

1 **Ordinance #08-02**

2 **AN ORDINANCE OF THE ALBANY CITY COUNCIL REGULATING THE USE OF**
3 **POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE AND REQUIRING**
4 **THE USE OF BIODEGRADABLE OR COMPOSTABLE DISPOSABLE FOOD**
5 **SERVICE WARE BY FOOD VENDORS AND CITY FACILITIES**

6 **WHEREAS**, this ordinance will institute practices by all food vendors and City Facilities
7 in Albany in order to:

- 8 1. Prohibit the use of polystyrene foam disposable food service ware, and
9 2. Require that all disposable food service ware be biodegradable or compostable, as
10 long as it is affordable.
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12 **WHEREAS**, the City of Albany has a duty to protect the natural environment, the
13 economy, and the health of its citizens; and

14 **WHEREAS**, effective ways to reduce the negative environmental impacts of throwaway
15 food service ware include reusing food service ware and using compostable and biodegradable
16 take-out materials made from renewable resources such as paper, corn starch and sugarcane; and

17 **WHEREAS**, polystyrene foam is a common environmental pollutant as well as a non-
18 biodegradable substance used as food service ware by food vendors operating in the City of
19 Albany; and

20 **WHEREAS**, there continues to be no meaningful recycling of polystyrene foam food
21 service ware and biodegradable or compostable food service ware is an affordable, safe, more
22 ecologically sound alternative; and

23 **WHEREAS**, affordable biodegradable or compostable food service ware products are
24 increasingly available for several food service applications such as cold cups, plates and hinge
25 containers and these products are more ecologically sound than polystyrene foam materials and
26 can be turned into a compost product; and
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1 **WHEREAS**, a number of Albany businesses engage in organics recycling and it has
2 been demonstrated that the use of biodegradable or compostable food service ware can reduce
3 waste disposal costs when the products are taken to composting facilities as part of an organics
4 recycling program rather than disposed in a landfill; and

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6 **WHEREAS**, the natural compost product from these biodegradable or compostable
7 materials is used as fertilizer for farms and gardens, thereby moving towards a healthier zero
8 waste system; and

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10 **WHEREAS**, disposable food service ware constitutes a large portion of the litter in
11 Albany's streets, parks and public places; and

12 **WHEREAS**, polystyrene foam is notorious as a pollutant that breaks down into smaller,
13 non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or
14 killing them; and

15 **WHEREAS**, due to the physical properties of polystyrene, the EPA states "that such
16 materials can also have serious impacts on human health, wildlife, the aquatic environment and
17 the economy."; and

18 **WHEREAS**, a 1986 EPA report on solid waste named the polystyrene manufacturing
19 process as the fifth largest creator of hazardous waste in the United States; and

20 **WHEREAS**, in the product manufacturing process as well as the use and disposal of the
21 products, the energy consumption, greenhouse gas effect, and total environmental effect,
22 polystyrene's environmental impacts were second highest, behind aluminum, according to the
23 California Integrated Waste Management Board; and

24 **WHEREAS**, styrene, a component of polystyrene, is a known hazardous substance that
25 medical evidence and the Food and Drug Administration suggests leaches from polystyrene
26 containers into food and drink; and

27 **WHEREAS**, styrene is a suspected carcinogen and neurotoxin which potentially
28 threatens human health; and

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2 **WHEREAS**, styrene has been detected in the fat tissue of every man, woman and child
3 tested by the EPA in a 1986 study; and

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

6
7 **WHEREAS**, due to these concerns nearly 100 cities have banned polystyrene foam food
8 service ware including several California cities, and many local businesses and several national
9 corporations have successfully replaced polystyrene foam and other non-biodegradable food
10 service ware with affordable, safe, biodegradable products; and

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12 **WHEREAS**, restricting the use of polystyrene foam food service ware products and
13 replacing non-biodegradable food service ware with biodegradable food service ware products in
14 Albany will further protect the public health and safety of the residents of Albany, the City of
15 Albany's natural environment, waterways and wildlife, would advance the City's goal of to Green
16 Albany, advance the City's goal of a 75% Waste Diversion Rate, and the goal to reduce
17 greenhouse gas emissions 25% below 2004 levels by the year 2020.

18 **NOW, THEREFORE, THE ALBANY CITY COUNCIL HEREBY ORDAINS AS**
19 **FOLLOWS:**

20 **Section 1**

21 Section 8-20 *Polystyrene Foam, Degradable and Recyclable Food Packaging* shall be
22 added to the Municipal Code and shall read as follows:

23 **8-20.1 Definitions**

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25 "ASTM Standard" means meeting the standards of the American Society for Testing and
26 Materials (ASTM) International standards D6400 or D6868 for biodegradable and compostable
27 plastics.

1 "Biodegradable" means the entire product or package will completely break down and return to
2 nature, i.e., decompose into elements found in nature within a reasonably short period of time
3 after customary disposal.

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5 "Compostable" means all materials in the product or package will break down into, or otherwise
6 become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely
7 manner in an appropriate composting program or facility, or in a home compost pile or device.
8 Compostable Disposable Food Service Ware includes ASTM-Standard Bio-Plastics (plastic-like
9 products) that are clearly labeled, preferably with a color symbol, such that any compost
10 collector and processor can easily distinguish the ASTM Standard Compostable plastic from
11 non-ASTM Standard Compostable plastic.
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14 "City Facilities" means any building, structure or vehicles owned or operated by the City of
15 Albany, its agent, agencies, departments and franchisees.
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17 "Customer" means any person obtaining Prepared Food from a Restaurant or Retail Food
18 Vendor.
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20 "Disposable Food Service Ware" means all containers, bowls, plates, trays, cartons, cups, lids,
21 straws, forks, spoons, knives and other items that are designed for one-time use and on, or in,
22 which any Restaurant or Retail Food Vendor directly places or packages Prepared Foods on
23 which are used to consume foods. This includes, but is not limited to, service ware for Takeout
24 Foods and/or leftovers from partially consumed meals prepared at Restaurants or Retail Food
25 Vendors.
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1 "Food Vendor" means any Restaurant or Retail Food Vendor located or operating within the City
2 of Albany.

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4 "Polystyrene Foam" means and includes blown polystyrene and expanded and extruded foams
5 (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam
6 insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and
7 processed by any number of techniques including, but not limited to, fusion of polymer spheres
8 (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding
9 (extruded foam polystyrene). Polystyrene Foam is generally used to make cups, bowls, plates,
10 trays, clamshell containers, meat trays and egg cartons.
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14 "Prepared Food" means Food or Beverages, which are served, packaged, cooked, chopped,
15 sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Vendor's premises or
16 within the City of Albany. For the purposes of this ordinance, Prepared Food does not include
17 raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance.
18 Prepared Food may be eaten either on or off the premises, also known as "takeout food".
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20 "Restaurant" means any establishment located within the City of Albany that sells Prepared Food
21 for consumption on, near, or off its premises by Customers. Restaurant for purpose: of this
22 Chapter includes Itinerant Restaurants, Pushcarts and Vehicular Food Vendors.
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24 "Retail Food Vendor" means any store, shop, sales outlet, or other establishment, including a
25 grocery store or a delicatessen, other than a Restaurant, located within the City of Albany that
26 sells Prepared Food.

27 **8-20.2 Prohibited Food Service Ware**
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1 a. Except as provided in Section 8-20.4, Food Vendors are prohibited from
2 providing Prepared Food to Customers in Disposable Food Service Ware that uses Polystyrene
3 Foam.

4 b. All City Facilities are prohibited from using Polystyrene Foam Disposable Food
5 Service Ware and all City Departments and Agencies will not purchase or acquire Polystyrene
6 Foam Disposable Food Service Ware for use at City Facilities.

7 c. City franchises, contractors and vendors doing business with the City shall be
8 prohibited from using Polystyrene Foam Disposable Food Service Ware in City facilities or on
9 city projects within the City of Albany.
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13 **8-20.3 Required Biodegradable and Compostable Disposable Food Service Ware**

14 a. All Food Vendors using any Disposable Food Service Ware will use
15 Biodegradable or Compostable Disposable Food Service Ware unless it can be shown that a
16 biodegradable/compostable or recyclable product is not available for a specific application. Food
17 Vendors are strongly encouraged to reuse Food Service Ware in place of using Disposable Food
18 Service Ware. In instances that Food Vendors wish to use a Biodegradable or Compostable
19 Disposable Food Service Ware Product that is not Affordable, a Food Vendor may charge a
20 "take out fee" to customers to cover the cost difference.

21 b. All City Facilities will use Biodegradable or Compostable Disposable Food
22 Service Ware.

23 c. City franchises, contractors and vendors doing business with the City will use
24 Biodegradable or Compostable Disposable Food Service Ware.

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26 **8-20.4 Exemptions**
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1 a. Prepared Foods prepared or packaged outside the City of Albany are exempt from
2 the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of
3 Albany are encouraged to follow the provisions of this Chapter.

4 b. Food Vendors will be exempted from the provisions of this Chapter for specific
5 items or types of Disposable Food Service Ware if the City Administrator or his/her designee
6 finds that a suitable Biodegradable or Compostable alternative does not exist and/or that
7 imposing the requirements of this Chapter on that item or type of Disposable Food Service Ware
8 would cause undue hardship.

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10 c. Polystyrene Foam coolers and ice chests that are intended for reuse are exempt
11 from the provisions of this Chapter.

12 d. Disposable Food Service Ware composed entirely of aluminum is exempt from
13 the provisions of this Chapter.

14 e. Emergency Supply and Services Procurement; In a situation deemed by the City
15 Administrator to be an emergency for the immediate preservation of the public peace, health or
16 safety, City Facilities, Food Vendors, City franchises, contractors and vendors doing business
17 with the City shall be exempt from the provisions of this Chapter.

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19 **8-20.5 Liability and Enforcement**

20 a. The City Administrator or his/her designee will have primary responsibility for
21 enforcement of this Chapter, The City Administrator or his/her designee is authorized to
22 promulgate regulations and to take any and all other actions reasonable and necessary to enforce
23 this Chapter, including, but not limited to, entering the premises of any Food Vendor to verify
24 compliance.

25 b. Anyone violating or failing to comply with any of the requirements of this
26 Chapter will be guilty of an infraction pursuant to Section 1-9 of the Albany Municipal Code,

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

1 **8-20.6 Violations - Penalties**

2 1. If the City Administrator or his/her designee determines that a violation of this
3 Chapter occurred, he/she will issue a written warning notice to the Food Vendor that a violation
4 has occurred.

5 2. If the Food Vendor has subsequent violations of this Chapter, the following
6 penalties will apply:

7 a. **A fine not exceeding one hundred dollars (\$100.00) for the first**
8 **violation after the warning notice is given.**

9 b. **A fine not exceeding two hundred dollars (\$200.00) for the second**
10 **violation after the warning notice is given,**

11 c. **A fine not exceeding five hundred dollars (\$500.00) for the third and**
12 **any future violations after the warning notice is given.**

13 3. Food Vendors may request an administrative hearing to adjudicate any penalties
14 issued under this Chapter by filing a written request with the City Administrator, or his or her
15 designee. The City Administrator, or his or her designee, will promulgate standards and
16 procedures for requesting and conducting an administrative hearing under this Chapter. Any
17 determination from the administrative hearing on penalties issued under this Chapter will be final
18 and conclusive.

19 **Section 2: Publication**

20 This ordinance shall be published in a newspaper of general circulation in the City of
21 Albany, which said newspaper is designated for that purpose, or it shall be posted in three
22 locations.

23 **Section 3: Severability**

24 If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason
25 held to be invalid, such decision shall not affect the validity of the remaining portions of the
26 ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the
27 fact that any one or more sections, subsections, sentences, clause or phrases be declared invalid.

28 **Section 4: Effective Date**

This ordinance shall become effective 30 days on or after its final passage and adoption.
Implementation of this ordinance will commence September, 2008.

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