

ORDINANCE NO. 872-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA REPEALING AND REPLACING ARTICLE 4, "SUSTAINABLE FOOD SERVICE WARE AND PROHIBITED PLASTIC PRODUCTS" WITHIN CHAPTER 5 OF TITLE 6 WITH A NEW ARTICLE 4, "REGULATING THE USE OF DISPOSABLE FOOD SERVICE WARE BY FOOD FACILITIES" TO REGULATE THE USE OF DISPOSABLE FOOD SERVICE WARE

WHEREAS, the City Council of the City of Pacifica adopted Ordinance 838 in October, 2018, 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 disposable food service ware by Food Facilities within the City of Pacifica, including prohibiting the use of plastic cutlery, stirrers, and straws; and

WHEREAS, the City of Pacifica ("City") is committed to sustainability, environmental preservation, and reducing greenhouse gas emissions; and

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; and

WHEREAS, the production, management, and consumption associated with disposable food service ware, typically used for only a few minutes before being discarded, have significant environmental impacts, including environmental contamination; consumption of precious resources such as energy and water; emissions of greenhouse gases; air and water pollution; litter on streets; and plastic pollution in waterways and oceans; and

WHEREAS, the most effective ways to reduce the negative environmental impacts of disposable food service ware include, in order of priority, using reusable food service ware; using natural -fiber based compostable materials, many made from renewable resources such as bamboo, wheat stalk/stem, and sugarcane that do not contain toxic chemicals; and recycling food service ware. When products are reused and recycled, natural resources are spared, less energy is used for the production of new products, and premium landfill space is preserved; when compostable products are turned into compost, they can reduce water use and lessen the need for fertilizer at the site where the compost is applied (e. g., gardens, yards, farm land, etc.), which can also lead to cost savings since less/no fertilizers need to be purchased; and

WHEREAS, reduction of disposable food service ware in the environment will advance compliance with federal, state, and local clean water mandates; 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 and Prohibited Plastic Products” 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, Regulating the Use of Disposable Food Service Ware by Food Facilities

Sec. 6-5.401. –Definitions.

The following terms, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) “Aluminum Foil- based” means any Disposable Food Service Ware composed entirely of aluminum, including but not limited to aluminum tray liners, aluminum foil, and aluminum foil baskets.
- (b) “Compostable” means that an item or material:
 - 1. Meets standards for composability from a certified/approved independent third-party approved by the Enforcing Agent, in collaboration with local waste processors, haulers, and/or other entities, as needed; and/or
 - 2. Is any variation of acceptable materials that will break down or otherwise become part of usable compost in a safe and timely manner as determined by the Enforcing Agent, in collaboration with local waste processors, haulers, and/or other entities, as needed; and
 - 3. Is Natural Fiber-based. Compostable items may include those that are made entirely of Natural Fiber or Natural Fiber-based items that are coated or lined with biologically based polymer, such as, but not limited to corn or other plant sources (e.g., compostable plastics), if certified/approved by independent third parties approved by the Enforcing Agent.

“Compostable” does not include items made entirely/primarily of biologically based polymer (e.g., PLA, PHA, or other compostable plastic), even if labeled or certified as compostable.

- (c) "Customer" means any person receiving goods from a Food Facility.
- (d) “Disposable” means designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple reuse
- (e) “Enforcing Agent” shall mean the Manager of the County of San Mateo or their designee as set forth in the Memorandum of Understanding (MOU) dated February 28, 2022 between the City of Pacifica and San Mateo County authorizing the County of San Mateo to provide education and enforcement services within the City of Pacifica. If the MOU is terminated by either party for any reason, an alternative Enforcing Agent may be designated by the City Manager or their designee.

- (f) “Food Service Ware” means food contact products used for serving, distributing, holding, packaging, and/or transporting Prepared Food including, but not limited to plates, cups, bowls, trays, clamshell containers, boxes, utensils, straws, lids, and food contact paper boxes, utensils, straws, lids, and food contact paper (e.g., wraps, bags, tray liners, etc.). The term "Food Service Ware" includes Food Service Ware Accessories.
- (g) “Food Service Ware Accessories” include different types of Food Service Ware such as straws, stirrers, Utensils, condiment cups and packets, cocktail sticks/picks, toothpicks, napkins, cup spill plugs, cup sleeves, and other similar accessory or accompanying Food Service Ware used as part of food or beverage service or packaging. Detachable lids for beverage cups and food containers are not considered a Food Service Ware Accessory.
- (h) “Perfluoroalkyl and Polyfluoroalkyl substances (PFAS)” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- (i) “Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Restrictions” mean either of the following:
 - 1. PFAS has not been intentionally added to a product or product component.
 - 2. The presence of PFAS in a product or product component is below 100 parts per million, as measured in total organic fluorine.
- (j) “Food Facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food to the public for human consumption, as defined by the California Health and Safety Code Section 113789 or successor. It includes both permanent and temporary food facilities. Public schools are exempt from the provisions of this article.
- (k) “Food Scrap Composting Method” means (1) self-hauling of food scraps to a permitted composting facility or a transfer station that accepts food scraps that will be transferred to a permitted composting facility for on-site compost processing, (2) food scrap compost collection service provided by a curbside hauler, or (3) on-site food scrap composting.
- (l) “Healthcare Facilities” mean places that provide healthcare to the public. Healthcare Facilities includes, but is not limited to hospitals, clinics, outpatient care centers, nursing homes, psychiatric care centers, medical offices, hospice homes, mental health and addiction treatment centers, orthopedic and other rehabilitation centers, urgent care, birth centers, etc.
- (m) “Natural Fiber/Natural Fiber-based” means a plant or animal-based, non-synthetic fiber, including but not limited to products made from paper, sugarcane, bamboo, wheat stems/stalk, hay, wood, etc.
- (n) “Non-Compostable” means not meeting the definition of Compostable set forth in this article.
- (o) “On-Premises Dining” means food prepared for consumption on the premises of the Food Facility either indoors or outdoors.
- (p) “Off-Premises Dining” means food prepared for consumption off of the premises of the Food Facility. “Off-Premises Dining” includes, but is not limited to, Takeout Food Delivery Service, drive-through and catering off-site.
- (q) "Polystyrene based" means and includes expanded polystyrene, which is a thermoplastic petrochemical material 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). The term “polystyrene” also

includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene [EPS]) and clear or solid polystyrene known as oriented polystyrene

(r) "Prepackaged Food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer and prepared at an approved source.

(s) "Prepared Food" means food or beverages that undergo a cooking or food preparation technique on the Food Facility's premises for consumption by the public. Cooking or food preparation technique includes, but is not limited to the following:

1. Cooking methods, utilizing the application of heat, such as steaming, microwaving, simmering, boiling, broiling, grilling, frying, or roasting.
2. Beverage preparation, such as blending, brewing, steeping, juicing, diluting, or pouring.
3. Food preparation techniques such as defrosting, rinsing, washing, diluting, cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing, decorating or icing.

Prepared Food 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.

(t) "Reusable" means Food Service Ware and Food Service Ware Accessories that are manufactured of durable materials and specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and are safe for washing and sanitizing according to applicable regulations.

(u) "Standard Condiment" means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, and includes different types such as ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, and sugar/sugar substitutes.

(v) "Takeout Food" means Prepared Food requiring no further preparation, which is purchased to be consumed off a Prepared Food Facility's premises. Takeout Food includes Prepared Food delivered by a Food Facility or by a third-party Takeout Food Delivery Service.

(w) "Takeout Food Delivery Service" is a service that delivers Takeout Food from a Food Facility to a customer for consumption off the premises. This service can be provided directly by the Food Facility or by a third-party

(x) "Utensils" include different types of instruments used to assist the consumption of food, specifically, forks, knives, spoons, sporks, chopsticks, and tongs.

Sec. 6-5.402. -Distribution of Disposable Food Service Ware and Standard Condiment

(a) Except as provided in Subsection (b) of this Section, Food Facilities for Off-Premise Dining (e.g., Takeout Food Delivery Service, catering off-site, etc.), shall not provide any Disposable Food Service Ware Accessories or Standard Condiment in Disposable packaging to a consumer unless the specific type of Disposable Food Service Ware Accessory (including different types of Utensils) or specific type of Standard Condiment is requested by the consumer.

(b) Food Facilities may ask a drive-through consumer if the consumer wants a specific type of Disposable Food Service Ware Accessory (including different

types of Utensils), if the item is necessary for the consumer to consume Prepared Food or to prevent spills of or safely transport Prepared Food.

- (c) Disposable Food Service Ware Accessories and Standard Condiment in Disposable packaging provided by Food Facilities for use by consumers for Off-Premise Dining shall not be bundled or packaged in a manner that prohibits a consumer from taking only the type of Disposable Food Service Ware Accessory (including different types of Utensils) or type of Standard Condiment desired without also having to take a different type of Disposable Food Service Ware Accessory or type of Standard Condiment. Food Facilities cannot distribute Disposable Utensils that are bundled or packaged together. Each type of Utensil (e.g., fork, spoon, knife, etc.) must be specifically requested by the consumer in order for a Food Facilities to provide the item(s).
- (d) Nothing in this article shall prohibit a Food Facility from making unwrapped Disposable Food Service Ware Accessories available to a consumer using refillable self-service dispensers that dispense different types of Disposable Food Service Ware Accessories one item at a time to allow for Disposable Food Service Ware Accessories to be obtained.
- (e) Nothing in this article shall prohibit a Food Facility from making Standard Condiment available to a consumer using refillable self-service dispensers to allow for Standard Condiment to be obtained. Food Facilities that offer Standard Condiment are encouraged to use bulk dispensers for the condiments rather than condiments packaged for single-use.
- (f) Takeout Food Delivery Services shall provide consumers with the option to proactively request the different types of available Disposable Food Service Ware Accessories (including different types of Utensils) and the different types of Standard Condiment from a Food Facility serving Prepared Food. The default option on the digital ordering/point-of-sale platforms of Takeout Food Delivery Services shall be that no Disposable Food Service Ware Accessories or Standard Condiment are requested.
- (g) Takeout Food Delivery Services shall provide Food Facilities the ability to tailor the digital ordering/point-of-sale platforms so that Food Facilities can customize and itemize the different types of available Disposable Food Service Ware Accessories (including different types of Utensils) and the different types of available Standard Condiments for consumers to proactively select.
- (h) If a Food Facility uses any Takeout Food Delivery Service, the Food Facility shall customize its menu with an itemized list and/or provide options of the different types of available Disposable Food Service Ware Accessories (including different types of Utensils) and the different types of available Standard Condiments for consumers to proactively select. Only those specific types of Disposable Food Service Ware Accessories (including different types of Utensils) or specific types

of Standard Condiment proactively requested by the consumer shall be provided by the Food Facility. If a consumer does not request any Disposable Food Service Ware Accessories or Standard Condiment, no Disposable Food Service Ware Accessories or Standard Condiment shall be provided by the Food Facility for delivery of Takeout Food. Pursuant to Subsection (c), each type of Utensil (e.g., fork, spoon, knife, etc.) offered by the Food Facility shall also be listed individually, unbundled on the menu and provided by the Food Facility for delivery with the Takeout Food only if requested by the consumer.

Sec. 6-5.403. -Standards and Required Use of Disposable Food Service Ware

- (a) No Food Facility shall use Polystyrene- based Disposable Food Service Ware when providing Prepared Food.
- (b) Food Facilities shall only provide Disposable straws, stirrers, utensils, and cocktail/toothpicks (and the packaging that these individual items are wrapped in, if any) that are Compostable.
- (c) Nothing in this Ordinance shall conflict or be construed to conflict with the Americans with Disabilities Act or any other applicable law concerning the rights of individuals with disabilities. In particular, nothing in this article shall restrict, or be construed to restrict, the provision by Food Facilities of Disposable Non-Compostable straws to individuals who may request the use of Disposable Non-Compostable straws to accommodate medical needs or disabilities. Healthcare Facilities may distribute Disposable Non-Compostable straws with or without request by a patient at the discretion of the Healthcare Facility staff based on the physical or medical needs of the patient.
- (d) Food Facilities shall use Compostable items for the below Disposable Food Service Ware when providing Prepared Food for Off-Premises Dining:
 - 1. Plates
 - 2. Bowls (of all sizes including, but not limited to soup and salad bowls)
 - 3. Cups (of all sizes including, but not limited to beverage and accessory cups for Standard Condiments)
 - 4. Food Trays and Food boats
 - 5. Boxes
 - 6. Hinged or lidded containers (e.g., clamshells), deli containers, and other containers used for the sale and/or distribution of Prepared Food
- (e) Commencing on the effective date of this article up until December 31, 2022, for the Compostable Disposable Food Service Ware listed in Subsection (d), Food Facilities shall use items that meet Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Restrictions. To verify the PFAS Restrictions, Food Facilities shall use items that are certified/approved by independent third parties approved by the Enforcing Agency or designee, in collaboration with local waste processors and haulers, as needed.
- (f) For all other Disposable Food Service Ware not listed in subsection (b) and (d), Food Facilities shall use only Disposable Food Service Ware for Off-Premises

Dining that can be composted by the Food Scrap Composting method utilized by the Food Facilities and/or accepted for recycling by the Food Facility's recycling collection service, unless a feasible alternative does not exist, as determined by the Enforcing Agent.

- (g) The Enforcing Agent shall maintain a list of approved Disposable Food Service Ware sources and/or references to organizations that maintain regularly updated lists of products that meet the requirements detailed in Subsections (a), (b), (d) and (e) of this Section. This information shall be made available on the Enforcing Agent's website and in the Enforcing Agent's Office. If a product is not included on the approved lists, the Food Facility wishing to use a product as Disposable Food Service Ware shall establish to the Enforcing Agent's satisfaction that the product complies with the requirements detailed in Subsections (a), (b), (d) and (e) of this Section.

Sec. 6-5.404. – Reusable Service Ware Use for On-Premises Dining

Food Facilities that have On-Premises Dining:

- (a) Shall only serve Prepared Food for consumption On-Premises with Reusable Food Service Ware except as otherwise provided in section (b);
- (b) May provide the following non-Reusable Food Service Ware Accessories: straws, stirrers, cocktail sticks/picks, toothpicks, napkins, wrappers and liners so long as they are Compostable.
- (c) Nothing in this section shall prohibit a Food Facility from offering, upon a customer's request, non-Reusable Food Service Ware for Take Out Food or to take away leftover food after dining on the premises; and
- (d) Provisions listed in Sec. 6-5.404 shall become effective June 1, 2023.

Sec. 6-5.405. -Record Keeping and Inspection

Food Facilities shall keep complete and accurate record or documents of the below items

1. Commencing on October 1, 2022, Food Facilities shall keep complete and accurate records or documents of the purchase of the acceptable Disposable Food Service Ware evidencing compliance with this Ordinance for a minimum period of three years from the date of purchase.
2. The records shall be made available for inspection at no cost to the Enforcing Agent during regular business hours. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be made available at the Food Facilities address.
3. The provision of false or incomplete information, records, or documents to the Enforcing Agent shall be a violation of this article.

Sec. 6-5.406. – Exemptions

The following are exempt from the requirements of this article.

- (a) Prepackaged Food.
- (b) Polystyrene coolers and ice chests intended for reuse.
- (c) Disposable Food Service Ware that is entirely Aluminum Foil-based or recyclable glass.
- (d) If the Enforcing Agent determines that a reasonably feasible Disposable Food Service Ware that complies with Section 6-5.402 (a), (b), (d), and (e) does not exist, these items will be exempt from all or select requirements of the above-mentioned provisions of this article until the Enforcing Agent determines that a reasonably feasible alternative is available on the market for purchase. The Enforcing Agent will have a current list of these temporarily exempted Disposable Food Service Ware made public.
- (e) Temporary exemptions due to an emergency are automatic without the submission of a request for an exemption. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to natural disasters, emergencies due to the release of hazardous materials, emergencies associated with loss of power and/or water, or emergency medical response.

Sec. 6-5.407. -Case-by-Case Consideration of Hardship Exemption

(a) Grounds for an exemption.

An exemption from any of the provisions of this article may be granted by the Enforcing Agent upon demonstration by a Food Facility to the satisfaction of the Enforcing Agent that strict application of the requirements would cause undue hardship. An “undue hardship” includes, but is not limited to the following:

1. A situation unique to the Food Facility where a suitable alternative that conforms with the requirements detailed in the Section 6-5.402(a), (b), (d), and (e) does not exist for a specific application.
2. Imposing the provisions of this article would cause significant economic hardship. “Significant economic hardship” may be based on, but not limited to, demonstrating that suitable Disposable Food Service Ware is not available at a commercially reasonable price and the additional cost associated with providing the Disposable Food Service Ware is particularly burdensome to the Food Facility based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the Food Facility, and other factors. Reasonable added cost for a suitable item as compared to a similar item that the Food Facility can no longer use shall not by itself constitute adequate grounds to support an exemption for such item. In determining

whether a significant economic hardship has been established, the Enforcing Agent may consider the following information: ability of the Food Facility to recover the additional expense by increasing its prices; the availability of tax credits and deductions; outside funding; and other options.

- (b) Request for an exemption. A request for an exemption from the requirements of this article shall include all information deemed necessary by the Enforcing Agent render a decision, including but not limited to documentation showing the factual support for the requested exemption. A request for an exemption may be approved by the Enforcing Agent, in whole or in part, with or without conditions. The duration of the exemption, if granted, shall also be determined by the Enforcing Agent. Information about the application process for requesting an exemption will be available on the Enforcing Agent's website and in the Enforcing Agent's Office.

Sec. 6-5.408. -Enforcement

- (a) The Enforcing Agent may enforce this article.
- (b) A violation of this article is an infraction and is also punishable by administrative fines as set forth in [Chapter 1.40](#) of the San Mateo County Ordinance Code. Violations of this article may also be subject to the remedies and penalties set forth in Title 1, Chapter 2 of the Pacifica Municipal Code.
- (c) Compliance plan.
1. If requested by the Enforcing Agent, a Food Facility that is in violation of any of the provisions detailed in this article shall create and submit to the Enforcing Agent a compliance plan, which will include information on corrective action(s) that the Food Facility shall undertake to come into compliance. Other requested information may include, and are not limited to proposed timeline for corrective action(s), and identification of individuals responsible for ensuring compliance.
 2. The Food Facility shall create and submit its completed compliance plan within fourteen calendar days (14) from the time of request by the Enforcing Agent.
- (d) This Section shall not be interpreted to limit any otherwise available civil or administrative remedies under law."

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 effective October 1, 2022.


PASSED AND ADOPTED this 14th day of March 2022, by the following vote:

AYES, Councilmembers: Beckmeyer, Bier, Bigstyck, O'Neill, Vaterlaus.

NOES, Councilmembers: n/a.

ABSTAIN, Councilmembers: n/a.

ABSENT, Councilmembers: n/a.


Mary Bier (Mar 17, 2022 07:17 PDT)

Mary Bier, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

For Signature: OrdinanceNo872-CS_SustainableFoodServiceWare_ProhibitPlastic

Final Audit Report

2022-03-17

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