

**ORDINANCE NO. [REDACTED]**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD,  
CALIFORNIA, AMENDING TITLE 6 OF THE CARLSBAD MUNICIPAL  
CODE TO ADD CHAPTER 6.09 – SINGLE-USE PLASTIC FOODWARE  
REDUCTION

WHEREAS, the City of Carlsbad, California ("city") aims to be a leader in sustainability and take action to: protect our natural resources, the environment and wildlife, divert waste from landfills, reduce greenhouse gas emissions, and increase city cleanliness and quality of life by reducing litter on city beaches and public areas; and

WHEREAS, the State of California has found and declared in California Public Resources Code Section 42355 that, "Littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs"; and

WHEREAS, expanded polystyrene, sometimes called "Styrofoam", is a harmful pollutant that breaks down into smaller pieces, is easily carried by wind onto beaches and waterways, harms wildlife, and persists in the marine environment; and

WHEREAS, polystyrene items and small single-use plastic foodware items are often difficult to recycle and are not accepted in the city's recyclable materials collection program; and

WHEREAS, polystyrene has been identified as one of the most common contaminants in the city's recyclable materials containers; and

WHEREAS, single-use disposable materials from food and beverage consumption make up approximately 25% of the waste produced in California; and

WHEREAS, the city adopted a Sustainable Materials Management Plan in 2019 and a subsequent Sustainable Materials Implementation Plan in 2021, to provide recommendations and actions to support the city's achievement of its sustainability goals; and

WHEREAS, a key initiative of the Sustainable Materials Implementation Plan is the research, development, and implementation of policies that reduce waste and support the city's sustainability goals, including an ordinance to address single-use plastic foodware and polystyrene; and

WHEREAS, the state Legislature enacted AB 1884 (Calderon, 2018), prohibiting full-service restaurants from providing single-use plastic straws unless requested by the consumer; and

WHEREAS, the state Legislature enacted AB 1276 (Carrillo, 2021), which expanded on AB 884 to require accessory foodware (e.g., utensils, chopsticks, straws, stirrers) and condiments only be provided upon consumer request, among other related requirements; and

WHEREAS, AB 1276 does not prevent a city from adopting and implementing an ordinance that would further restrict a food facility or a third-party food delivery platform from providing single-use foodware accessories or standard condiments to a consumer; and

WHEREAS, in addition to more sustainable alternatives for single-use foodware, the city wishes to encourage use of reusable foodware in order to emphasize the importance of source reduction and align with the city's SMMIP goals; and

WHEREAS, by providing single-use foodware accessories only upon request and increasing use of reusables, businesses can limit unnecessary inventory reductions; and

WHEREAS, as a coastal community, protecting the cleanliness of the city's beaches helps improve quality of life and stimulates the local economy by creating a more attractive environment for tourism; and

WHEREAS, the acceptable alternatives to single-use foodware provided under the Ordinance will align with the materials accepted in the city's collection program, which reduces confusion for residents, businesses, and visitors about source separation requirements, and ultimately reduces the risk of contamination; and

WHEREAS, reducing contamination benefits waste haulers and facility operators by improving effectiveness of collection and processing, increasing quality of materials, meeting diversion targets, and extending the operating life of landfills; and

WHEREAS, in order to support businesses with successful implementation, this ordinance includes a phased implementation approach that prioritizes education prior to enforcement.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Carlsbad, California, ordains as follows:

SECTION I: The above recitations are true and correct.

SECTION II: Title 6 of the Carlsbad Municipal Code is amended to add Chapter 6.09 – Single-Use Plastic Foodware Reduction, which reads as follows:

## Chapter 6.09

### SINGLE-USE PLASTIC FOODWARE REDUCTION

#### Sections:

<b>6.09.010</b>	<b>Intent and purpose.</b>
<b>6.09.020</b>	<b>Definitions.</b>
<b>6.09.030</b>	<b>Prohibition on polystyrene and single-use plastic foodware.</b>
<b>6.09.040</b>	<b>City facilities and city-affiliated events.</b>
<b>6.09.050</b>	<b>Foodware accessories requirements.</b>
<b>6.09.060</b>	<b>Other provisions.</b>
<b>6.09.070</b>	<b>Exemptions.</b>
<b>6.09.080</b>	<b>Enforcement.</b>
<b>6.09.090</b>	<b>Severability.</b>

#### **6.09.010 Intent and Purpose.**

- A. It is the intent and purpose of this chapter to reduce the use of single-use plastic foodware provided in the city, in order to:
1. Protect wildlife and the environment by reducing harmful litter and marine debris;
  2. Divert waste from landfills and reduce contamination of the city's recyclable materials and organic materials collection programs;
  3. Conserve resources and reduce greenhouse gas emissions;
  4. Improve the cleanliness of city public areas and beaches to increase quality of life for residents, businesses, and visitors; and,
  5. Align with the goals set forth in other city policies, including the current city council-adopted versions of the city's Sustainable Materials Management Plan and Climate Action Plan.

#### **6.09.020 Definitions.**

- A. For purposes of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section, unless it is obvious from the context that another meaning is intended:

"AB 1276" means the 2021 bill amending California Public Resources Code Sections 42270 and 42271 and adding California Public Resources Code Sections 42272 and 42273, relating to solid waste and the provision of certain single-use foodware accessories.

"City" or "City of Carlsbad" means the incorporated territory of the City of Carlsbad, California.

"City-affiliated event" means any event or activity that is sponsored or co-sponsored by the city, is paid for, in part or full, using city funds, occurs on city-owned property, or requires a special event permit pursuant to Chapter 8.17 of this code or other authorization from the city.

"City facilities" means any building, structure, facility, park, or vehicle owned, leased, or operated by the city, its agents, agencies, departments, and authorized designees.

"City funds" means all monies or other assets received and managed by, or which are otherwise under the control of the city, and any notes, bonds, securities, certificates of indebtedness or other fiscal obligations issued by the city.

"Compostable" means materials that meet all of the following conditions:

- 1) Are accepted for collection in the city's organic materials collection program, as determined by the city manager or designee;
- 2) Meet the "ASTM standard specification" for compostability, as defined in California Public Resources Code Section 42356, or a subsequent standard if revised by the state in accordance with Public Resources Code Section 42356.1.

- 3) Comply with the labeling requirements of California Public Resources Code Section 42357; and
- 4) Comply with the regulated perfluoroalkyl and polyfluoroalkyl substances standards set forth in California Health and Safety Code Section 109000, as applicable to the types of “food packaging” defined under that section.

“Consumer” has the same meaning as in California Health and Safety Code Section 113757.

“Enforcement agency” means the City of Carlsbad or its authorized agents charged with ensuring compliance with this chapter.

“Enforcement official” means the city manager of the City of Carlsbad or designee.

“Food service provider” means any person or establishment that provides or sells prepared food or beverages on or off its premises within the city, including:

- 1) A restaurant, café, coffee shop, fast food restaurant, drive-thru service, grocery store, supermarket, convenience store, delicatessen, cafeteria, farmers’ market vendor, or similar facility where prepared food is available for consumption on or off the premises;
- 2) Any mobile food facility, mobile food vendor, catering operation, food truck, or temporary food facility that provides prepared food;
- 3) Transient lodging facilities, including hotels, motels, and bed and breakfasts that provide prepared food, regardless of whether the prepared food is complementary or available for purchase by the consumer; and,
- 4) Entities specified in California Health and Safety Code Sections 113789(a) and 113789(b).

For the purposes of this chapter, the definition of food service provider does not include the entities specified under Section 6.09.070.

“Foodware” means items used for containing, serving, or consuming prepared food, including containers, cups, bowls, plates, trays, cartons, boxes, and foodware accessories. Foodware does not include polystyrene egg cartons, meat trays, coolers, ice chests, or packing materials.

“Foodware accessory” means foodware items, including utensils (e.g., forks, knives, spoons, and sporks), straws, stirrers, condiment cups and packets, cup lids, cup sleeves, cocktail sticks, toothpicks, splash sticks, spill plugs, and other similar accessory items used as part of or alongside prepared food.

“Person” means any person, business, corporation, or event organizer or promoter; public, nonprofit, or private entity, agency, or institution; or, partnership, association, or other organization or group, however organized.

“Polystyrene” means a thermoplastic petrochemical material utilizing the styrene monomer including, but not limited to, polystyrene foam or expanded polystyrene processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, extrusion-blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene).

“Prepared food” means food or beverages that are prepared and served or provided by the food service provider using any cooking or food or beverage preparation technique and that are ready to consume, either on or off the food service provider’s premises, without further food or beverage preparation or repackaging. Prepared food includes “beverages” and “ready to eat food” as defined in California Health and Safety Code Sections 113739 and 113881, respectively. Prepared food does not include raw or uncooked whole fruits or vegetables that are not prepared through chopping, squeezing, blending, mixing, or otherwise altered through food preparation; or, uncooked meat, poultry, fish, or eggs that are not intentionally provided for further consumption without food preparation.

“Regulated entities” means food service providers, city facilities, city-affiliated events, or other persons regulated by this chapter.

“Reusable” means items manufactured out of durable materials to be used repeatedly over an extended period of time and are able to be washed and sanitized in accordance with applicable laws and regulations.

“Single-use” means items designed for one-time or limited use prior to being discarded, and not designed for repeated use and sanitizing.

“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, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes.

“Third-party food delivery platform” has the same meaning as in California Health and Safety Code Section 113930.5.

**6.09.030 Prohibition on polystyrene and single-use plastic foodware.**

- A. Food service providers shall not provide prepared food in foodware made of polystyrene, and shall only use foodware that is reusable or compostable.
- B. Food service providers shall comply with the requirements of this chapter for both on-premises and off-premises consumption of prepared food; and, for any method of ordering, including in-person, telephone, drive-through, self-serve, web or other digital order, or through a third-party food delivery platform.
- C. Notwithstanding Section 6.09.030(A), the following foodware types are permissible:
  - 1. A food service provider may use non-compostable foil wrappers if those wrappers are necessary to contain and form the prepared food (e.g., for burritos or wraps), provided that such wrappers are accepted in the city’s recyclable materials collection program; and,
  - 2. A food service provider may maintain a small supply of single-use plastic straws to provide to consumers with a disability or other medical or health conditions, in accordance with Section 6.09.070. Such straws shall be provided only upon request, in accordance with Section 6.09.050.

**6.09.040 City facilities and city-affiliated events.**

- A. The procurement, use, or distribution of foodware that is made of polystyrene or foodware that is not reusable or compostable shall be prohibited at all city facilities, and city-affiliated events. Foodware accessories shall be distributed in accordance with Section 6.09.050.
- B. The city, its departments, agents, employees, or designees acting in their official capacity as representatives of the city, shall not purchase or otherwise procure foodware that is made of polystyrene or that is not compostable or reusable. City funds utilized in any manner, including purchase orders, purchasing cards, and grant money, shall not be used to purchase foodware that does not comply with the requirements of this chapter.
- C. All special event permit applications required by Chapter 8.17 of this code, city facility rental agreements, leases, vendor contracts, or other such approvals for applicable activities or services on city property shall include a provision requiring the applicant to assume responsibility for complying with the requirements of this chapter.

**6.09.050 Foodware accessories requirements.**

- A. Regulated entities shall distribute foodware accessories in accordance with this chapter and AB 1276. To the extent that this chapter is more stringent, this chapter shall govern, as permitted under California Public Resources Code Section 42271(h).
- B. Except as provided in subsections 6.09.050(E) through 6.09.050(H) below, regulated entities shall not provide any single-use foodware accessory or standard condiments packaged for single use to a consumer unless the foodware accessory or standard condiment is requested by the consumer.
- C. Regulated entities shall comply with the requirements of this section for both on-premises and off-premises consumption of prepared food; and, for any method of ordering, including in-person, telephone, drive-through, self-serve, web or other digital order, or through a third-party food delivery platform.

- D. Single-use foodware accessories and standard condiments packaged for single use provided by regulated entities for use by consumers shall not be bundled or packaged in a manner that prohibits a consumer from taking only the type of single-use foodware accessory or standard condiment desired without also having to take a different type of single-use foodware accessory or standard condiment.
- E. A food service provider may ask a drive-through consumer if the consumer wants a single-use foodware accessory, rather than the consumer initiating the request, if the single-use foodware accessory is necessary for the consumer to consume prepared food, or to safely transport or prevent spills of prepared food.
- F. A food service provider that is located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, may ask a walk-through consumer if the consumer wants a single-use foodware accessory, rather than the consumer initiating the request, if the single-use foodware accessory is necessary for the consumer to consume prepared food, or to safely transport or prevent spills of prepared food.
- G. A food service provider may provide lids or cup sleeves for beverages that are provided via drive thru or delivery by the food service provider or a third-party food delivery platform without consumer request, if specifically necessary for the consumer to safely consume such beverages, or for prevention of spills and the safe transport of beverages.
- H. A third-party food delivery platform shall provide consumers with the option to request single-use foodware accessories or standard condiments from a food service provider serving prepared food. The third-party food delivery platform shall provide the food service provider with the option to customize its menu on the platform, and provide technical assistance to the food service provider as needed in order to make such changes.
- I. If a food service provider uses any third-party food delivery platform for prepared food, the food service provider shall customize its menu with a list of available single-use foodware accessories and standard condiments, and only those single-use foodware accessories or standard condiments selected by the consumer shall be provided by the food service provider. If a consumer does not select any single-use foodware accessories or standard condiments, no single-use foodware accessory or standard condiment shall be provided by the food service provider for delivery of prepared food, except as provided for in subsection 6.09.050(G) above.
- J. Nothing in this section shall prohibit a regulated entity from making unwrapped single-use foodware accessories available to a consumer using refillable self-service dispensers that dispense one item at a time to allow for single-use foodware accessories to be obtained.
- K. Nothing in this section shall prohibit a regulated entity from making standard condiments available to a consumer using refillable self-service dispensers to allow for standard condiments to be obtained.
- L.

**6.09.060 Other provisions to reduce use of single use plastics.**

- A. Regulated entities are encouraged, but not required, to take actions in addition to the requirements of this chapter that support a goal of reducing the use of and waste generated by single-use foodware.
- B. Regulated entities are strongly encouraged, but shall not be required, to provide refillable or reusable foodware rather than disposable foodware for consumers, to the greatest extent practicable.
- C. A regulated entity that offers standard condiments is encouraged to use bulk dispensers for the condiments rather than condiments packaged for single use.
- D. Food service providers, at their discretion, may include a charge for foodware provided to consumers or provide other incentives to encourage use of reusable foodware.
- E. Within 30)days of the effective date of this chapter, food service providers shall post educational materials regarding the requirements of this chapter, if such materials are provided by the city. The educational materials shall be posted on or near the food service provider's menu, point-of-sale counter, or other location that is clearly visible to the consumer prior to ordering.

**6.09.070 Exemptions.**

The following exemptions and waiver provisions shall apply:

- A. Entities excluded from the requirements of this chapter include correctional institutions, health care facilities, residential care facilities, and public and private school cafeterias, as defined in California Public Resources Code Section 42273.
- B. The city manager may temporarily exempt regulated entities from some or all of the provisions of this chapter during an “emergency”, as defined in Section 6.04.020, for the immediate preservation of public peace, health, or safety consistent with the provisions of Chapter 6.04.
- C. The city manager or designee may exempt certain item(s) from the provisions of this chapter, if the city manager or designee determines that no reasonably feasible alternative is available for one or more types of foodware regulated under this chapter, until the city manager or designee determines that a feasible alternative is available.
- D. Nothing in this chapter shall restrict, or be construed to constrict, the availability and provision of single-use plastic straws requested by a consumer with a disability or other medical or health condition or circumstance. It shall not be a violation of this chapter for a regulated entity to provide a single-use plastic straw to such individuals that specifically request plastic straws in accordance with this subsection.
- E. The city manager or designee may adopt rules, regulations, or forms for regulated entities to obtain full or partial temporary waivers for up to six months from one or more requirements of this chapter. The subject of such waivers may include feasibility-based exemptions. The city manager or designee may also adopt an administrative fee for waiver applications, as well as a process for waiving administrative fees for certain applicants.

**6.09.080 Enforcement.**

- A. The enforcement agency and enforcement official may exercise any code enforcement powers and procedures as provided in Title 1 of this code. The enforcement agency shall enforce the requirements set forth in Section 6.09.050 commencing June 1, 2022; and, shall enforce the requirements of all other requirements of this chapter, unless otherwise provided in subsequent sections, commencing July 1, 2023.
- B. Each regulated entity shall maintain records demonstrating compliance with the requirements of this chapter and make such records available for inspection upon request of the city manager or designee.
- C. The first and second violations of this chapter shall result in a notice of violation, and any subsequent violation shall constitute an infraction punishable by a fine of twenty-five dollars (\$25) for each day in violation, but not to exceed three hundred dollars (\$300) annually.
- D. The city manager or designee is authorized to establish rules and regulations and to take any and all actions necessary for the administration and enforcement of this chapter. Such actions may include inspecting the premises of the regulated entity to verify compliance with this chapter.
- E. The city attorney is authorized to pursue all available administrative, civil, and criminal remedies set forth in this code to enforce this chapter. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- F. The remedies and penalties provided in this section may be cumulative and are not exclusive.

**6.09.090 Severability.**

If any portion of this chapter, or its application to particular persons or circumstances, is held to be invalid or unconstitutional by a final decision of a court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this chapter or the application of the chapter to persons or circumstances not similarly situated.

EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption; and the City Clerk's Office shall certify the adoption of this ordinance and cause the full text of the ordinance or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a Regular Meeting of the Carlsbad City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, and thereafter

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_ day of \_\_\_\_\_, 2022, by the following vote, to wit:

AYES:

NAYS:

ABSENT:

NAYS:

ABSENT:

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
CELIA A. BREWER, City Attorney

\_\_\_\_\_  
MATT HALL, Mayor

\_\_\_\_\_  
FAVIOLA MEDINA, City Clerk Services Manager  
(SEAL)