

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 and may ultimately float, or be blown, into the Pacific Ocean; and

WHEREAS, take-out food and beverage 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 reusable or recyclable, natural resources are spared, and less energy and resources are used to produce new products; and

WHEREAS, regulating the use of Polystyrene and EPS will help 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 but not limited to uncoated paper, sugar cane, wood, or bamboo. This ordinance specifically prohibits Bioplastics and other compostable Plastics as replacements, because Bioplastics contaminate recycling systems and compostable Plastics contaminate the IWMA Regional composting system.
- C. “Bioplastic” is a type of biodegradable plastic derived from biological substances rather than from petroleum.
- D. “Disposable Food and Beverage Containers” is interchangeable with “to-go” packaging, “dine-in” packaging, “food and/or beverage packaging material”, and means all containers that are used to hold Prepared Food or Beverages. Disposable Food and Beverage Containers include but are not limited to clamshells, bowls, plates, utensils, trays, wrappers or wrapping, platters, condiment containers, cartons, cups, and drink ware that are made of Polystyrene or EPS.
- E. “Egg Carton” means a carton for eggs sold to consumers from a refrigerator case or similar appliance.
- F. “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.
- G. “Expanded Polystyrene” or “EPS” means blown, expanded, and extruded Polystyrene or other EPS 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 plastic foams). Expanded Polystyrene and other plastic foams are generally used to make cups, drink ware, 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 or EPS food service ware, packing or shipping material, or non-encapsulated marine devices regardless of whether it exhibits a Resin Code.

H. "Expanded Polystyrene Products" or "EPS Products" means any product made from Polystyrene or EPS, but is not limited to clamshells, bowls, plates, utensils, trays, wrappers or wrapping, platters, condiment containers, cartons, cups, drink ware, as well as non-encapsulated coolers, containers, ice chests, 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 and beverage service ware and non-encapsulated products regardless of whether it exhibits a Resin Code.

I. "Food and Beverage Provider" means any establishment or organization located within an IWMA Member Jurisdiction that is a provider of Prepared Food and Beverages for public consumption including, but not limited to, any store, supermarket, delicatessen, restaurant, shop, caterer, farmers market, non-profit entity, vending machine, or mobile food Vendor.

J. "IWMA Member Jurisdiction" includes the County of San Luis Obispo, the Authorized District members of the IWMA, and the Cities of Arroyo Grande, Atascadero, Grover Beach, Morro Bay, Paso Robles, Pismo Beach, and San Luis Obispo.

K. "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.

L. "Non-encapsulated Marine Devices" means any device non-encapsulated used as a floatation aid. Examples include but are not limited to marine buoys and dock floats.

M. "Prepared Food and Beverage" 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 and Beverage Provider using any cooking, packaging, food preparation or beverage preparation technique (e.g., cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared within an IWMA Member Jurisdiction). Prepared Food and Beverages may be eaten either "dine-in" or "take-out" from the Food and Beverage Provider's premises.

N. "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.

O. "Polystyrene Packing Material" means Polystyrene or EPS material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage, including shipping boxes and packing peanuts.

P. "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 paper.

Q. "Resin Code" means a resin identification code placed on plastics to identify the material composition for separation of different types of plastics for recycling or disposal.

R. "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, utensils, 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.

S. "Supplier" means anyone selling, distributing, or otherwise supplying food and beverage service ware, packaging, and Non-encapsulated Marine Devices to any business, store, supermarket, delicatessen, restaurant, shop, caterer, farmers market, vending machine, or mobile food Vendor doing business in the IWMA Region.

T. "Tray" means any packaging used to contain, support, or encase meat, seafoods, vegetables, and other products.

U. "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 EPS Disposable Food Containers are Prohibited.

A. Food and Beverage Providers within the IWMA Region may not provide Prepared Food and Beverages in or provide separately any Disposable Food and Beverage 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 and Beverages in Disposable Food and Beverage Containers made from Polystyrene or EPS.

D. Food 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 and Beverage Providers within IWMA Member Jurisdictions utilizing “to-go” or “dine-in” Food and Beverage 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 “to-go” or “dine-in” Food and Beverage Containers shall use Reusable, Biodegradable, or Recyclable products.

C. IWMA Member Jurisdiction contractors and event promoters utilizing “to-go” or “dine-in” Food Containers shall use Reusable, Biodegradable, or Recyclable products while performing under IWMA Member Jurisdiction contract or permit.

SECTION 6. Prohibited Sales.

No Vendor, Supplier, 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 clamshells, bowls, plates, utensils, trays, wrappers or wrapping, platters, condiment containers, cartons, cups, and drink ware as well as non-encapsulated coolers, containers, ice chests, marine buoys and dock floats, 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 applies to all Polystyrene and EPS Food and Beverage service ware and non-encapsulated products regardless of whether it exhibits a Resin Code.

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 and Beverage 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 Executive Director 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 Executive Director if the Vendor can demonstrate in writing a public health and safety requirement or medical necessity to use the product. The IWMA Board or Executive Director 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 Executive Director to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The IWMA Board or Executive Director may require the applicant to provide additional information.

D. The IWMA Board or Executive Director 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 and Beverage 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, business, or job-site delivered (e.g. residents or businesses ordering products online or in-store and having them delivered to their home or job-site) shall be exempt from the provisions of this section.

SECTION 8. Violations and Enforcement.

A. The IWMA may enforce the provisions of this Ordinance through a civil action for civil penalties in the amounts established herein, and any other civil remedy, including prohibitory and mandatory injunction relief, filed in the Superior Court of the County of San Luis Obispo to compel and enforce the provisions herein against any Food and Beverage provider or Vendor within San Luis Obispo County in violation of this Ordinance. In addition to any relief available

to IWMA to enforce this Ordinance, the IWMA shall also be entitled to recover reasonable attorneys' fees and costs incurred in enforcing this Ordinance.

B. For any violation of this Ordinance, the IWMA may sue to recover civil penalties in the amount of \$1,000.00 per day for every day on which a violation exists. For purposes of calculating the civil penalties to be established hereunder, each day on which the Food and Beverage provider or Vendor fails to comply with the requirements of this Ordinance, after having received a written notice of violation issued by the IWMA, shall constitute a separate offense.

C. In lieu of the civil penalties identified in Section 8 (B), the Executive Director may, in his/her discretion, take the following actions with regard to a Food and Beverage Provider or Vendor not in compliance:

1. Issue a written warning in which the violating party has ninety (90) days to comply.
2. Issue fines as follows:
 - i. A fine of one hundred dollars (\$100.00) for the first violation after a written ninety (90) day warning notice is given.
 - ii. A fine of two hundred dollars (\$200.00) for the second violation.
 - iii. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations.
3. For the first violation, the IWMA or designee may allow the violating Food and Beverage Provider or Vendor, 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.

D. In addition to the civil relief available to the IWMA set forth above, any violation of this Ordinance shall also constitute a misdemeanor punishable under the laws of the State of California. The District Attorney, the County Counsel, or any City Attorney shall be authorized to enforce the provisions of this Ordinance within their respective jurisdictions. In the event of such criminal enforcement, the following criminal penalties apply to violations of this Ordinance:

1. Violation of Misdemeanor. Violations of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor.
2. The San Luis Obispo County Sheriff's Department and/or any other police department or law enforcement agencies located within the IWMA's jurisdiction may

issue a Notice to Appear Citation for any misdemeanor pursuant to California Penal Code Section 853.6 for any violation of this Ordinance.

3. Penalty for Misdemeanor. Any Food and Beverage provider or Vendor found to be in violation of any provision of this Ordinance, or who fails to comply with any of its requirements shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than one thousand dollars (\$1,000.00), or both. Each day such violation continues shall be considered a separate offense.

E. To the extent any Member Jurisdictions have adopted code enforcement Ordinances applicable to their jurisdictions, this Ordinance may be enforceable by said governmental entities under said Ordinances as land-use or code-enforcement violations consistent with said Ordinances.

F. The remedies provided by this section are cumulative and in addition to any other remedies available at law or in equity.

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 Interim Board Secretary