

ORDINANCE NO. 776

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA REPEALING AND REPLACING IN ITS ENTIRETY CARPINTERIA MUNICIPAL CODE CHAPTER 8.50, REGULATING POLYSTYRENE PRODUCTS AND SINGLE-USE PLASTICS

WHEREAS, the City of Carpinteria ("City") pursuant to its police powers has the authority to enact laws which promote the public health, safety and general welfare of its residents; and,

WHEREAS, the City is required under state and federal law to implement policies and programs to protect unique coastal resources and environmentally sensitive habitat areas, reduce the amount of waste generated in the community that goes to landfills, and prevent storm water runoff from polluting creek and ocean waters; and,

WHEREAS, the Carpinteria community is attractive to residents, businesses, and visitors due to a local economy and quality of life that is centered on a clean and healthy environment, including but not limited to, parks, public open spaces, creeks, estuary, tidelands, and the ocean; and,

WHEREAS, plastic pollution, including single-use plastics and polystyrene, have raised environmental and health concerns related to water pollution, the welfare of marine life, and human health; and,

WHEREAS, numerous studies have documented the prevalence of plastic debris in the environment, including in storm drains and on beaches, negatively impacting the local environment and creating clean-up costs for the City; and,

WHEREAS, the state Legislature recognized that littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs. 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 (California Public Resources Code §42355); and,

WHEREAS, recycling of polystyrene and many single-use plastics is currently not available through the City's franchise waste hauler or anywhere in the region and it is not financially feasible for the City to develop such a program; and,

WHEREAS, there are alternatives to polystyrene and single-use plastic items available, and,

WHEREAS, it is in the City's interest to establish programs and services that reduce the amount of litter in the environment, in particular beach litter and marine pollution, to increase the quality of life for the City's residents and visitors and protect local wildlife habitat.

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

SECTION 1. INCORPORATION OF RECITALS

The above recitals are true and correct and are incorporated herein, and are each relied upon independently by the City Council for its adoption of this Ordinance.

SECTION 2. AMENDMENT TO CODE

Chapter 8.50 of Title 8 (Health and Safety) of the Carpinteria Municipal Code is repealed and replaced in its entirety to read as follows:

“8.50.010 Title

The title of this Chapter shall be “Regulating Polystyrene Products and Single-use Plastics.”

8.50.020 Purpose

The purpose of these provisions is to promote:

- A. The protection of unique coastal resources found in Carpinteria and identified for protection as a part of the City’s General Plan/Local Coastal Plan including the Carpinteria “El Estero” Salt Marsh, Beaches, Tidelands, Offshore Reefs, Harbor Seal Rookery, and Creekways and Riparian Habitat.
- B. Protection of public health, safety, and general welfare.
- C. Compliance with federal, state, and local laws regarding water quality and waste diversion.
- D. A reduction in the amount of waste and debris in City parks, public open spaces, creeks, estuary, tidelands and the ocean, and the amount of material going to landfills.

8.50.030 Definitions

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly indicates otherwise:

- A. “ASTM Standard” means meeting the American Society for Testing and Materials (ASTM) international standard D6400 or D6868 for compostable plastics, as those standards may be amended.
- B. “City Facility” means any building, structure or vehicle owned or leased by the City of Carpinteria, its agents, agencies, and departments.
- C. “City Contractor” means any Person or entity that enters into an agreement with the City to furnish products or services to or for the City.

- D. "Compostable" means means Disposable Foodware and Disposable Foodware Accessories that are is designed to be collected for recovery with organic waste, such as food scraps and yard trimmings, and are free of all intentionally added Fluorinated Chemicals, as certified by the Biodegradable Product Institute (BPI) or other independent third-party certifying organization or agency recognized by the City.
- E. "Disposable Foodware" means disposable products designed to be used once, or for a short period of time, before being discarded, typically used for serving, consuming, or transporting Prepared Food. Disposable Foodware includes, but is not limited to, plates, bowls, trays, cups or drinkware, or any container in or on which Prepared Food is placed or packaged for consumption, and includes Disposable Foodware Accessories.
- F. "Disposable Foodware Accessories" means disposable products designed to be used once, or for a short period of time, before being discarded, typically for serving, consuming or transporting Prepared Food, and includes, but is not limited to, wrappers or wrapping, condiment containers, straws, utensils, stirrers, and lid plugs (splash sticks).
- G. "Events Promoter" means an applicant or their agent for any event permit issued by the City or any City employee(s) responsible for any City-organized event.
- H. "Expanded Polystyrene" means blown expanded and extruded polystyrene or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Expanded Polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, ice chests, shipping boxes and packing peanuts.
- I. "Fluorinated Chemical" means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as perfluoroalkyl (PFOA) and polyfluoroalkyl (PFOS) substances, or PFAS chemicals.
- J. "Fluorinated Chemical Free" means an item that: (1) contains no intentionally added Fluorinated Chemicals at or beyond 100 parts per million, as measured in total organic fluorine; and (2) is either certified fluorinated chemical free by the Biodegradable Product Institute (BPI) or other third party as recognized by the City, or is a napkin, stirrer, splash stick, cocktail stick, toothpick, or utensil made entirely of natural fiber containing no intentionally added Fluorinated Chemicals.
- K. "Foil Balloon" means, but is not limited to, balloons that are made of "metalized" plastic (nylon) film coated with polyethylene and metallic materials that are sealed together with heat and can be electrically conductive, and includes balloons often referred to as made of Mylar, which is a brand name for a special type of polyester film. .
- L. "Food Provider" means any Person or establishment located within the City that is a retailer of Prepared Food for public consumption including, but not limited to, any store, supermarket, delicatessen, restaurant, shop, caterer, or mobile food vendor.

- M. "Latex Balloon" means a balloon made with the sap from a rubber tree to which chemicals are added including pigments, oils, curing agents and accelerators.
- N. "Person" means an individual, business, trust, firm, joint stock company, corporation, nonprofit (including a government corporation), partnership, or association.
- O. "Plastic Beverage Straw" means a tube 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 petroleum or biologically based polymer straws, but does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.
- P. "Plastic Cutlery" means any utensil, such as a fork, spoon, spork, or knife, 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 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.
- Q. "Plastic Stirrer" means a device that is 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 petroleum or biologically based polymer stirrers, but does not include stirrers that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.
- R. "Polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer, including, but not limited to, rigid polystyrene or Expanded Polystyrene, processed by any number of techniques, including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, Expanded Polystyrene molding, or extrusion-blow molding (extruded polystyrene), and clear or solid polystyrene (oriented polystyrene). The resin code for polystyrene is '6' or 'PS,' either alone or in combination with other letters. This definition applies to all Polystyrene Foodware, regardless of whether it exhibits a resin code.
- S. "Polystyrene Cooler" means any cooler or ice chest made of polystyrene foam (Expanded Polystyrene), where such foam is not fully encased in another more durable material.
- T. "Polystyrene Foodware" means Disposable Foodware that contains or utilizes Polystyrene.
- U. "Polystyrene Packing Material" means Polystyrene material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage, including shipping boxes and packing peanuts.
- V. "Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared that do not require further preparation or repackaging to be consumed. Prepared Food does not

include raw whole foods and vegetables that are not chopped, squeezed or mixed, or uncooked meats, fish and/or poultry.

- W. "Recyclable" means that a product or packaging that can be sorted, cleansed, and reconstituted using Carpinteria'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.
- X. "Reusable Foodware" means all foodware, including but not limited to, plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period, and is safe for washing and sanitizing according to applicable regulations.
- Y. "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 but not limited to ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes.
- Z. "Vendor" means any store or business which sells or offers goods or merchandise, located or operating within the City of Carpinteria, including those referenced in the definition of "Food Provider."

8.50.040 Prohibition of Use, Distribution, and Sale of Polystyrene Foodware, Polystyrene Coolers, Polystyrene Packing Materials, Polystyrene Egg Cartons, Polystyrene Produce Trays, and Polystyrene Meat and Fish Trays.

- A. No Food Provider or beverage provider shall distribute or sell any Polystyrene Foodware and Foodware Accessories in conjunction with the sale of Prepared Food at any location within the City.
- B. No Person shall sell any Polystyrene Foodware or Expanded Polystyrene Coolers at any location within the City.
- C. No Vendor in the City shall sell, distribute, or use Polystyrene Packing Material, including, but not limited to, foam peanuts, packing peanuts, foam popcorn, or packing noodles.
- D. No Person or Vendor may sell, offer for sale, or otherwise distribute for compensation within the City, any meat and fish trays, produce trays, or egg cartons made, in whole or in part, from Polystyrene, either as separate items or as part of the sale of meat, fish, poultry, vegetables, fruit, or eggs sold to consumers.
- E. No Person shall distribute or sell Prepared Food in any Polystyrene Foodware at City facilities that have been rented, leased or are otherwise being used with permission of the City. This subsection is limited to use of City facilities for which a Person has entered into an agreement with the City to rent, lease or otherwise occupy a City Facility.

- F. No Person shall use or distribute Polystyrene Foodware at City-sponsored events, City-managed concessions and City meetings open to the public. This subsection shall apply to the Event Promoters, City Contractors, Food Providers, beverage providers, and any other Person that enters into an agreement with one or more of the function sponsors to sell or distribute Prepared Food or otherwise provide a service related to the function.
- G. The City, City Contractors, and their agents shall not purchase or acquire Polystyrene Foodware and distribute it for public use.

8.50.050 Single-use Plastic Prohibited.

- A. No Food Provider shall use, provide, distribute, or sell Plastic Beverage Straws, Plastic Stirrers, or Plastic Cutlery.
- B. Nothing in this section precludes restaurants, including fast food restaurants, Food Providers, or Vendors from using or making non-plastic alternatives, such as those made from paper, sugar cane, or bamboo, available to customers. Non-plastic alternative straws, stirrers, or cutlery shall only be provided upon request by the customer.
- C. It is unlawful for any Person or Food Provider to distribute Plastic Beverage Straws or Stirrers at any City Facility or any City-sponsored event.

8.50.060 Required Compostable or Recyclable Disposable Foodware.

- A. All Food Providers within the City utilizing Disposable Foodware shall use Compostable or Recyclable products.
- B. All City facilities, whether owned or leased by the City, City-managed concessions, City-sponsored events, and City permitted events, utilizing Disposable Foodware shall use Compostable or Recyclable products.
- C. City Contractors and Events Promoters utilizing Disposable Foodware shall use Compostable or Recyclable products while performing under a City contract or permit.
- D. No Person shall distribute, sell, or offer for sale any foodware that contains Fluorinated Chemicals.

8.50.070 Reusable Foodware.

- A. Customers may provide their own Reusable Foodware for food and beverage service in accordance with the California Health and Safety Code Section 114121, as it may be amended from time to time.
 - 1. Clean consumer-owned containers provided or returned to the Food Provider for filling may be filled and returned to the same consumer if the container is filled by either an employee of the food provider or the owner of the container. For the purposes of this section, a consumer-owned container shall be designed and

constructed for reuse in accordance with Section 3-304.17(B)(1) of the 2017 Food Code published by the federal Food and Drug Administration. The food provider shall either isolate the consumer-owned containers from the serving surface or sanitize the serving surface after each filling.

2. Food Providers may refuse, at their sole discretion, any customer-provided Reusable Foodware that is cracked, chipped, or corroded, appears inappropriate in size, material, or condition for the intended beverage or food item, or that appears to be excessively soiled or unsanitary. Food Providers may, at their discretion, provide a discount for customers who bring their own Reusable Foodware for takeout.
3. The Food Provider shall prepare, maintain, and adhere to written procedures to prevent cross-contamination.

8.50.080 Disposable Foodware Accessories Upon Request.

- A. Food Providers shall only distribute Disposable Foodware Accessories and Standard Condiments upon the request of the customer.
- B. Food Providers shall include in their digital ordering platforms for ordering food a statement that communicates that Disposable Foodware Accessories are offered only upon request and shall include the ability for customers to select which Foodware Accessories or Standard Condiments they want. If a consumer does not select any single-use Foodware Accessories or Standard Condiments, no single-use Foodware Accessory or Standard Condiments shall be provided by the Food Provider for delivery of ready-to-eat food.
- C. Food Providers shall not package disposable Foodware Accessories and Standard Condiments in a manner that prevents a customer from taking only the type of Foodware Accessory or Standard Condiment desired without also having to take a different type of Foodware Accessory or Standard Condiment.
- D. Food Providers are encouraged, but not required, to take actions in addition to the requirements of this section that support the goal of reducing the use of and waste generated by all disposable food service products.

8.50.090 Latex Balloons and Foil Balloons.

- A. No Person, including but not limited to a balloon wholesaler, retailer (e.g., party supply, craft store) or third-party vendor shall sell or distribute Foil Balloons within the City either as a separate item or included in a packaged product set.
- B. No Person shall use or distribute foil, Foil Balloons on public property within City limits including but not limited to parks and beaches.
- C. No Person shall use or distribute Latex Balloons filled with air or lighter than air gas at any City function or City sponsored event.

- D. No Person shall release Latex Balloons filled with air or lighter than air gas anywhere within the City limits.

8.50.100 Prohibited sales.

No Vendor or Events Promoter in the City may sell or otherwise provide any Polystyrene product which is not wholly encapsulated or encased within a more durable material, except as exempted in Section 8.50.110. This specifically includes, but is not limited to, cups, plates, bowls, trays, clamshells and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, packing peanuts, or other packaging materials.

8.50.110 Exemptions and Extensions.

- A. The City Manager or their designee may grant an exemption or extension of time to any Person from the requirements of this Chapter as follows:
1. A request for an exemption or extension of time shall be filed in writing with the City Manager or designee and shall include documentation of the reason for the requested exemption or extension. . The City may require the applicant to provide additional information as necessary, and make an independent verification of the facts provided (e.g., site visit) to make a determination.
 2. Extensions or exemptions shall be granted at the City Manager's, or designee's, sole discretion.
 3. The City Manager or designee's written decision on the exemption or extension is effective within 10 days of the decision.
- B. Extension of Time. The City Manager, or designee, may grant an extension of up to six months to a Food Provider or Vendor, with or without conditions, upon finding that compliance would create an undue hardship. No extensions beyond January 1, 2025, however, shall be provided. Undue hardship may include, but not be limited to, situations where:
1. There are no reasonable alternatives for reasons that are unique to the applicant; or
 2. Compliance with the requirements of this chapter would deprive a person of a legally protected right.
- C. Exemptions to the requirements of this Chapter shall be considered as follows:
1. Foods prepared or packaged outside the City and sold in the City.
 2. Products made from Expanded Polystyrene which are wholly encapsulated or encased by a more durable material. Examples include surfboards, life preservers, and craft supplies.
 3. Construction products made from Polystyrene are exempted from this Chapter if the products are used in compliance with Carpinteria Municipal Code Title 15, Buildings

and Construction, and Chapter 8.10, Stormwater Management, and used in a manner preventing Polystyrene from being released into the environment.

4. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and Food Providers and Vendors shall be exempt from the provisions of this Chapter.
 5. The provision or distribution by a Food Provider of a Plastic Beverage Straw to a Person in order to assure full compliance with the Americans with Disabilities Act (42 USC § 12102).
 6. Polystyrene packaging products which have been received from sources outside the City and which may be reused to be kept out of the waste stream.
 7. Food or beverages brought by individuals for personal consumption to City facilities, including, but not limited to City parks, provided the City facility is being used for individual recreation or similar purposes and such facility use is not part of a larger organized event.
- D. To obtain an extension or exemption for complying with the provisions related to Disposable Foodware or Disposable Foodware Accessories under this Chapter, the Food Provider or Vendor must demonstrate that:
1. No Disposable Foodware or Disposable Foodware Accessories item exists with substantially similar size, performance and/or utility that conforms with the disposable foodware standards; and
 2. The nonconforming Disposable Foodware or Disposable Foodware Accessories item to be used in lieu of a conforming item is recyclable or compostable in the City of Carpinteria recyclable or compostable collection program.
 3. Food providers and beverage providers must provide documentation of good faith efforts to obtain a substantially similar compliant item.
 4. Records of attempts to obtain a compliant item may include emails, letters or other correspondence with vendors that furnish Disposable Foodware or Disposable Foodware Accessories, seeking the compliant item and a timeline for compliance.

The City Manager or designee shall have discretion to impose a time limit on any exemption provided under this subsection.

8.50.120 Penalties and Enforcement.

- A. The presence on the premises of a Food Provider of non-recyclable plastic shall constitute a rebuttable presumption that such packaging is being dispensed.
- B. Violations of this Chapter shall be enforced as follows:
1. In accordance with Public Resources Code Section 42272 (b), the first and second violations of Section 8.50.080 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 an amount of three hundred dollars (\$300) annually.

2. All other violations of this Chapter by a Food Provider or Vendor shall be subject to administrative fines as provided in Chapter 1.06. Such fines are subject to appeal pursuant to the procedures of that Chapter.
3. Each and every sale or other transfer of non-recyclable plastic food packaging shall constitute a separate violation of this ordinance.
4. The City Manager or his or her designee shall be responsible for enforcement of this Chapter. The City Manager or designee may establish regulations or administrative procedures, and take other action that is reasonable and necessary to further the purposes of this Chapter.
5. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter and any regulations or administrative procedures developed pursuant thereto.

- C. The remedies and penalties provided in this Chapter are cumulative and not exclusive of other remedies and penalties available under other provisions of applicable law.”

SECTION 3. Environmental Review.

The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, the proposed Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15308 on the separate and independent ground that it is an action of a regulatory agency for the protection of the environment because, among other things, it will regulate the use and sale of Polystyrene products and reduce the amount of Polystyrene products that enter local landfills and waterways.

SECTION 4. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance 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 remainder of this Ordinance, which shall remain in full force and effect. The City Council hereby declares that it would have passed and adopted this ordinance, and each and all provisions hereof, irrespective of the fact that any one or more provisions may be declared invalid.

SECTION 5. Effective Date.

This ordinance shall take effect on the 31st day following its adoption.

SECTION 6. Certification.

The City Clerk shall certify the adoption of this ordinance and within 15 days after its adoption shall cause it to be published in accordance with California law.

PASSED, APPROVED AND ADOPTED on _____, 20__, by the following vote:

AYES: COUNCILMEMBER(S):

NOES: COUNCILMEMBER(S):

ABSENT: COUNCILMEMBER(S):

ABSTAIN: COUNCILMEMBER(S):

Mayor, City of Carpinteria

ATTEST:

Brian C. Barrett, CMC, CPMC
City Clerk, City of Carpinteria

I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held on _____.

Brian C. Barrett, CMC, CPMC
City Clerk, City of Carpinteria

APPROVED AS TO FORM:

Jena Shoaf Acos, on behalf of Brownstein
Hyatt Farber Schreck, LLP acting as
City Attorney of the City of Carpinteria