

## ORDINANCE 2014-013

### ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO PROHIBITING THE RETAIL SALE OF PLASTIC FOAM PRODUCTS, PROHIBITING THE USE OF PLASTIC FOAM DISPOSABLE FOOD WARE, AND ENCOURAGING THE USE OF COMPOSTABLE, RECYCLABLE AND REUSABLE FOOD WARE

WHEREAS, the City of San Pablo has an interest in protecting its waterways, environment, and taxpayers from the negative impacts of plastic foam;

WHEREAS, plastic foam has been associated with considerable environmental impacts, including being a problematic component of litter;

WHEREAS, plastic foam breaks down into smaller pieces resulting in high cleanup costs for the City;

WHEREAS, plastic foam is lightweight and is easily transported to the marine environment harming wildlife who mistake it for food;

WHEREAS, plastic foam food ware is commonly used by food providers in the City of San Pablo and has limited recycling potential;

WHEREAS, affordable compostable and recyclable food ware products are increasingly available and are more ecologically sound than plastic foam materials;

WHEREAS, restricting the use of plastic foam products and replacing non-compostable, non-reusable, or non-recyclable food ware with compostable, reusable, or recyclable food ware products will further protect waterways and promote environmental sustainability;

WHEREAS, the City of San Pablo has a residential and commercial organics collection and composting program in place through which compostable food ware can be disposed and turned into compost; and

WHEREAS, for these reasons, many jurisdictions in California have banned plastic foam products.

NOW THEREFORE, the City Council of the City of San Pablo ordains as follows:

Section 1. Chapter 5.13 is hereby added to the San Pablo Municipal Code, to read as follows:

## **“CHAPTER 5.13 PLASTIC FOAM**

### **5.13.010 - Definitions.**

"Compostable" means the product is capable of composting and is labeled in accordance with California law, or is consistent with the timeline and specifications of American Society for Testing and Materials (ASTM) International standards ASTM D6400 and D6868, as those standards may be amended, without regard to material type.

"City Facilities" means any building or structure owned or operated by the City of San Pablo, its agents, 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, or utensils. The City Manager or his/her designee may amend this definition as necessary.

"Food Provider" means any restaurant or retail food establishment providing Prepared Food to customers, and any provider of Prepared Food at organized or special events occurring within the boundaries of the City of San Pablo.

"Plastic Foam" means blown expanded and extruded polystyrene (sometimes called Styrofoam™) or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded from plastic). Plastic Foam is generally used to make such items as cups, bowls, plates, trays, clamshell containers, ice chests, packing peanuts, beach and pool toys, and meat trays.

"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."

"Recyclable" means material that can be sorted, cleansed, and reconstituted using San Pablo's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. For purposes of this chapter, "Plastic Foam" is not

considered to be "recyclable." "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

"Restaurant" means any establishment located within the City of San Pablo 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.

"Retail vendor" means any store or other business that sells goods or merchandise located or operating within the City of San Pablo.

"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.

#### **5.13.020 - Plastic Foam Food Ware Products Prohibited.**

- (a) No Food Provider shall provide Prepared Food in the City of San Pablo in or on any product that contains plastic foam.
- (b) No City franchisee, City contractor, or City vendor or caterer shall provide Prepared Food in City facilities, events or on City projects, in or on any product that contains plastic foam.
- (c) No City Facility shall provide Prepared Food in or on any product that contains plastic foam. City departments and agencies shall not purchase or acquire Disposable Food Ware containing plastic foam.
- (d) All City contracts and leases shall contain the following minimum language in substantially the same form:

"To the extent Contractor is a food provider in the City of San Pablo, Contractor agrees to comply fully with and be bound by all of the provisions of the food packaging ordinance as set forth in the San Pablo Municipal Code Chapter 5.13. The provisions of this chapter 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 City will suffer actual damages that will be impractical or extremely difficult to

determine; further, contractor agrees that the sum of one hundred dollars liquidated damages for the first breach, two hundred dollars liquidated damages for the second breach in the same year, and five hundred dollars liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that the city 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 city because of contractor's failure to comply with these provisions. These penalties may be withheld from payment otherwise due to contractor."

#### **5.13.030 - Required Compostable or Recyclable Food Ware.**

(a) All Food Providers using any Disposable Food Ware for providing Prepared Food to customers shall use Compostable or Recyclable Disposable Food Ware. Food Providers are encouraged to use Reusable Food Ware in place of Disposable Food Ware where practicable.

(b) All individuals, entities or organizations using City Facilities for public or private events shall use Compostable or Recyclable Disposable Food Ware, and are encouraged to use Reusable Food Ware in place of Disposable Food Ware where practicable.

(c) City franchisees, contractors and vendors while in the City are 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 Compostable or Recyclable Disposable Food Ware.

#### **5.13.040 - Prohibited Sale of Plastic Foam Products.**

No Retail Vendor or special event in the City of San Pablo may sell, rent or otherwise provide any product which is composed entirely or primarily of Plastic Foam, except as exempted in Section 5.13.050. This specifically includes but is not limited to cups, plates, bowls, clamshells and other products intended primarily for food service use, as well as coolers, pool or beach toys, packing peanuts or other packaging materials.

#### **5.13.050 - Exemptions.**

(a) Prepared Foods prepared or packaged outside the City of San Pablo are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the City of San Pablo are encouraged to follow the provisions of this chapter.

(b) Emergency Supply and Services Procurement: In a situation deemed by the City Manager or designee to be an emergency for the immediate preservation of the public peace, health or safety, the City Manager or designee may exempt City Facilities, Food Providers, City franchisees, contractors and vendors doing business with the City from the provisions of this chapter.

**5.13.060 - 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) Violators of this chapter shall be guilty of an infraction pursuant to Chapter 1.08 of the San Pablo Municipal Code. All violations are subject to San Pablo's administrative citation process, including first tier administrative fines and appeals as set forth in San Pablo Municipal Code Chapter 1.10. The use of such procedure is non-exclusive; the City may use any and all other civil, administrative or criminal enforcement procedures to gain compliance with the requirements of this chapter.

(c) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

(d) All fines collected pursuant to the ordinance shall be deposited in the City's Environmental Programs Fund or any similar fund.

**5.13.070 - Severability.**

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid.

**5.13.080 - No Conflict with Federal or State Law.**

Nothing in this ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

**5.13.090 - Effective date.**

This ordinance shall become operative on April 1, 2015."

Section 2. This proposed Ordinance will preserve and enhance the environment within the City of San Pablo and is exempt from the requirements of the California Environmental Quality Act ("CEQA"), as amended, pursuant to Section 15061(b)(3) of the CEQA Guidelines. There is also no possibility that the ordinance will have an adverse effect on

the environment and it is thus exempt pursuant to Section 15308 of the CEQA Guidelines. A Categorical Exemption shall be filed pursuant to CEQA Guidelines sections 15061(b)(3) and 15308.

Section 3: This ordinance shall become effective thirty (30) days following its adoption and shall be published once within fifteen (15) days after adoption in the West County Times, a newspaper of general circulation in the City of San Pablo, together with the names of those council members voting for or against; or, in the alternative, a summary prepared by the City Attorney's Office shall be published and a certified copy of the full text of the proposed ordinance or proposed amendment shall be posted in the office of the city clerk at least five days prior to the city council meeting at which the ordinance is to be adopted. Within 15 days after adoption of the ordinance, the city clerk shall publish a summary of the ordinance with the names of those city council members voting for and against the ordinance or amendment and the city clerk shall post in the office of the city clerk a certified copy of the full text of the adopted ordinance or amendment along with the names of those city council members voting for and against the ordinance or amendment.

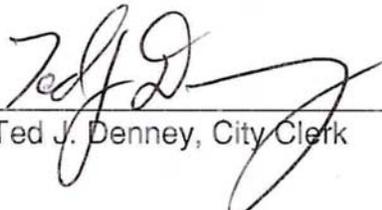
If the city clerk determines that it is not feasible to prepare a fair and adequate summary of the ordinance, a display advertisement of at least one-quarter of a page in a newspaper of general circulation in the city shall be published at least five days prior to the city council meeting at which the ordinance is to be adopted. Within 15 days after adoption of the ordinance or amendment, a display advertisement of at least one-quarter of a page shall be published. The advertisement shall indicate the general nature of, and provide information about, the ordinance, including information sufficient to enable the public to obtain copies of the complete text of the ordinance or amendment, and the names of those city council members voting for and against the ordinance or amendment.

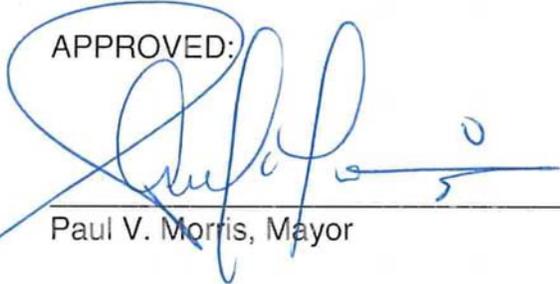
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First read at a regular meeting of the City Council of the City of San Pablo on the 6<sup>th</sup> day of October, 2014, and finally passed and adopted at a regular meeting of said City Council held on the 20<sup>th</sup> day of October, 2014, by the following vote:

AYES:	COUNCILMEMBERS:	Calloway, Kinney, Chao Rothberg and Morris
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	Valdez
ABSTAIN:	COUNCILMEMBERS:	None

ATTEST:

  
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Ted J. Denney, City Clerk

APPROVED:   
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Paul V. Morris, Mayor