

**CHAPTER 9.10, Part 17 - POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE**

**9.10.3100 - Definitions.**

The definitions set forth in this section shall govern the application and interpretation of this part.

- A. **"Disposable food service ware"** means single-use disposable products used in the restaurant and food service industry for serving prepared food and includes, but is not limited to, plates, trays, cups, bowls, trays, and hinged or lidded containers (clamshells). Disposable food service ware does not include straws, utensils, drink lids, or ice chests.
- B. **"Food vendor"** means any establishment located in the City of San José that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand. A "food vendor" does not include a food service provider that is associated with either a nonprofit organization with Section 501(c)(3) status under the Internal Revenue Code or a public agency sponsored program.
- C. **"National food vendor"** means a food vendor that is a chain of franchised or corporate-owned establishments located in more than one state.
- D. **"Polystyrene foam"** means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). "Polystyrene foam" is commonly made into disposable food service ware products. "Polystyrene foam" does not include clear or solid polystyrene (oriented polystyrene).
- E. **"Prepared food"** means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. "Prepared food" does not include: (1) any raw, uncooked meat products or fruits or vegetables, unless it can be consumed without further preparation; or (2) prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.

(Ord. 29298.)

**9.10.3110 - Polystyrene foam disposable food service ware prohibited**

- A. No national food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2014.

- B. No food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2015.

(Ord. 29298.)

**9.10.3120 - Exemptions to the polystyrene foam disposable food service ware prohibition.**

- A. A national food vendor or food vendor may seek an exemption from the prohibition under Section 9.10.3110 due to a "unique packaging hardship" under Subsection B. of this section or a "financial hardship" under Subsection C. of this section.
- B. The national food vendor or food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a "unique packaging hardship" exemption.
- C. The national food vendor or food vendor must demonstrate both of the following to qualify for a "financial hardship" exemption: (1) a gross income under three hundred thousand dollars on their annual income tax filing for the most recent tax year; and (2) with respect to each specific and necessary polystyrene foam disposable food service ware, that there is no feasible alternative that would cost the same or less than the polystyrene foam disposable food service ware.
- D. The national food vendor or food vendor may submit a written application for an exemption on a form provided by the department of environmental services. The director of environmental services or designee ("director") may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve months. The national food vendor or food vendor must apply for a new exemption period no later than sixty days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the director shall be final and is not subject to appeal.

(Ord. 29298.)