

San Luis Obispo County
Integrated Waste Management Authority
ORDINANCE NO. 2019-1

**AN ORDINANCE REGULATING POLYSTYRENE AND EXPANDED POLYSTYRENE (EPS)
FOOD CONTAINERS AND PRODUCTS**

WHEREAS, the San Luis Obispo County Integrated Waste Management Authority (“IWMA”) is a joint powers agency established pursuant to California Government Code Section 6500 and empowered by its member jurisdictions to exercise the members’ common powers to achieve the mandates imposed by the Integrated Waste Management Act of 1989 (AB 939) on a regional basis; and

WHEREAS, items made from Polystyrene and Expanded Polystyrene (“EPS”) are not Biodegradable and in many cases, not Recyclable. Polystyrene and EPS break into small pieces and because they are lightweight, may be picked up by the wind even when they have been disposed of properly; and

WHEREAS, Polystyrene and EPS as litter are highly durable. Both Polystyrene and EPS litter are present in parks and public places, streets and roads, waterways and storm drains which may ultimately float, or be blown, into the Pacific Ocean; and

WHEREAS, take-out food packaging that is Reusable, Biodegradable, and Recyclable is the most responsible and sustainable choice for San Luis Obispo County’s tourist economy, its citizenry, and its environment. When products are recycled, natural resources are spared, less energy is used to produce new products, and landfill space is preserved; and

WHEREAS, regulating the use of Polystyrene and EPS will maximize the operating life of landfills and help protect the natural environment from contamination and degradation; and

WHEREAS, the IWMA Board of Directors considered taking action on Polystyrene and EPS at prior IWMA Board Meetings and has directed staff to develop an ordinance to prohibit the use of Polystyrene and EPS containers, trays, cartons, and non-encapsulated products.

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the San Luis Obispo County Integrated Waste Management Authority as follows:

SECTION 1. Recitals.

The above recitals are true and correct and incorporated herein by this reference as the findings of the IWMA Board of Directors.

SECTION 2. Environmental Determination.

The proposed ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency for the protection of the environment because, among other things, it will regulate the use and sale of Polystyrene and EPS and reduce the amount of Polystyrene and EPS that enter local landfills and waterways. Thus, this Ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

SECTION 3. Definitions.

- A. “Affordable” means that a Biodegradable or Recyclable product may cost up to fifteen percent more than the purchase cost of comparable Polystyrene and EPS alternatives.
- B. “Biodegradable” means all the materials in the product or package that will break down, or otherwise become part of usable soil-conditioning material such as uncoated paper, sugar cane, wood, or bamboo. This ordinance specifically prohibits Bioplastics and other compostable Plastics as replacements.
- C. “Disposable Food Container” is interchangeable with “to-go” packaging and “food packaging material” and means all containers that are used to hold Prepared Food or drinks. Disposable Food Containers include clamshells, bowls, plates, trays, cartons, and cups that are intended for single use, including, without limitation, food containers for takeout foods and/or leftovers from partially consumed meals prepared by Food Providers.
- D. “Egg Carton” means a carton for raw eggs sold to consumers from a refrigerator case or similar appliance.
- E. “Events Promoter” means an applicant for any event permit issued by an IWMA Member Jurisdiction or any IWMA Member Jurisdiction employee(s) responsible for any IWMA Member Jurisdiction organized event.
- F. “Expanded Polystyrene” or “EPS” means blown, expanded, and extruded Polystyrene 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 foam plastic). Expanded Polystyrene and other plastic foams are generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, ice chests, shipping boxes, and packing peanuts. The Resin Code for polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies to all Polystyrene food service ware, regardless of whether it exhibits a Resin Code.

G. “Expanded Polystyrene Products” means any item, but is not limited to, cups, utensils, plates, bowls, trays, clamshells, raw meat trays, raw fish trays and other raw food trays, egg cartons, and other products intended primarily for food service use, as well as coolers, containers, ice chests, unencapsulated marine buoys, shipping boxes, packing peanuts, or other packaging materials. The Resin Code for polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies to all polystyrene food service ware, regardless of whether it exhibits a Resin Code.

H. “Food Provider” means any establishment located within an IWMA Member Jurisdiction that is a retailer of Prepared Food or beverages for public consumption including, but not limited to, any store, supermarket, delicatessen, restaurant, shop, caterer, farmers markets, vending machines, or mobile food Vendor.

I. “IWMA Member Jurisdiction” includes the County of San Luis Obispo and the Cities of Arroyo Grande, Atascadero, Grover Beach, Morro Bay, Pismo Beach, Paso Robles, and San Luis Obispo.

J. “IWMA Region” means the geographic area that includes the unincorporated area of San Luis Obispo County, California, and the seven incorporated cities within San Luis Obispo County.

K. “Prepared Food” means food or beverages that are (1) ready to consume without any further food preparation, alteration, or repackaging; and (2) prepared, provided, sold, or served by a Food Provider using any cooking, packaging or food preparation technique (e.g., cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared within an IWMA Member Jurisdiction). Prepared Food may be eaten either on or off the Food Provider’s premises.

L. “Polystyrene” means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to, rigid polystyrene or Expanded Polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, Expanded Polystyrene molding, or extrusion-blown molding (extruded polystyrene), and clear or solid polystyrene (oriented polystyrene). The Resin Code for polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies to all polystyrene food service ware, regardless of whether it exhibits a Resin Code.

M. “Polystyrene Packing Material” means polystyrene material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage, including shipping boxes and packing peanuts.

N. “Recyclable” means any material that is specified as recyclable in a franchise agreement within the boundaries of San Luis Obispo County including, but not limited to, aluminum, tin

and bi-metal cans, clear and colored glass containers, high density polyethylene (HDPE), polyethylene terephthalate (PET), corrugated cardboard, and mixed paper.

O. “Resin Code” means a resin identification code placed on plastics primarily to identify the material composition for separation of different types of plastics for recycling.

P. “Reusable Food Service Ware” means any product designed to be used over and over for serving, consuming, or transporting prepared food and raw food, including but not limited to reusable plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, or any container in or on which prepared foods and raw foods are placed or packaged for consumption.

Q. "Supplier" means anyone selling, or otherwise supplying food packaging to a restaurant or retail food vendor.

R. “Vendor” means any store or business which sells or offers goods, **services**, or merchandise, located or operating within an IWMA Member Jurisdiction, including those referenced in the definition of “Food Provider.”

SECTION 4. Polystyrene and Expanded Polystyrene Disposable Food Containers are Prohibited.

A. Food Providers within the IWMA Region may not provide Prepared Food in or provide separately any Disposable Food Container made from Polystyrene or EPS except as exempted in Section 7.

B. Disposable Food Containers made from Polystyrene or EPS are prohibited from use in all IWMA Member Jurisdiction stores or businesses which sell or offer goods, **services**, or merchandise.

C. IWMA Member Jurisdiction contractors in the performance of IWMA Member Jurisdiction contracts and event promoters may not provide Prepared Food in Disposable Food Containers made from Polystyrene or EPS.

D. Food Providers and beverage providers are prohibited from using, providing, distributing, or selling Polystyrene or EPS.

SECTION 5. Required Reusable, Biodegradable, or Recyclable Disposable Food Containers.

A. All Food Providers within IWMA Member Jurisdictions utilizing Disposable Food Containers shall use Reusable, Biodegradable, or Recyclable products.

B. All IWMA Member Jurisdiction stores or businesses which sell or offer goods, **services**, or merchandise utilizing Disposable Food Containers shall use Reusable, Biodegradable, or Recyclable products.

C. IWMA Member Jurisdiction contractors and event promoters utilizing Disposable Food Containers shall use Reusable, Biodegradable, or Recyclable products while performing under IWMA Member Jurisdiction contract or permit.

SECTION 6. Prohibited Sales.

No Vendor or Events Promoter in the IWMA Member Jurisdiction may sell or otherwise provide any Polystyrene or EPS product which is not wholly encapsulated or encased within a more durable material, except as exempted in Section 7. This specifically includes, but is not limited to, cups, utensils, plates, bowls, trays, clamshells, raw meat trays, raw fish trays and other raw food trays, egg cartons, and other products intended primarily for food service use, as well as coolers, containers, ice chests, unencapsulated marine buoys, unencapsulated dock floats, shipping boxes, packing peanuts, or other packaging materials.

SECTION 7. Exemptions.

A. The IWMA Board or designee may exempt a Food Provider from the requirements set forth in Section 4.A. of this Ordinance for a one-year period upon the Food Provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty as evidenced by no alternatives being available or if such alternatives are not Affordable. The IWMA Board or designee shall put the decision to grant or deny a one-year exemption in writing, and the decision shall be final.

B. Exemption to allow for the sale or provision of Polystyrene or EPS products may be granted by the IWMA Board or designee if the Vendor can demonstrate in writing a public health and safety requirement or medical necessity to use the product. The IWMA Board or designee shall put the decision to grant or deny the exemption in writing and the decision shall be final.

C. An exemption application shall include all information necessary for the IWMA Board or designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The IWMA Board or designee may require the applicant to provide additional information.

D. The IWMA Board or designee may approve the exemption application in whole or in part, with or without conditions.

E. Products made from Polystyrene or EPS which are wholly encapsulated or encased by a more durable material are exempt from the provisions of this ordinance. Examples include but

are not limited to surfboards, life preservers, coolers, and craft supplies which are wholly encapsulated or encased by a more durable material.

F. Construction products made from Polystyrene or EPS are exempted from this ordinance if the products are used in compliance with an IWMA Member Jurisdiction's applicable municipal code for buildings and construction and used in a manner preventing the Polystyrene or EPS from being released into the environment.

G. In a situation deemed by the IWMA Executive Director or designee to be an emergency for the immediate preservation of the public peace, health, or safety. IWMA Member Jurisdiction facilities, Food Providers, IWMA Member Jurisdiction contractors, and Vendors doing business with the IWMA Member Jurisdictions shall be exempt from the provisions of this section.

H. Polystyrene or EPS packaged products which have been received from sources outside the IWMA Region and are home delivered (e.g. residents ordering products online and having them delivered to their home).

SECTION 8. Violations.

A. Any Business, Food Provider, or Vendor not in compliance will be issued a warning in which they have ninety (90) days to comply. If upon revisit by the IWMA, the Business, Food Provider or Vendor is still in violation of the ordinance, the IWMA will notify the applicable IWMA Member Jurisdiction for enforcement.

B. For the first violation, the IWMA or designee may allow the violating Food Provider, in lieu of payment of the administrative fine, to submit receipts demonstrating the purchase after the citation date of Reusable, Biodegradable, or Recyclable products in an amount equal to the amount of the citation.

C. An IWMA Member Jurisdiction may enforce this ordinance through the IWMA Member Jurisdiction code enforcement ordinances and this ordinance shall be enforceable by IWMA Member Jurisdictions under said ordinances as land-use or code-enforcement violations consistent with said ordinances.

D. The remedies provided by this section are cumulative and in addition to any other remedies available at law or in equity. Fines are established as follows:

1. A fine of one hundred dollars (\$100.00) for the first violation after a warning notice is given.
2. A fine of two hundred dollars (\$200.00) for the second violation.
3. A fine of exceeding five hundred dollars (\$500.00) for the third and any future violations.

E. In addition to other remedies provided by this section or by other law, any violation of this section may be remedied by a civil action brought by the IWMA Member Jurisdiction attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

SECTION 9. Severability.

If any subdivision, paragraph, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this ordinance. It is the IWMA's express intent that each remaining portion would have been adopted irrespective of the fact that any one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

SECTION 10. Effective Date.

This Ordinance was introduced, and the title thereof read, at the regular meeting of the IWMA Board of Directors on September 11, 2019, and further reading was waived by a majority vote of those Directors present.

This Ordinance shall take effect and be in full force on and after six (6) months from the date of its passage and before the expiration of fifteen (15) days from the date of its passage, it shall be published once with the names of the members of the Board of Directors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of San Luis Obispo.

On a motion by Director _____, seconded by Director _____, the foregoing Ordinance was passed and adopted by the Board of Directors of the San Luis Obispo County Integrated Waste Management Authority, this ____ day of _____ 2019, by the following vote:

AYES:

NOES:

ABSENT:

Original signed by

Aaron Gomez, President
San Luis Obispo County
Integrated Waste Management Authority

ATTEST:

Original signed by

IWMA Board Secretary