

## DRAFT ORDINANCE

### **SEC. 66.09. The Single Use Plastic Reduction Ordinance.**

#### **SEC. 66.0901. DEFINITIONS.**

For purposes of this Article 6, the following definitions shall apply:

"City" means the City of San Diego.

"City contractors and lessees" means any person or entity that has a contract with the City for public works or improvements to be performed, for a franchise, concession, or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the City, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the City.

"City Facility" means any building, structure, park, beach, or vehicle owned or operated by the City of San Diego.

"City Facility Food Provider" means an entity that provides, but does not sell, Prepared Food in City Facilities.

"Department" means the City of San Diego Environmental Services Department (ESD).

"Director" means the Director of the Environmental Services Department, or his or her designee.

"Distribute" means the sale, offer for sale, or other transfer of possession of an item for compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of possession of another item for compensation.

"Egg Carton" means a carton for raw eggs sold to consumers from a refrigerator case or similar retail appliance.

"Food Service Ware" means all containers, bowls, plates, trays, cups, lids, straws, forks, spoons, knives, napkins, and other like items that are designed for one-time use for Prepared Foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Vendors. The term "Food Service Ware" does not include items composed entirely of aluminum, or polystyrene foam coolers and ice chests.

"Food Vendor" means any Restaurant or Retail Food Vendor located or operating within

the City of San Diego.

"Meat and Fish Tray" means a tray for raw meat, fish, or poultry sold to consumers from a refrigerator case or similar retail appliance.

"Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.

"Polystyrene Foam" means 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 polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.

"Prepared Food" means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared (collectively "prepared") within the City of San Diego for individual customers or consumers. For the purpose of this Article, Prepared Food includes takeout food, but does not include raw eggs or raw, butchered meats, fish and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance.

"Recyclable" means material that can be sorted, cleansed, and reconstituted using San Diego'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 thermally destroying solid waste.

"Restaurant" means any establishment located within the City of San Diego that sells Prepared Food for consumption on, near, or off its premises. For purposes of this Article, the term includes a Restaurant operating from a temporary facility, cart, vehicle or mobile unit.

"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 San Diego that sells Prepared Food.

## **SEC. 66.0902. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED.**

(a) No person may sell, offer for sale, or otherwise Distribute within the City (1) any Food Service Ware made, in whole or in part, from Polystyrene Foam.

(b) The Director shall, after a noticed public hearing, adopt a list of suitable alternative Compostable or Recyclable Food Service Ware products. "Suitable alternative Compostable or Recyclable Food Service Ware products" means Food Service Ware products that the Director determines serve the same intended purpose as non-compliant products and meets the standards for what is Compostable and/or Recyclable set under this Article 6, and are reasonably affordable. The Director shall regularly update the list.

If a product is included on the Director's list it will be deemed to comply with this Section 66.0902. If a product is not included on the Director's list, the person using the product as Food Service Ware will have the burden of establishing to the Director's satisfaction that the product complies with this Section.

**SEC. 66.0903. USE OF NON-COMPLIANT DISPOSABLE FOOD SERVICE WARE PROHIBITED.**

(a) Food Vendors may not sell, offer for sale, or otherwise Distribute Prepared Food in Disposable Food Service Ware made, in whole or in part, from Polystyrene Foam.

(b) City Facility Food Providers may not provide Prepared Food to City Facilities in Disposable Food Service Ware made in whole or in part, from Polystyrene Foam.

(c) City Departments may not purchase, acquire, or use Disposable Food Service Ware for Prepared Food where the Food Service Ware is made, in whole or in part, from Polystyrene Foam.

(d) City contractors and lessees may not use Food Service Ware for Prepared Food in City Facilities and while performing under a City contract or lease where the Food Service Ware is made, in whole or in part, from Polystyrene Foam.

(e) Persons may not use Food Service Ware for Prepared Food in or at City Facilities, including parks, beaches, and recreation centers, where the Food Service Ware is made, in whole or in part, from Polystyrene Foam.

(f) The Director shall, after a noticed public hearing, adopt a list of suitable alternative Compostable or Recyclable Food Service Ware products. "Suitable alternative Compostable or Recyclable Food Service Ware products" means Food Service Ware products that the Director determines serve the same intended purpose as non-compliant products, meet the standards set under this Article 6, and are reasonably affordable. The Director shall regularly update the list.

If a product is included on the Director's list, it will be deemed to comply with this Section 66.0903. If a product is not included on the Director's list, the person using the

product as Food Service Ware will have the burden of establishing to the Director's satisfaction that the product complies with this Section.

(g) It shall not be a violation of this Section 66.0903 to sell, provide, or purchase Prepared Food packaged in Food Service Ware otherwise prohibited by subsections (a) through (c), or to use Food Service Ware otherwise prohibited by subsection (d), if the Prepared Food is packaged outside the City and is sold or otherwise provided to the consumer in the same Food Service Ware in which it originally was packaged. Businesses packaging Prepared Food outside the City are encouraged to use Food Service Ware that is Compostable or Recyclable and is not made, in whole or in part, from Polystyrene Foam.

#### **SEC. 66.0904. OTHER POLYSTYRENE FOAM PRODUCTS.**

(a) No person may sell, offer for sale, or otherwise distribute for compensation within the City:

- (1) Food Service Ware;
- (2) coolers, ice chests, or similar containers;
- (3) pool or beach toys; or
- (4) dock floats, mooring buoys, or anchor or navigation markers;

made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a more durable material.

(b) No person may sell, offer for sale, or otherwise Distribute for compensation within the City Meat and Fish Trays and Egg Cartons made, in whole or in part, from Polystyrene Foam, either as separate items or as part of the sale of raw meat, fish, poultry, or eggs sold to consumers from a refrigerator case or similar retail appliance.

#### **SEC. 66.0905. POLYPROPYLENE PLASTIC PRODUCTS.**

(a) A Food Vendor or Retail Food Vendor may only offer for use or distribute within the City:

- (1) utensils, including, but not limited to forks, knives, spoons;

made, in whole or in part, from Polypropylene plastic for takeout (to-go) orders of Prepared Food upon the request of the person(s) ordering the Prepared Food.

(b) A Food Vendor or Retail Food Vendor may only offer for use or distribute within the City:

(1) straws;

made, in whole or in part, from Polypropylene plastic upon the request of the person(s) ordering the Prepared Food.

#### **SEC. 66.0906. IMPLEMENTATION; CITY CONTRACTS AND LEASES.**

(a) The Director shall create, maintain, and regularly update the product lists referenced in Sec. 66.0902(b) and Sec. 66.0903(f).

(b) The Director is authorized to promulgate regulations, guidelines and forms, and to take any and all other actions reasonable and necessary to implement and enforce this Article.

(c) The Director may waive the provisions of Sections 66.0902, 66.0903, and 66.0904 due to a feasibility-based hardship. The person seeking the waiver must demonstrate to the Director's satisfaction that no reasonably feasible alternative exists to a specific non-compliant product.

(d) The Director may waive the provisions of Sections 66.0902, 66.0903, and 66.0904 due to a financial hardship. The person seeking the exemption must demonstrate to the Director's satisfaction both (1) that the applicant has a gross income of less than \$500,000 on the applicant's annual income tax filing for the most recent tax year, and (2) that with respect to each specific non-compliant product, there is no suitable and reasonably affordable alternative product available.

(e) A person seeking a waiver under subsections (c) or (d) of this Section 66.0906 must submit a written application on a form approved by the Director. The Director may require the applicant to submit additional information or documentation to make a determination regarding the waiver requested the Director shall review requests for waivers on a case-by-case basis, and may grant the waiver in whole or in part, with or without conditions, for a period of up to 24 months. An applicant for renewal of a waiver must apply for a new waiver period no later than 60 days prior to the expiration of the then-current period to preserve a continuous waiver status. The Director shall review each application anew and base his or her determination on the most current information available. The Director's determination shall be final and shall not be subject to appeal.

(f) Any person, or City officer, employee, or department may seek a waiver from the requirements of subsections (b), (c), (d), or (e) of Section 66.0903 of his Article by filing a request on a form approved by the Director. The Director may grant a waiver in whole or in part, with or without conditions, for a period of up to 24 months if the person, City officer, employee, or department person seeking the waiver has demonstrated to the Director's satisfaction that strict application of the specific requirement would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances, or the waiver is otherwise justified.

(g) In addition to individual waivers provided (or under subsections (c), (d). and (f) of this Section 66.0906, the Director may waive the provisions of Section 66.0904 with respect to particular categories of uses of Packing Materials or Egg Cartons or Meat and Fish Trays made, in whole or in part, from Polystyrene Foam, or other non-Compostable or non-Recyclable material. The Director may grant a waiver under this subsection (g) in whole or in part, with or without conditions, for a period of up to 24 months, upon finding that no suitable and reasonably affordable alternative to use of the non-compliant product is feasible. The Director's determination shall be final and shall not be subject to appeal.

#### **SEC.66.0907. ENFORCEMENT AND PENALTIES.**

(a) The Director shall issue a written warning to any person he or she determines is violating Sections 66.0902, 66.0903, 66.0904, and 66.0905 of this Article. If after issuing a written warning of violation, the Director finds that the person continues to violate the provisions of Sections 66.0902, 66.0903, 66.0904, and 66.0905, the Director may apply for or impose the various sanctions provided in this Section.

(b) Any person who violates the provisions of Sections 66.0902, 66.0903, 66.0904, and 66.0905 of this Article shall be guilty of an infraction. If charged as an infraction, upon conviction thereof, said person shall be punished for the first offense by a fine of not more than \$200.00 for a first violation; not more than \$350.00 for a second violation in the same year and not more than \$500.00 for each subsequent violation in the same 12-month period.

(c) The Director may issue an administrative fine or civil liability citation to any such person violating Sections 66.0902, 66.0903, 66.0904, and 66.0905 in accordance with San Diego Municipal Code.

(d) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Article, including without limitation, civil penalties in an amount not exceeding \$200.00 for the first violation, \$350.00 for the second violation, and \$500.00 for each subsequent violation in any given 12-month period.

(e) The City may not recover both administrative and civil penalties pursuant to subsections (c) and (d) of this Section for the same violation. Penalties collected under subsections (c) and (d) of this Section, which may include recovery of enforcement costs, shall be used to fund implementation and enforcement of this Article.

**SEC. 66.0908. SEVERABILITY.**

If any section, subsection, sentence, clause, or phrase of this Article 6 is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Article. The City Council hereby declares that it would have passed this Article and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Article would be subsequently declared invalid or unconstitutional.

**SEC. 66.0909. NO CONFLICT WITH FEDERAL OR STATE LAW.**

This Article is intended to be a proper exercise of the City's police power and role as a market participant, to operate only upon its own officers, agents, employees, and facilities, and other persons acting within the City's boundaries, and not to regulate inter-city or interstate commerce. Nothing in this Article shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law.

**SEC. 66.0910. UNDERTAKING FOR THE GENERAL WELFARE.**

In undertaking the implementation of this Article, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

**SEC. 66.0911. EFFECTIVE DATE; OPERATIVE DATE.**

This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the City Council overrides the Mayor's veto of the ordinance. This ordinance shall become operative on *October 1, 2018*; provided, however, that the application of this ordinance to Meat and Fish Trays shall become operative on *January 1, 2019*.

**~~§44.0226 Plastic Food Containers—Definitions~~**

In this Division the following definitions shall apply:

~~“Polystyrene Plastic” means a thermoplastic petrochemical material utilizing a styrene monomer and a blowing agent compound which is used to produce molded expanded or extruded expanded polystyrene plastic foam.~~

~~“Polystyrene Food Packaging” means a thermoplastic petrochemical material utilizing a styrene monomer and blowing agents used for packaging and containing food and drink materials, including, but not limited to, cups, bowls, plates, hinge carry out and sandwich containers, egg cartons, and stock food containers. (Renumbered from Sec. 45.0201 and retitled on 3-8-1994 by O-18049 N.S.) (Renumbered from former Section 42.0170 on 1-2-2013 by O-20229 N.S.; effective 2-1-2013.)~~

#### ~~§44.0227 Plastic Food Containers— Prohibitions as to Certain Polystyrene~~

~~On or after January 1, 1989, it shall be unlawful to manufacture, sell or distribute to any person in this City any polystyrene food packaging product made of or with polystyrene plastic using a fully halogenated chlorofluorocarbon (CFC—12 dichlorodifluoromethane), except with the authorization of the City Manager. (Renumbered from Sec. 45.0202 and retitled on 3-8-1994 by O-18049 N.S.) (Renumbered from former Section 42.0171 on 1-2-2013 by O-20229 N.S.; effective 2-1-2013.)~~

~~§44.0228 Plastic Food Containers— Exemptions (a) The City Manager may exempt an item or type of polystyrene packaging from the requirements of this Division, upon a showing that the item or type has no acceptable non-CFC processed equivalent. (b) Polystyrene food packaging manufactured prior to January 1, 1989 is exempt from the provisions of this ordinance. (Renumbered from Sec. 45.0203 and retitled on 3-8-1994 by O-18049 N.S.) (Renumbered from former Section 42.0172 on 1-2-2013 by O-20229 N.S.; effective 2-1-2013.)~~

~~§44.0229 Plastic Food Containers— Penalty In addition to any other applicable civil or criminal penalty, any person convicted of a violation of section 44.0227 is guilty of an infraction, which is punishable by a fine not to exceed \$50.00 for the first violation, \$100.00 for the second violation within one (1) year, and \$250.00 for each additional violation within one (1) year. Each incident in violation of section 44.0227 shall constitute a separate violation. (Renumbered from former Section 42.0173, and amended 1-2-2013 by O-20229 N.S.; effective 2-1-2013.)~~



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