

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KEY WEST  
PROHIBITING THE USE OF EXPANDED POLYSTYRENE DISPOSABLE FOOD  
WARE AND REQUIRING THE USE OF BIODEGRADABLE OR  
COMPOSTABLE FOOD WARE BY FOOD PROVIDERS AND CITY FACILITIES**

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Now, therefore, the City Council of the City of Key West does ordain as follows:

**SECTION 1 Findings.**

WHEREAS, the City of Key West has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, expanded polystyrene and plastic are widespread, persistent environmental pollutants; and

WHEREAS, expanded polystyrene and plastic food ware are commonly used by food providers in the City of Key West;

WHEREAS, expanded polystyrene and plastic constitutes a significant portion of the litter in Key West's waters, mangroves, streets, parks, and public places and the cost of managing this litter is high and rising; and

WHEREAS, small, non-biodegradable pieces of expanded polystyrene are extremely difficult and costly to clean up, especially in mangroves and waterways; and

WHEREAS, expanded polystyrene is a pollutant that breaks down into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them; and

WHEREAS, in some areas of the Pacific Ocean, small plastic pieces outnumber zooplankton by up to six times, the numbers in the Atlantic Ocean and Gulf of Mexico are growing, which will impact marine life such as filter feeders; and

WHEREAS, plastic particles in the ocean may leach a range of chemicals such as bisphenol A and substances known as polystyrene-based oligomers, which are not found naturally; and

WHEREAS, non-biodegradable packaging bans are encouraged by the Environmental Protection Agency; and

WHEREAS, assessments in impaired watersheds identify expanded polystyrene food ware as a common element, and in one case the most predominant number of trash pieces; and

WHEREAS, styrene is a known neurotoxin and possible human carcinogen; and

WHEREAS, styrene, the precursor to polystyrene, is a hazardous substance that has been shown to leach from polystyrene containers into food and drink and to leach in greater quantities when the food or drink are of high temperature or high fat content; and

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

WHEREAS, due to these concerns, more than one hundred local governments in the United States have banned expanded polystyrene food ware, and many small businesses and several national corporations have successfully replaced expanded polystyrene and other non- biodegradable food ware with biodegradable and/or compostable products; and

WHEREAS, reusing food ware and using compostable and biodegradable take-out materials made from renewable resources such as paper, corn starch and sugarcane are effective ways to reduce the negative impacts of disposable food ware; and

WHEREAS, the City of Key West encourages the use of unbleached, non-coated, recycled-content paper food ware and food ware made from sugarcane fiber as the most environmentally preferable alternatives when the use of reusable food ware is not feasible and the use of paper bags as an alternate to plastic bags;

WHEREAS, the Florida Department of Environmental Protection's 2010 report, plastic bags are a nuisance because they can interfere with "recycling, waste management, storm-water management, and litter control." the report also noted that improper disposal of the bags "damages natural systems and wildlife."; and

WHEREAS, expanded polystyrene and plastic products are made from non-renewable resources; and

WHEREAS, there are extremely limited local recycling options for expanded polystyrene and plastic food ware,

WHEREAS, aluminum is a valuable material to recycle, has a closed-loop recycling system, and a recycling program for aluminum exists in Key West; and

WHEREAS, biodegradable and compostable food ware products such as cups, plates, bowls and hinged containers, are available in local stores, are increasingly available in the food service market, and are more ecologically sound over their life cycle than expanded polystyrene or plastic; and

WHEREAS, biodegradable and compostable utensils, straws, and lids are increasingly available in the food service market but are not widely available in local stores; and

WHEREAS, many businesses in Florida cities engage in organics recycling and have demonstrated that the use of biodegradable or compostable food ware can reduce disposal costs when the products are taken to composting facilities as part of an organics recycling program; and

WHEREAS, the City intends to ensure that any food ware that ends up in our natural areas are a natural compost product from biodegradable or compostable materials that will not have an adverse effect on the water system; and

WHEREAS, restricting the use of expanded polystyrene and plastic food ware and replacing non-biodegradable, non-compostable, non-reusable, or non-recyclable food ware with biodegradable, compostable, reusable, or recyclable food ware products in Key West will further protect the public health and safety of the residents of Key West, the natural environment, waterways and wildlife, would advance the City's goal of Zero Waste; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of Key West; and

NOW THEREFORE, the City Council of the City of Key West does ordain as follows:

## **SECTION**

Chapter \_\_\_\_ entitled **"Green To Go Food Ware Ordinance"** is hereby added to the City of Key West Municipal Code to read as follows:

## **CHAPTER \_\_\_\_**

### **Sections:**

- 9.17.010 Definitions.**
- 9.17.020 Required Biodegradable and Compostable Food Ware.**
- 9.17.030 Exemptions.**
- 9.17.040 Enforcement and Penalties.**

**9.17.010 Definitions.**

"ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.

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

"Compostable" means all materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Compostable Disposable Food Ware includes ASTM-Standard Bio-Plastics (plastic-like products) that are clearly labeled, preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic.

"City Facilities" means any building, structure or vehicle owned or operated by the City of Key West, its agent, agencies, departments and franchisees.

"Customer" means any member of the public obtaining Prepared Food from a Food Provider.

"Disposable Food Ware" means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items that are designed for one-time use for Prepared Foods, including service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Providers. The City Manager or his/her designee may amend this definition as necessary.

"Food Provider" means any vendor, business, organization, entity, group or individual, including any Restaurant or Retail Food Establishment, located or operating within the City of Key West or providing food or beverage to the public, and any provider of Prepared Food at organized or special events.

"Expanded Polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of Expanded Polystyrene insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

"Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, hole drilled or otherwise prepared on the Food Provider's premises. For the purposes of this ordinance, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises, also known as "takeout food".

"Restaurant" means any establishment located within the City of Key West that sells Prepared Food for consumption on, near, or off its premises by Customers.

"Retail Food Establishment" means any store, shop, sales outlet, or other establishment, other than a Restaurant, including but not limited to a grocery store, delicatessen, mobile

food preparation and sale unit, drive-in, coffee shop, cafeteria, short-order cafe, luncheonette, grill, sandwich shop, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, takeout Prepared Food place, industrial feeding establishment, catering kitchen, commissary, special event, food market, produce stand, food stand, or similar place in which food or drink is prepared for sale, or for service, on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served or provided to Customers.

“Reusable Food Ware” means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items that are designed for prolonged use, including but not limited to ceramic, glass, porcelain, and metal food ware.

#### **9.17.020 Required Biodegradable and Compostable Food Ware**

A. All Food Providers using any Disposable Food Ware for providing Prepared Food to Customers will use Biodegradable or Compostable Disposable Food Ware. Food Providers are strongly encouraged to use Reusable Food Ware in place of Disposable Food Ware where practical. A Food Provider may charge a "take out fee" or "environmental fee" to customers to cover the cost difference.

B. All City Facilities will use Reusable Food Ware in City facilities and events where practical. If Reusable Food Ware is not practical for a specific application, the City must use Biodegradable or Compostable Disposable Food Ware.

C. City franchisees, contractors and vendors doing business with the City are strongly encouraged to use Reusable Food Ware in place of Disposable Food Ware where practical. If reusable Food Ware is not practical, City franchisees, contractors and vendors doing business with the City shall use Biodegradable or Compostable Disposable Food Ware.

#### **9.17.030 Exemptions**

A. Expanded Polystyrene coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

B. Disposable Food Ware composed entirely of aluminum is exempt from the provisions of this Chapter.

C. Emergency Supply and Services Procurement: In a situation deemed by the City Manager or his/her designee to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Providers, City franchisees, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter.

#### **9.17.040 Enforcement and Penalties**

A. The City Manager or his/her designee shall have primary responsibility for enforcement of this Chapter. The City Manager or his or her designee 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, entering the premises of any Food Provider to verify compliance.

B. If the City Manager or his/her designee determines that a violation of this Chapter has occurred, he/she shall mail a written warning notice to the Food Provider.

C. Any person who does not correct the violation within thirty (30) days after the warning notice is mailed shall be guilty of a misdemeanor pursuant to section \_\_\_\_\_ of the Key West Municipal Code. All violations are subject to Key West’s administrative citation process, including first tier administrative fines and appeals as set forth in Key West Municipal Code Chapter\_\_\_\_\_.

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

### **SECTION 3**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Key West hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

### **SECTION 4**

The City intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

### **SECTION 5**

This ordinance shall become effective on October 1, 2016 and enforceable when business licenses are renewed.