

ORDINANCE NO. 838-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA REPEALING AND REPLACING ARTICLE 4, "SUSTAINABLE FOOD SERVICE WARE" WITHIN CHAPTER 5 OF TITLE 6 REGULATING PLASTIC BEVERAGE STRAWS, STIRRERS AND CUTLERY AND POLYSTYRENE DISPOSABLE FOOD SERVICE WARE

WHEREAS, the City Council of the City of Pacifica adopted Ordinance 767 in January, 2002, codified in Article 4 within Chapter 5 of Title 6 (Section 6-5.401 et seq.) of the Pacifica Municipal Code, which established certain standards relating to the use of food service ware by food vendors within the City of Pacifica, including the required use of biodegradable, compostable, reusable or recyclable disposal food service ware; and

WHEREAS, since adopting Ordinance 767, the science and understanding of which types of plastics are appropriate for recycling and composting and which types of plastics are biodegradable has evolved; and

WHEREAS, the California State Legislature has recognized that littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs. (California Public Resources Code § 42355.) The State Legislature further declared its intent to ensure that environmental marketing claims, including claims of biodegradation of plastics, do not lead to an increase in environmental harm associated with plastic litter by providing consumers with a false belief that certain plastic products are less harmful to the environment. (*Id.*)

WHEREAS, although plastics are generally recyclable, plastics synthesized from petroleum and natural gas do not biodegrade. Even with the emergence of bioplastics, which are derived from renewable biomass sources, such as plants and microorganisms, there is no certified type of bioplastic that biodegrade in a marine environment.

WHEREAS, plastic straws, stirrers, and cutlery are generally made from polystyrene or polypropylene. Although the City has already prohibited the use of foam polystyrene food service ware by food vendors providing prepared food, the City desires to specifically prohibit plastic and bioplastic beverage straws, stirrers, and cutlery to fulfill the City's goals of reducing littered plastic products and encouraging sustainable food service ware products; and

WHEREAS, on August 13, 2018 and September 10, 2018, the City Council held public meetings to discuss issues relating to litter within the City and possibly adopting stronger standards relating to certain types of litter such as plastic cutlery, plastic stirrers and plastic beverage straws; and

WHEREAS, according to the Ocean Conservancy International Coastal Cleanup 2017 Report, plastic lids and straws are the 6th to 7th most found items on the world's beaches; and

WHEREAS, the City has an interest in preserving its beaches and the community in general, litter-free to ensure the health and safety of its citizens and the preservation of the environment.

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

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Repeal and Replacement.

Article 4, "Sustainable Food Service Ware," of Chapter 5, "Garbage, Collection and Recycling" within Title 6, "Health and Safety" of the Pacifica Municipal Code is hereby repealed in its entirety and replaced in its entirety to read as follows:

"Article 4, Sustainable Food Service Ware and Prohibited Plastic Products

Sec. 6-5.401. –Definitions.

- (a) "ASTM Standard Specifications" means Standard Specifications for Compostable Plastics D6400 or Standard Specifications for Biodegradable Plastics D6868, as adopted or subsequently amended by the American Society for Testing and Materials (ASTM).
- (b) "City facilities" means any building, structure or vehicles owned or operated by the City of Pacifica, its agent, agencies and departments.
- (c) "Compostable" means material that can be broken down into, or otherwise become part of usable compost in a safe and timely manner. "Compostable" also includes a plastic-like material if the material meets the ASTM Standard Specifications for compostability and the product is labeled in accordance with California Public Resources Code Section 42357 et seq., and Department of the Environment regulations for easy identification of compostable products meeting ASTM Standard Specification for compostable plastics.
- (d) "Cup" means an open, usually bowl shaped drinking vessel for hot or cold liquids.
- (e) "Customer" means any person receiving goods from a food vendor.
- (f) "Disposable food service ware" means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, sporks, knives, stirrers and other items designed for one-time or nondurable uses on or in which any food vendor directly places or packages prepared foods or which are used to consume foods. "Disposable food service ware" does not include coolers and ice chests that are intended for reuse.
- (g) "Food vendor" means any and all sales outlets, stores, shops, vehicles or other places of business located within the City of Pacifica which operate primarily to sell or convey foods or beverages directly to the ultimate consumer. "Food vendor" shall include both restaurants and retail food vendors.

- (h) "Polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes called "Styrofoam TM" a Dow Chemical Co. trademarked form of EPS insulation) also referred to as expanded polystyrene (EPS) 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, form molding, and extrusion-blow molding (extruded foam polystyrene), and in this article is referenced as "foam polystyrene." Foam polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. The term "polystyrene" also means and includes clear or solid polystyrene which is also known as "oriented," and referenced in this article as "solid polystyrene." "Solid polystyrene" is generally used to make clear clamshell containers, and clear or colored straws, lids and utensils.
- (i) "Plastic beverage straw" means a tube for use in consuming beverages, intended for only one-time use, made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources for transferring a beverage from its container to the mouth of the drinker. "Plastic beverage straw" includes compostable and biodegradable petroleum or biologically based polymer forms of straws, but does not include forms of straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.
- (j) "Plastic cutlery" means any utensil, such as a fork, spoon, spork, or knife, intended for only one-time use, made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources intended for only one-time use. "Plastic cutlery" includes compostable and biodegradable petroleum or biologically based polymer forms of cutlery, but does not include forms of cutlery that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.
- (k) "Plastic stirrer" means a device used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources. "Plastic stirrer" includes compostable and biodegradable petroleum or biologically based polymer forms of stirrers, but does not include forms of stirrers that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.
- (l) "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 within the City of Pacifica. Prepared food may be eaten either on or off the premises. Prepared food does not include raw food such as eggs or meat.
- (m) "Restaurant" means any establishment located within the city that prepares and sells that prepared food for consumption on, near, or off its premises to customers. For purposes of this article, the term includes a restaurant operating from a temporary facility, cart, vehicle, or mobile unit and also includes fast food restaurants.

- (n) "Retail food vendor" or "vendor" means any establishment other than a restaurant, located within the city where prepared food is sold for consumption on, near or off its premises to customers. For purposes of this article the term includes a delicatessen or cafe.

Sec. 6-5.402. -Prohibited use of foam polystyrene or solid polystyrene.

- (a) Food vendors are prohibited from providing prepared food to customers in foam polystyrene or solid polystyrene disposable food service ware.
- (b) No foam polystyrene or solid polystyrene disposable food service ware shall be used in any City facilities. No city department or agency will purchase or acquire foam polystyrene or solid polystyrene disposable food service ware for use at City facilities.

Sec. 6-5.403. -Prohibited use of plastic cutlery, plastic stirrers, and plastic beverage straws and encouraged use of paper cups.

- (a) No restaurant or retail food vendor shall use, distribute, or provide to its customers plastic cutlery, plastic beverage straws, or plastic stirrers.
- (b) Nothing in this section shall preclude a restaurant or retail food vendor from offering non-plastic disposable food service ware such as those made from paper, sugar cane, or bamboo to customers; or encouraging non-use of plastic lids, cups or plastic containers.
- (c) Restaurants and retail food vendors are strongly encouraged to use, distribute, or provide 100% compostable paper cups.
- (d) All individuals, entities or organizations that rent or use City facilities shall be prohibited from using plastic beverage straws, plastic stirrers, or plastic cutlery and are strongly encouraged to use 100% compostable paper cups.

Sec. 6-5.404. -Exemptions.

- (a) Foods prepared or packaged outside the City of Pacifica are exempt from the provisions of this article. Purveyors of food prepared or packaged outside the City of Pacifica are encouraged to follow the provisions of this article.
- (b) Food vendors may be exempted from the provisions of this article if the City Manager or his /her designee finds that imposing the requirements of this article would cause undue hardship. "Undue hardship," for purposes of this article, means the food vendor is financially unable to comply with the requirements of this article or that the requirements imposed by this article would be impossible to comply with.

- (1) Any food vendor may seek an exemption from the requirements of this article by filing a request in writing with the City Manager or his/her designee. The City Manager or his/her designee may waive any specific requirement(s) of this article for a period of not more than one year if the food vendor qualifies for the exemption.
- (2) A food vendor seeking an exemption must submit documents that are suitable for consideration and enable the City to reasonably determine that the food vendor is unable to comply with this article. Those documents may include, but are not limited to:
 - i. Accurate, complete and legible copies of state and federal income tax returns and all schedules for the preceding tax year;
 - ii. Financial statements;
 - iii. Loan applications;
 - iv. Bank account records;
 - v. Income and expense records for twelve (12) months preceding submittal for the request;
 - vi. Purchasing and inventory records;
 - vii. Any other documentation as may be requested by the City Manager or his/her designee.
- (3) A food vendor granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship if the food vendor wishes to have the exemption extended. The City Manager's or his/her designee's decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.

Sec. 6-5.405. -Enforcement.

The City Manager or his/her designee will have primary responsibility for enforcement of this article. The City Manager or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this article, including, but not limited to, entering the premises of any food vendor to verify compliance in accordance with applicable law.

Sec. 6-5.406. -Violations and penalties.

- (a) Causing, permitting, aiding, abetting or concealing a violation of any provision of this article shall also constitute a violation of this article.
- (b) Any violation of this article shall constitute an infraction.
- (c) Violations of this article are subject to the remedies and penalties set forth in Title 1, Chapter 2 of this Code.
- (d) Violations of this article shall also be punishable in accordance with Title 1, Chapter 6 of this Code.

Section 3. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), under Section 15061(b)(3) of the CEQA Guidelines (14 Cal. Code Regs. 15000 et seq.) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published in accordance with State law.

Section 6. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

PASSED AND ADOPTED this 13th day of November, 2018, by the following vote:

AYES: Keener, Vaterlaus, Digre, O'Neill, Martin

NOES:

ABSTAIN:


ABSENT:




John Keener, Mayor

ATTEST:

APPROVED AS TO FORM:



Sarah Coffey, City Clerk



For Michelle Marchetta Kenyon, City Attorney