



**AGENDA**  
**COMMISSION ON THE ENVIRONMENT**  
**REGULAR MEETING**  
**WEDNESDAY, AUGUST 14, 2019**  
**6:00 PM**  
**CITY COMMUNITY ROOM**  
**420 CAPITOLA AVENUE, CAPITOLA, CA 95010**

**CALL TO ORDER**

Commissioners: Cathlin Atchison, Jacques Bertrand, Michelle Beritzhoff-Law, Meredith Keet, Peter Wilk

**WRITTEN & ORAL COMMUNICATIONS** *(No action may be taken)*

*The Chair may announce and set time limits at the beginning of each agenda item.*

*The Committee Members may not discuss Oral Communications to any significant degree, but may request issues raised be placed on a future agenda.*

**APPROVAL OF MINUTES** of May 8, 2019

**OTHER BUSINESS**

1. Introduction of new student member Bryce Ebrahimian
2. Discussion of the Single-Use Plastic and Paper Carryout Bag Reduction Ordinance and Environmentally Acceptable Packaging Materials Ordinance

**ITEMS FOR FUTURE AGENDAS**

**ADJOURNMENT** to November 13, 2019

**Notice:** The Commission on the Environment meets quarterly (February, May, August, November) at 6:00 PM in the Community Room located at 420 Capitola Avenue, Capitola.

**Agenda and Agenda Packet Materials:** The Commission on the Environment Agenda is available on the City's website: [www.cityofcapitola.org/](http://www.cityofcapitola.org/) on Friday prior to the Wednesday meeting. If you need additional information please contact the Public Works Department at (831) 475-7300.

**Americans with Disabilities Act:** Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the City Clerk's office at least 24-hours in advance of the meeting at 831-475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

**DRAFT MINUTES**  
**Commission on the Environment**  
**Regular Meeting**  
**May 8, 2019**

**CALL TO ORDER**

Commissioners Present: Cathlin Atchison, Jacques Bertrand, Meredith Keet, Peter Wilk

Commissioners Absent: Michelle Beritzhoff-Law

City Staff Present: Steve Jesberg, Danielle Uharriet

**WRITTEN AND ORAL COMMUNICATIONS**

Cathlin Atchinson requested that protection of the monarch butterfly habitat be incorporated into any conditions for future development and/or construction that may occur at the Monarch Cove Inn property. Jacques Bertrand and Peter Wilk commented that the Planning Commission and Coastal Commission would be reviewing any future development and/or construction for the site.

Meredith Keet commented that she had met with Katherine O'Dea, Executive Director of Save Our Shores regarding a list of plastic pollution mitigation measures SOS would like the City to address.

**OTHER BUSINESS**

1. The minutes of February 27, 2019 were approved (Bertrand/Atchison)

2. Introduction of new commissioner Meredith Keet

Meredith commented she is the founder of the new Zero Shop in Capitola Village. A retail shop that aims to serve as a resource for building more ethical and sustainable habits in our everyday lives. A local business that strive to create a positive impact on the community for the health and future of the planet.

3. Amend the 2019 meeting schedule was approved (Wilk/Keet)

4. Review of the Commission Work Plan 2019

**Previous work items:**

♦ Soquel Creek/Peery Park Riparian Restoration

Peter Wilk recommended continuing to work on plan implementation and maintenance, with potential expansion of invasive species removal to enlarge the restoration area to join the adjacent existing Bay Avenue riparian area. Commissioner Wilk requested Community Development staff consider additional funding from the Tree Fund to enable continued work in Peery Park.

Jacques Bertrand suggested ivy removal in Noble Gulch Park and the potential opportunity for volunteer events in the park.

♦ Native Milkweed Campaign/Monarch Protection and Preservation

Cathlin Atchison stated she will either obtain photo permissions or provide photos for use in the informational flyer, then staff will post the information on the website. Chairperson Atchison offered to donate native milkweed seed for distribution at city hall. Commissioner Keet agreed to work on the distribution of the native seeds.

♦ Climate Action Plan Assistance

Peter Wilk commented the city was already in compliance with the CAP goals but suggested that the Commission review the CAP goals list previously provided by the Community Development Department (CDD), and work with the CDD to identify specific reduction measures for ongoing or potential implementation.

The Commission agreed to remove the following items from the Work Plan:

- ✦ ~~EV promotion~~
- ~~Increase charging station locations~~
- ✦ ~~HERO promotion~~
- ~~How to promote the HERO energy saving program~~

- ♦ Restaurant ordinance informational guide/leaflet

Develop an informational guide for distribution to restaurants regarding Capitola regulations

Meredith Keet inquired about city requirements and enforcement for restaurants to provide compostable ware. As a future agenda item, the Commission will review the city's single-use plastics and acceptable packaging ordinances.

- ♦ 4Cs Central Coast Climate Collaborative

Jacques Bertrand stated the 4Cs has several committees of which he is participating in the sea level rise committee and will continue to provide updates to the Commission.

#### **New work items:**

- ♦ Sustainability Guidance for Events in Capitola (example: Wharf-to-Wharf)

How to provide guidance to organizations/groups that put events on in Capitola regarding:

Reducing waste

Eliminating single use plastics with the aim of reducing plastic waste blowing onto the beach and into the sea

Sustainable water use

Michelle Beritzhoff-Law suggested developing an event sustainability guide. The Commission continued the item for future discussion. Norene Huber suggested that prior to school field trips, students were educated in the difference between garbage vs/ recycling.

Peter Wilk inquired about the number of hits on the Environmentally Sustainable Living in Capitola website tab and the status of the Green Building Guidelines. Staff will provide updates at the next meeting.

#### **ITEMS FOR NEXT AGENDA**

- Review of the city's Single-Use Plastic and Paper Carryout Bag Reduction Ordinance and Environmentally Acceptable Packaging Materials Ordinance

**ADJOURNMENT** to a Regular meeting on August 14, 2019

Approved at the meeting of August 14, 2019

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Danielle Uharriet  
Environmental Projects Manager

**Chapter 8.07**  
**SINGLE-USE PLASTIC AND PAPER CARRYOUT BAG REDUCTION**

Sections:

- [8.07.010](#) Purpose and findings.
- [8.07.020](#) Definitions.
- [8.07.030](#) Ban on plastic bags and store charge for single-use paper carryout bags.
- [8.07.040](#) Implementation.
- [8.07.050](#) Exemptions allowing single-use bags.
- [8.07.060](#) Enforcement.
- [8.07.070](#) Violations.
- [8.07.080](#) Severability.
- [8.07.090](#) Effective date.
- [8.07.100](#) No conflict with federal or state law.
- [8.07.110](#) Preemption.

**8.07.010 Purpose and findings.**

A. It is the intent of the city of Capitola, in enacting this chapter, to eliminate the common use of plastic single-use carryout bags, encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single-use bags in general.

B. Whereas the city of Capitola has an obligation to protect the environment, the economy, and public health. The city of Capitola has a seventy-five percent waste reduction goal, which is to be reached by waste reduction, reuse, recycling, and composting. The city of Capitola makes the following findings:

1. The Department of Resources Recycling and Recovery (CalRecycle) estimates that Californians use nearly twenty billion single-use plastic bags per year and discard over one hundred plastic bags per second. Further the Environmental Protection Agency estimates that only five percent of the plastic bags in California and nationwide are currently recycled.
2. According to Save Our Shores, a Santa Cruz based marine conservation non-profit that conducts beach, river, and inland cleanups in the coastal regions of Santa Cruz, San Mateo, and Monterey Counties, from June 2007 to May 2011, over four hundred cleanups were conducted where volunteers removed a total of twenty-six thousand plastic bags. Unchecked, this material would have likely entered the marine environment of the Monterey Bay National Marine Sanctuary.
3. Plastic bags returned to supermarkets may be recycled into plastic lumber; however, a very low percentage of bags are actually returned. Recycling bags into lumber does not reduce the

impact of making new plastic carryout bags. The CalRecycle 2009 Statewide Recycling Rate for Plastic Carryout Bags report indicates that of the fifty-two thousand seven hundred sixty-five tons of regulated bags purchased statewide, only one thousand five hundred twenty tons were collected for recycling, a recycling rate of about three percent.

4. The city of Capitola currently has a plastic bag recycling component to the residential curbside recycling program.

5. Improperly prepared plastic bags create equipment problems at the material recovery facility. Loose bags wrap around the bearings and shafts of the material separator. The equipment must be stopped and the bags removed before they cause permanent damage. This results in slower production times for the sorting crew, as well as increased processing and repair costs.

6. Compostable plastic carryout bags, as currently manufactured, do not solve the problems of wildlife damage, litter, or resource use addressed by this chapter. Compostable carryout bags are designed to remain intact until placed in a professional compost facility, so they do not degrade quickly as litter or in a marine environment. Producing compostable bags consumes nearly as much fossil fuel as noncompostable bags. Mixing compostable bags with regular plastic bags prevents recycling or composting either of them. Therefore, there is no exemption in this chapter for compostable carryout bags.

7. Reusable bags are readily available from numerous sources and vendors. Many grocery and other retail establishments throughout the city of Capitola already offer reusable bags for sale at a price as low as one dollar.

8. Even though paper bags are recycled at a much higher rate within the city of Capitola than plastic bags, the purpose of this chapter is to reduce all single-use bags. For this reason, a charge on paper bags is indicated as an incentive to reduce their use and encourage reusable bags.

9. Paper bags that contain a minimum of forty percent post-consumer recycled content have fewer negative impacts than virgin paper bags. Paper shopping bags with forty percent post-consumer recycled content are easily available, and such bags are in wide use by Capitola merchants.

10. Many California cities have adopted or are pursuing a ban as the most effective means to eliminate the impacts these plastic bags cause. State law does not prohibit jurisdictions from placing fees on plastic or paper bags. (Ord. 995 § 1 (part), 2014; Ord. 977 § 1, 2013)

#### **8.07.020 Definitions.**

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For the purposes of this chapter, the following definitions apply:

- A. "Carryout bags" means bags provided by retailers to customers at the point of sale to hold customers' purchases. "Carryout bags" do not include bags used to contain loose items prior to checkout, such as meat, produce, and bulk goods, and does not include prepackaged products.
- B. "Single-use plastic bag" or "single-use plastic carryout bag" means a single-use carryout bag of any size that is made from plastic and provided at the point of sale to customers by a retail establishment. Single-use plastic bags include both compostable and noncompostable carryout bags.
- C. "Single-use paper bag" means a checkout bag provided by a retail establishment at the point of sale that is made from paper and is not a reusable bag.
- D. "Recyclable" means material that can be sorted, cleansed, and reconstituted using the city's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise destroying solid waste.
- E. "Reusable bag" means any bag with handles that is specifically designed and manufactured for multiple reuse, and meets the following requirements: (1) is either made of cloth or other washable woven fabric, or made of durable material including plastic that is at least four mils thick; and (2) does not contain lead, cadmium, or any other heavy metal in toxic amounts. A reusable bag may be made of recyclable plastic such as high density polyethylene (HDPE), low density polyethylene (LDPE), or polypropylene.
- F. "Retail establishment" or "retail store" means all sales outlets, stores, shops, restaurants, vehicles, or other places of business located within the city of Capitola, which operate primarily to sell or convey goods, directly to the ultimate consumer.
- G. "Restaurants" means an establishment whose principal business is the sale of prepared food for consumption either on- or off-premises, are not covered under this chapter.
- H. "Exempted uses" means those point-of-purchase or delivery sales, which have received a special exemption through the city manager or designee, that allows the use of single-use bags. (Ord. 995 § 1 (part), 2014; Ord. 977 § 1, 2013)

**8.07.030 Ban on plastic bags and store charge for single-use paper carryout bags.**

- A. No retail establishment shall provide plastic carryout bags to customers at the point of sale, except as permitted in this chapter.
- B. No city of Capitola contractors, special events promoters, or their vendors, while performing under contract or permit shall provide plastic carry-out bags to customers at the point of sale.
- C. Single-use paper carryout bags provided to customers shall contain a minimum of forty percent

post-consumer recycled paper fiber, and be recyclable in the city of Capitola's curbside recycling program.

D. Retail establishments shall charge, during the first year of implementation of this chapter, a fee that will be established by the city council at the time of adoption of the ordinance codified in this chapter, for each single-use paper carryout bag provided to customers at the point of sale. The city council shall review the charge amount one year from the date of adoption to judge its effectiveness and at any time thereafter as the city council deems necessary. Notice of such fee shall be displayed in retail establishments at a prominent location.

E. The charge imposed pursuant to this section shall not be applied to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, the State Department of Social Services Food Stamp program, or other government subsidized purchase programs for low-income residents.

F. The ban on single-use plastic bags and the charge on single-use paper bags shall not apply to restaurants, or to bags that are integral to the packaging of the product, or bags without handles provided to the customer: (1) to transport produce, bulk food, pharmacy products or meat from a department within a retail store to the point of sale; or (2) to segregate food merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or single-use paper bag.

G. Retail establishments are strongly encouraged to make reusable bags available for sale to customers at a reasonable price.

H. Retail establishments shall indicate on the customer transaction receipt the number of carryout bags provided, and the total amount charged for those bags. (Ord. 977 § 1, 2013)

**8.07.040 Implementation.**

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A. Sixty days before the ordinance codified in this chapter takes effect, the city of Capitola shall post, mail or deliver a copy of it to retail establishments within the city limits of the city of Capitola.

B. The city of Capitola will distribute to each store a reproducible placard designed to inform shoppers of the city of Capitola policy for carryout bags.

C. The city of Capitola finance department shall provide a copy of this chapter to every new retail establishment that applies for a business license in the city of Capitola. (Ord. 977 § 1, 2013)

**8.07.050 Exemptions allowing single-use bags.**

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A. The city manager, or designee, may exempt a retail establishment from the requirement set forth in Section [8.07.030](#) of this chapter for a one-year period upon the retail establishment showing, in

writing, that this chapter would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing, and the city manager or designee decision shall be final.

B. An exemption application shall include all information necessary for the city manager or designee to make a decision, including, but not limited to, documentation showing factual support for the claimed exemption.

C. The city manager or designee may approve the exemption application in whole or in part, with or without conditions. (Ord. 977 § 1, 2013)

#### **8.07.060 Enforcement.**

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Enforcement of this chapter shall be as follows:

A. The city manager, or designee, shall have primary responsibility for enforcement of this chapter and shall have authority to issue citations for violation of this chapter. The city manager, or designee, is authorized to establish regulations or administrative procedures to ensure compliance with this chapter.

B. A person or entity violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction.

C. The city of Capitola may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure authorized by it.

D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

E. The city manager or designee may inspect any retail establishment's premises to verify compliance with this chapter. (Ord. 977 § 1, 2013)

#### **8.07.070 Violations.**

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Violations of this chapter shall be enforced as follows:

A. Violation of this chapter is hereby declared to be a public nuisance. Any violation described in Section [8.07.060](#) shall be subject to abatement by the city of Capitola, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by injunction, upon a showing of violation.

B. Upon a first violation by a retail establishment, the city manager, or designee, shall mail a written warning to the retail establishment. The warning shall recite the violation, and advise that future violations may result in fines.



C. Upon a second or subsequent violation by a retail establishment, the following penalties will apply:

1. A fine not exceeding one hundred dollars for the first violation that occurs thirty days or more after the first warning.
2. A fine not exceeding two hundred dollars for the second violation that occurs sixty days or more after the first warning.
3. A fine not exceeding five hundred dollars for the third violation that occurs ninety days or more after the first warning.
4. A fine not exceeding five hundred dollars for every thirty-day period not in compliance, that occurs ninety days or more after the first warning.

D. Special events promoters and their vendors who violate this chapter in connection with commercial or noncommercial special events shall be assessed fines as follows:

1. A fine not exceeding two hundred dollars for an event of one to two hundred persons.
2. A fine not exceeding four hundred dollars for an event of two hundred one to four hundred persons.
3. A fine not exceeding six hundred dollars for an event of four hundred one to six hundred persons.
4. A fine not exceeding one thousand dollars for an event of six hundred one or more persons.

E. Remedies and fines under this section are cumulative. (Ord. 977 § 1, 2013)

**8.07.080 Severability.**

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If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The city of Capitola hereby declares that it would have passed this title, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional. (Ord. 977 § 1, 2013)

**8.07.090 Effective date.**

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The ordinance codified in this chapter shall become effective two months after the date of final

passage by the city of Capitola city council. (Ord. 995 § 1 (part), 2014: Ord. 977 § 1, 2013)

**8.07.100 No conflict with federal or state law.**

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Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. (Ord. 977 § 1, 2013)

**8.07.110 Preemption.**

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The provisions of this chapter shall be null and void if state or federal legislation, or administrative regulation, takes effect with the same or substantially similar provisions as contained in this chapter. The city council shall determine whether or not identical or substantially similar statewide legislation has been enacted or regulations issued. (Ord. 977 § 1, 2013)

**Chapter 8.36  
ENVIRONMENTALLY ACCEPTABLE PACKAGING MATERIALS**

Sections:

- [8.36.010](#) Findings and intent.
- [8.36.020](#) Definitions.
- [8.36.030](#) Prohibited food service ware.
- [8.36.035](#) Prohibited retail sales.
- [8.36.040](#) Required biodegradable and compostable disposable food service ware.
- [8.36.050](#) Exemptions.
- [8.36.060](#) Liability and enforcement.
- [8.36.070](#) Violations – Penalties.
- [8.36.080](#) Study.

**8.36.010 Findings and intent.**

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The city council finds and declares:

- A. The city has a duty to protect the natural environment, the economy, and the health of its citizens.
- B. Effective ways to reduce the negative environmental impacts of throw-away food service ware include reusing food service ware and using compostable and biodegradable take-out materials made from renewable resources such as paper, corn starch and sugarcane.
- C. Polystyrene foam is a common environmental pollutant as well as a nonbiodegradable substance that is commonly used as food service ware by food vendors operating in the city.
- D. There continues to be no meaningful recycling of polystyrene foam food service ware and biodegradable or compostable food service ware is an affordable, safe, more ecologically sound alternative.
- E. Affordable biodegradable or compostable food service ware products are increasingly available for several food service applications such as cold cups, plates and hinge containers and these products are more ecologically sound than polystyrene foam materials and can be turned into a compost product.
- F. New Leaf Markets, Grinds Coffee Shop, and other Capitola businesses have successfully eliminated the use of polystyrene and nonbiodegradable packaging materials in the operation of their businesses.
- G. The Oakland Coliseum has successfully replaced its cups with biodegradable cornstarch cups and has shown an overall cost savings due to organics recycling.

H. Over one hundred fifty-five businesses in Oakland engage in organics recycling and it has been demonstrated that the use of biodegradable or compostable food service ware can reduce waste disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill.

I. The natural compost product from these biodegradable or compostable materials is used as fertilizer for farms and gardens, thereby moving towards a healthier zero waste system.

J. Disposable food service ware constitutes a large portion of the litter in Capitola's lagoon, waterways and storm drains, and on the beaches, streets, parks and public places and the cost of managing this litter is high and rising.

K. Polystyrene foam is notorious as a pollutant that breaks down into smaller, nonbiodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them.

L. Due to the physical properties of polystyrene, the EPA states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy."

M. A 1986 EPA report on solid waste named the polystyrene manufacturing process as the fifth largest creator of hazardous waste in the United States.

N. In the product manufacturing process as well as the use and disposal of the products, the energy consumption, greenhouse gas effect, and total environmental effect, polystyrene's environmental impacts were second highest, behind aluminum, according to the California Integrated Waste Management Board.

O. Styrene, a component of polystyrene, is a known hazardous substance that medical evidence and the Food and Drug Administration suggests leaches from polystyrene containers into food and drink.

P. Styrene is a suspected carcinogen and neurotoxin which potentially threatens human health.

Q. Styrene has been detected in the fat tissue of every man, woman and child tested by the EPA in a 1986 study.

R. The general public is not typically warned of any potential hazard, particularly in the immigrant and non-English-speaking community.

S. Due to these concerns nearly one hundred cities have banned polystyrene foam food service ware including several California cities, and many local businesses and several national corporations have successfully replaced polystyrene foam and other nonbiodegradable food service ware with affordable, safe, biodegradable products.

T. Restricting polystyrene foam products that are not wholly encapsulated or encased by a more

durable material and replacing non-biodegradable food service ware with biodegradable food service ware products in Capitola will further protect the public health and safety of the residents of Capitola, the city of Capitola's natural environment, waterways and wildlife, would advance the city's goal of developing a sustainable city, advance the city's goal of zero waste by 2020 and fulfill Article 10 of the Environmental Accords, whereby Capitola partnered with other cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year. (Ord. 964 § 1, 2011; Ord. 913 § 2, 2006)

**8.36.020 Definitions.**

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

- A. "Affordable" means purchasable by the food vendor for same or less purchase cost than the non-biodegradable, non-polystyrene foam alternative.
- B. "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.
- C. "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.
- D. "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 service 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.
- E. "City facilities" mean any building, structure or vehicles owned or operated by the city of Capitola, its agent, agencies, departments and franchisees.
- F. "Customer" means any person obtaining prepared food, merchandise or product from a restaurant or retail food vendor, or retail vendor.
- G. "Disposable food service ware" means all containers, bowls, plates, trays, cartons, cups, forks, spoons, knives and other items that are designed for one-time use and on, or in, which any restaurant, retail vendor or retail food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at restaurants, sold at restaurants, retail vendors or

retail food vendors.

H. "Food vendor" means any restaurant or retail food vendor located or operating within the city of Capitola.

I. "Polystyrene foam" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam 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). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

J. "Prepared food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food vendor's premises or within the city of Capitola. For the purposes of this ordinance, prepared food includes 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."

K. "Product" means any product such as coolers, cups, bowls, plates, clamshells, containers, ice chests, packing peanuts or other packing materials, beach or pool toys, or any other product or merchandise containing polystyrene foam that is not encapsulated or encased by a more durable material.

L. "Restaurant" means any establishment located within the city of Capitola that sells prepared food for consumption on, near, or off its premises by customers. Restaurant for purposes of this chapter includes itinerant restaurants, pushcarts and vehicular food vendors.

M. "Retail food vendor" means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the city of Capitola that sells prepared food.

N. "Retail vendor" means any store that sells goods or merchandise located or operating within the city of Capitola.

O. "Special events promoter" means an applicant for any special events permit issued by the city or any city employee(s) responsible for any city organized special event. (Ord. 964 § 2, 2011; Ord. 939 § 1, 2009; Ord. 913 § 2, 2006)

**8.36.030 Prohibited food service ware.**

A. Except as provided in Section [8.36.050](#), food vendors are prohibited from providing prepared food to customers in disposable food service ware that uses polystyrene foam.

B. All city facilities are prohibited from using polystyrene foam disposable food service ware and all city departments and agencies will not purchase or acquire polystyrene foam disposable food service ware for use at city facilities.

C. City franchisees, special event promoters, contractors and vendors doing business with the city shall be prohibited from using polystyrene foam disposable food service ware in the city of Capitola. (Ord. 964 § 3, 2011; Ord. 939 § 1, 2009; Ord. 913 § 2, 2006)

**8.36.035 Prohibited retail sales.**

No retail vendor or special event promoter in the city of Capitola may sell, rent or otherwise provide any polystyrene foam product which is not wholly encapsulated or encased within a more durable product, except as exempted in Section [8.36.050](#). This specifically includes, but is not limited to, cups, plates, bowls, clamshells and other products intended primarily for food service use, as well as coolers, containers, ice chests, pool or beach toys, packing peanuts or other packaging materials. (Ord. 964 § 4, 2011)

**8.36.040 Required biodegradable and compostable disposable food service ware.**

A. All food vendors using any disposable food service ware will use biodegradable or compostable disposable food service ware unless they can show a biodegradable or compostable product is not available for a specific application or does not exist. A food vendor may charge a “take out fee” to customers to cover the cost difference.

B. All city facilities will use biodegradable or compostable disposable food service ware.

C. City franchises, special events promoter, contractors and vendors doing business with the city will use biodegradable or compostable disposable food service ware unless they can show a biodegradable or compostable product is not available for a specific application or does not exist. (Ord. 964 § 5, 2011; Ord. 939 § 1, 2009; Ord. 913 § 2, 2006)

**8.36.050 Exemptions.**

A. Prepared foods prepared or packaged outside the city of Capitola are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the city of Capitola are encouraged to follow the provisions of this chapter.

B. Food vendors will be exempted from the provisions of this chapter for specific items or types of disposable food service ware if the city manager or designee finds that a biodegradable or compostable alternative does not exist.

C. To apply for an exemption from the requirement set forth in Section [8.36.040](#), a food vendor must submit an application to the city manager. The application shall include all information necessary for

the city manager or the manager's designee to make a decision, including, but not limited to, documentation showing factual support for the claimed exemption.

D. Disposable food service ware composed entirely of aluminum is exempt from the provisions of this chapter.

E. Meat trays are exempt from the provisions of this chapter.

F. Products wholly encapsulated or encased by another non-polystyrene product, are exempt from the provisions of this chapter. Examples include surfboards, boats, life preservers, construction materials, craft supplies and durable coolers not principally composed of polystyrene.

G. Emergency Supply and Services Procurement: In a situation deemed by the city manager to be an emergency for the immediate preservation of the public peace, health or safety, city facilities, food vendors, retail vendors, city franchises, contractors and vendors doing business with the city shall be exempt from the provisions of this chapter. (Ord. 964 § 6, 2011; Ord. 939 § 1, 2009; Ord. 913 § 2, 2006)

**8.36.060 Liability and enforcement.**

A. The city manager or designee will have primary responsibility for enforcement of this chapter. The city manager or 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 or retail vendor to verify compliance.

B. City facilities, food vendors, retail food vendors, retail vendors and restaurants will be given three months from the effective date of the ordinance codified in this chapter to comply with the provisions herein.

C. If, after the first three months of the effective date of the ordinance codified in this chapter, the city manager or designee determines that a violation of this chapter occurred, he or she will issue a written warning notice to the retail food establishment that a violation has occurred, specifying a three month time period for the food or retail vendor to conform to the provisions of this chapter.

D. Violation or failure to comply with any of the requirements of this chapter shall constitute an infraction pursuant to Title 4 of the Capitola Municipal Code.

E. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter. (Ord. 964 § 7, 2011; Ord. 913 § 2, 2006)

**8.36.070 Violations – Penalties.**

A. If the city manager or designee determines that a violation of this chapter has occurred, he or she will issue a written warning notice to the food or retail vendor or special event promoter that a violation



has occurred, and give the offending party three months to conform to the provisions of this chapter.

B. If the food or retail vendor or special events promoter has subsequent violations of this chapter, the following penalties will apply:

1. A fine not exceeding one hundred dollars for the first violation after the warning notice is given.
2. A fine not exceeding two hundred dollars for the second violation after the warning notice is given.
3. A fine not exceeding five hundred dollars for the third and any future violations after the warning notice is given. (Ord. 964 § 8, 2011; Ord. 939 § 1, 2009; Ord. 913 § 2, 2006)

**8.36.080 Study.**

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One year after the effective date of the ordinance codified in this chapter, the city manager will conduct a study on the effectiveness of this chapter. (Ord. 913 § 2, 2006)