and/or compostable food ware for businesses in the City of Richmond; and

WHEREAS, the natural compost product from biodegradable or compostable materials may be used in farms and gardens, thereby moving towards a healthier zero waste system; and

WHEREAS, restricting the use of expanded polystyrene and plastic food ware and replacing non-biodegradable, non-compostable, non-reusable, or non-recyclable food ware with biodegradable, compostable, reusable, or recyclable food ware products in Richmond will further protect the public health and safety of the residents of Richmond, the natural environment, waterways and wildlife, would advance the City's goal of Zero Waste by 2040 and fulfill the Urban Environmental Accords, whereby Richmond partnered with other cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of Richmond and is exempt from the requirements of the California Environmental Quality Act ("CEQA"), as amended, pursuant to Guideline 15061(b)(3) and Guideline 15308, of the CEQA Guidelines; and

WHEREAS, the City of Richmond supports pending legislation to ban expanded polystyrene food packaging as well as statewide efforts to reduce the prevalence of expanded polystyrene and other plastic litter; and

NOW THEREFORE, the City Council of the City of Richmond does ordain as follows:

**SECTION 2**

Chapter 9.17 entitled “**Food Ware Ordinance**” is hereby added to the City of Richmond Municipal Code to read as follows:

**CHAPTER 9.17**

**Sections:**

- 9.17.010 Definitions.**
- 9.17.020 Required Biodegradable and Compostable Food Ware.**
- 9.17.030 Exemptions.**
- 9.17.040 Enforcement and Penalties.**

**9.17.010 Definitions.**

"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.

"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.

"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 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.

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

"Customer" means any member of the public obtaining Prepared Food from a Food Provider.

"Disposable Food Ware" means all containers, bowls, plates, trays, cartons, cups, and other items that are designed for one-time use for Prepared Foods, including service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Providers. This term does not include lids, straws, forks, spoons or knives. The City Manager or his/her designee may amend this definition as necessary.

"Food Provider" means any vendor, business, organization, entity, group or individual, including any Restaurant or Retail Food Establishment, located or operating within the City of Richmond or providing food or beverage to the public, and any provider of Prepared Food at organized or special events.

"Expanded Polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of Expanded Polystyrene 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). Expanded Polystyrene 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. For the purposes of this ordinance, Prepared Food does not include 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".

"Restaurant" means any establishment located within the City of Richmond that sells Prepared Food for consumption on, near, or off its premises by Customers.

"Retail Food Establishment" means any store, shop, sales outlet, or other establishment, other than a Restaurant, including but not limited to a grocery store, delicatessen, mobile food preparation and sale unit, drive-in, coffee shop, cafeteria, short-order cafe, luncheonette, grill, 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, special event, 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 to Customers.

"Reusable Food Ware" means all containers, bowls, plates, trays, cartons, cups, and other items that are designed for prolonged use, including but not limited to ceramic, glass, porcelain, and metal food ware.

#### **9.17.020 Required Biodegradable and Compostable Food Ware**

A. All Food Providers using any Disposable Food Ware for providing Prepared Food to Customers will use Biodegradable or Compostable Disposable Food Ware. Food Providers are strongly encouraged to use Reusable Food Ware in place of Disposable Food Ware where practicable. A Food Provider may charge a "take out fee" to customers to cover the cost difference.

B. All City Facilities will use Reusable Food Ware in City facilities and events where practicable. If Reusable Food Ware is not practical for a specific application, the City must use Biodegradable or Compostable Disposable Food Ware.

C. City franchisees, contractors and vendors doing business with the City are strongly encouraged to use Reusable Food Ware in place of Disposable Food Ware where practicable. If reusable Food Ware is not practical, City franchisees, contractors and vendors doing business with the City shall use Biodegradable or Compostable Disposable Food Ware.

#### **9.17.030 Exemptions**

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

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

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

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

#### **9.17.040 Enforcement and Penalties**

A. The City Manager or his/her designee shall have primary responsibility for enforcement of this Chapter. 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, entering the premises of any Food Provider to verify compliance.

B. If the City Manager or his/her designee determines that a violation of this Chapter has occurred, he/she shall mail a written warning notice to the Food Provider.

C. Any person who does not correct the violation within thirty (30) days after the warning notice is mailed shall be guilty of a misdemeanor pursuant to section 1.04.100 of the Richmond Municipal Code. All violations are subject to Richmond's administrative citation process, including first tier administrative fines and appeals as set forth in Richmond Municipal Code Chapter 2.62.

D. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

### **SECTION 3**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Richmond hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

### **SECTION 4**

The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

### **SECTION 5**

This ordinance shall become effective on July 1, 2010.

First read at a regular meeting of the Council of the City of Richmond held ,  
October 20, 2009, and finally passed and adopted at a regular meeting thereof held  
November 17, 2009, by the following vote:

AYES: Councilmembers Bates, Butt, Ritterman, Rogers,  
Viramontes, and Vice Mayor Lopez.

NOES: None.

ABSTENTIONS: None.

ABSENT: Mayor McLaughlin.

DIANE HOLMES  
Clerk of the City of Richmond

[SEAL]

Approved:

GAYLE MCLAUGHLIN

Mayor

Approved as to form:

RANDY RIDDLE

City Attorney

I certify that the foregoing is a true copy of **Ordinance No. 37-09**, finally passed  
and adopted by the City Council of the City of Richmond at a regular meeting held on  
November 17, 2009.