

**ORDINANCE NO. 2090, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING A NEW CHAPTER 8.56 (ENVIRONMENTALLY ACCEPTABLE FOOD CONTAINERS AND SERVICE WARE) TO TITLE 8 (HEALTH AND SAFETY) OF THE MORGAN HILL MUNICIPAL CODE RELATED TO POLYSTYRENE FOOD CONTAINERS AND SERVICE WARE**

WHEREAS, the City of San Jose ("San Jose"), acting as the lead agency under the California Environmental Quality Act (CEQA), undertook to prepare environmental documentation for a proposed ordinance prohibiting the use of polystyrene foam food containers and service ware (the "proposed ordinance") on behalf of all 15 cities in Santa Clara County and the County of Santa Clara; and

WHEREAS, the Initial Study and Notice of Intent to Adopt a Negative Declaration prepared by San Jose for the proposed ordinance were circulated for public review and comments; and

WHEREAS, during the public review and comment period, the City of Morgan Hill, as a responsible agency for the proposed ordinance, participated in the CEQA process as required by Title 14 of the California Code of Regulations, Section 15096; and

WHEREAS, San Jose adopted the Negative Declaration prepared for the proposed ordinance on August 27, 2013, which Negative Declaration has not been challenged to date; and

WHEREAS, on October 2, 2013, the City Council considered the Initial Study and Negative Declaration prepared by San Jose for the proposed ordinance at a duly noticed public meeting in connection with the City Council's review and approval of the proposed ordinance prohibiting the use of polystyrene foam food containers and service ware in the City of Morgan Hill and adopted the negative declaration by separate resolution of the City Council.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

**SECTION 1. CEQA REVIEW.**

1. The City Council has reviewed the Negative Declaration for the proposed ordinance to prohibit the use of polystyrene food containers and service ware, and all comments received regarding the Negative Declaration. After reviewing the foregoing, the City Council has determined that no evidence or circumstances exist that would require the preparation of additional environmental documents. Further, the City Council has exercised its independent judgment and has determined that the ordinance will not have a significant impact on the environment all as memorialized by a separate resolution adopted by the City Council.

**SECTION 2. CHAPTER 8.56 ADDED.** A new Chapter 8.56 (Environmentally Acceptable Food Containers and Service Ware) is hereby added to Title 8 (Health and Safety) of

the Morgan Hill Municipal Code, which new Chapter shall be numbered and entitled and shall read in its entirety as follows:

### **Chapter 8.56**

#### **ENVIRONMENTALLY ACCEPTABLE FOOD CONTAINERS AND SERVICE WARE**

Sections:

- 8.56.010**      **Definitions**
- 8.56.020**      **Polystyrene foam food containers and service ware prohibited**
- 8.56.030**      **Exemptions**
- 8.56.040**      **Violations**
- 8.52.050**      **No conflict with federal or state law.**

#### **8.56.010.      Definitions.**

Unless otherwise expressly stated, whenever used in this Chapter, the following terms shall have the meanings set forth below:

- A.      "Customer" means a person obtaining prepared food from a food provider.
- B.      "Food container" means a container that is used, or is intended to be used, to hold prepared food. "Food container" includes, but is not limited to, a cup, bowl, plate, tray, carton, or clamshell container that is intended for single use.
- C.      "Food provider" means any vendor, business, organization, entity, group or individual operating in the city of Morgan Hill that offers food or beverages to the public for consumption on or off premises, regardless of whether there is a charge for the food. "Food provider" includes, but is not limited to, food providers operating restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, delicatessens, itinerant restaurants, pushcarts, and vehicular food vendors. "Food provider" also includes food providers operating cafeterias in private schools and places of employment whether or not such establishments are open to the general public.
- D.      "Food service ware" includes plates, bowls, cups, lids, straws, stirrers, forks, spoons, knives, napkins, trays, and other items primarily designed for use in consuming food.
- E.      "Polystyrene foam" means a container made of blown polystyrene, and expanded and extruded foams (sometimes called Styrofoam) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead polystyrene), injection molding, foam molding, and

extrusion-blown molding (extruded foam polystyrene), which is used, or is intended to be used, to hold prepared food.

F. "Prepared food" means any food, including beverages, that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption, including but not limited to ready-to-eat and takeout food.

G. "Vendor" means the operator of any store or business which sells or offers goods or merchandise, located or operating within the City of Morgan Hill.

**8.56.020 Polystyrene foam containers and service ware prohibited.**

A. On or after April 22, 2014, a vendor or food provider shall not dispense prepared food to a customer in a polystyrene foam food container.

**8.56.030. Exemptions.**

The following are exempt from the provisions of this Chapter:

A. Raw eggs and raw, butchered meat, fish, or poultry that is sold from a butcher case or a similar retail appliance.

B. A vendor or food provider may dispense prepared food to a customer using polystyrene foam containers if that food provider demonstrates, in writing, to the satisfaction of the Director of Community Services that compliance with the provisions of this Chapter will impose a unique problem, not generally applicable to other persons in similar circumstances, that will result in an undue economic hardship. The Director of Community Services shall put the decision to grant or deny an exemption in writing and may exempt the vendor or food provider pursuant to this subdivision until April 22, 2015, or not more than one year from the date of the demonstration, whichever date is sooner. The Director's decision shall be final.

**8.56.040. Violations.**

A. The Director of Community Services has primary responsibility for enforcement of this Chapter. The Director of Community Services 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, investigating violations, issuing fines and entering the premises of any store during business hours.

B. If the Director of Community Services determines that a violation of this Chapter has occurred, he or she will issue a written warning notice to the vendor or food provider that a violation has occurred and the potential penalties that will apply for future violations.

C. Any vendor or food provider that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.

D. If a vendor or food provider has subsequent violations of this Chapter that are similar in kind to the violation addressed in a written warning notice, the Director of Community Services may issue or cause to be issued an administrative citation imposing the fine for such violation as set forth in Chapter 1.19 of the Morgan Hill Municipal Code.

E. A fine shall be imposed for each day a violation occurs or is allowed to continue.

**8.52.050 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.

SECTION 2. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days after the date of its adoption.

SECTION 3. POSTING AND PUBLICATION. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

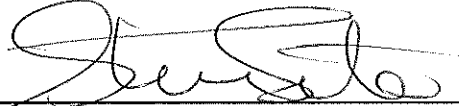
**THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 2<sup>nd</sup> DAY OF OCTOBER 2013, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6<sup>th</sup> DAY OF NOVEMBER 2013, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:**

**AYES: COUNCIL MEMBERS: Larry Carr, Rich Constantine, Steve Tate**  
**NOES: COUNCIL MEMBERS: None**  
**ABSTAIN: COUNCIL MEMBERS: None**  
**ABSENT: COUNCIL MEMBERS: Marilyn Librers, Gordon Siebert**

**ATTEST:**

  
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**IRMA TORREZ, City Clerk**

**APPROVED:**

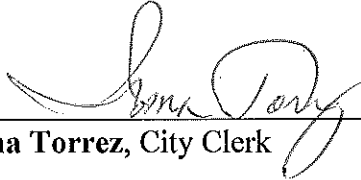
  
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**STEVE TATE, Mayor**

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2090, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6<sup>th</sup> Day of November 2013.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 11/20/13

  
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Irma Torrez, City Clerk

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