

TYPE E - FOODWARE ORDINANCE TEMPLATE

Chapter 5.80 - ENVIRONMENTAL REGULATIONS

Sections:

5.80.010 - Purpose.

5.80.020 - Definitions.

5.80.030 - Prohibition of use, distribution, and sale of polystyrene food service ware, Coolers, Packing Materials, Egg Cartons, and Produce and Meat Trays.

5.80.040 - Single-Use Plastic Straws, Stirrers, and Utensils prohibition; "Upon-Request" policy for Non-Plastic single use Straws, Stirrers, and Utensils.

5.80.050 - Extensions and Exemptions.

5.80.060 - Certification of compliance.

5.80.070 - Infraction.

5.80.010 - Purpose.

The City has long-been an environmental leader in addressing pollution issues. 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. These regulations reduce single-use waste; reduce greenhouse gas emissions; reduce the distribution of disposable single-use plastic; reduce polystyrene use and litter in the City; keep plastic waste from landfills; and reduce plastic litter threats to natural ecosystems and ocean wildlife, in order to protect the health of the community and promote environmentally sustainable practices in the City.

5.80.020 - Definitions.

As used in this chapter, unless the context otherwise clearly indicates, the words and phrases are defined as follows:

"Affected Retail Establishment" means any retail establishment located within or doing business within the geographical limits of the City.

"Beverage Provider" means any business, organization, entity, group, or individual that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption. Beverage provider also includes any organization, group or individual that regularly provides beverages to its members or the general public as a part of its activities or services.

"City Facility" means any building, structure, property, park, open space, or vehicle, owned or leased by the City, its agents, agencies, or departments.

"City Contractor" means any person that enters into an agreement with the City to furnish products or services to or for the City.

"City-Sponsored Event" means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.

"Compostable" means all the materials in the product or package that will break down, or otherwise become part of usable compost (soil-conditioning material, mulch), such as paper and certified compostable plastics that meet the American Society for Testing and Materials (ASTM) standard specifications for compostable plastics D6400 or biodegradable plastics D6868 for compostability.

"Customer" means any person obtaining goods from an affected retail establishment, vendor or non-profit vendor.

"Disposable Food Service Ware" or **"Disposables"** means single-use, disposable products used for serving, consuming or transporting prepared food and, raw food, or beverages, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, straws, lids, utensils, stirrers, lid plugs (splash sticks), or any container in or on which prepared food and, raw food, or beverages are placed or packaged for consumption.

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

"Food Provider" means any person or establishment that provides or sells prepared food or raw food or beverages within the City to the general public to be consumed on the premises or for take-away consumption. Food provider includes but is not limited to: (1) a grocery store, supermarket, restaurant, drive-thru, cafe, coffee shop, snack shop, public food market, farmers' market, convenience store, or similar fixed place where prepared food or raw food or beverages is available for sale on the premises or for take-away consumption; and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food provider also includes any organization, group or individual that regularly provides prepared food or raw food or beverages to its members or the general public as a part of its activities or services.

"Grocery Store" means any dealer in staple foodstuffs, meats, produce and dairy products and usual household supplies.

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

"Non-Profit Vendor" means a recognized tax exempt organization which provides goods as a part of its services.

"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.

"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, used to transfer a beverage from its container to the mouth of the drinker. Plastic Beverage Straw includes compostable, petroleum-based or a biologically-based polymer straw, but does not include straws that are made from non-plastic materials, including but not limited to paper, pasta, sugar cane, wood, or bamboo.

"Plastic Stirrer" means a plastic device that is used to mix beverages and/or plug the opening of a beverage lid, and intended for only one-time use. **Plastic Stirrer** includes compostable, petroleum-based, or a biologically-based polymer stirrers and lid plugs (splash sticks), but does not include stirrers that are made from non-plastic materials, including but not limited to paper, pasta, sugar cane, wood, or bamboo.

"Plastic Utensil" means any plastic utensil, including but not limited to forks, spoons, sporks, knives, cutlery, and disposable flatware intended for only one-time use. Plastic Utensils includes compostable, petroleum-based, or biologically-based polymer forms of utensils, but does not include forms of utensils that are made from non-plastic materials, including but not limited to paper, sugar cane, wood, or bamboo.

"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 food service ware, regardless of whether it exhibits a resin code.

"Polystyrene Cooler" means any cooler or ice chest made of Polystyrene Foam, where such foam is not fully encased in another material.

"Polystyrene Food Service Ware" means Disposable Food Service Ware that contains or utilizes Polystyrene.

"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.

"Prepared Food" means any food or beverage that is: (1) ready to consume without any further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a Food Provider using any cooking, packaging or food preparation technique. Prepared Food may be eaten either on or off the Food Provider's premises.

"Produce Tray" means any tray or carton for vegetable, fruit, or eggs sold to consumers from a refrigerator case or similar retail appliance.

"Raw Food" means any meat, fish, poultry, vegetable, fruit, or egg.

"Recyclable" means material that can be sorted, cleansed, and reconstituted using the City'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.

"Resin Code" means a resin identification code placed on plastics to identify the material composition for separation of different types of plastics for recycling.

"Retail Establishment" means any commercial business facility that sells goods directly to the ultimate consumer including but not limited to grocery stores, pharmacies, liquor stores, "mini-marts," and retail stores and vendors selling clothing, food and personal items.

"Vendor" means any store, shop, restaurant, sales outlet, mobile food vendor, pushcart, or other commercial establishment located within or doing business within the City, which provides perishable or nonperishable goods.

5.80.030 - Prohibition of use, distribution, and sale of Polystyrene Food Service Ware, Coolers, Packing Materials, Egg Cartons, and Produce and Meat Trays.

- A. No Food Provider or Beverage Provider shall distribute or sell any Polystyrene Food Service Ware in conjunction with the sale of Prepared Food or Raw Food or beverages at any location within the City.
- B. No Person shall sell any Polystyrene Food Service Ware or Polystyrene Cooler at any location within the City.
- C. No business or 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 may sell, offer for sale, or otherwise distribute for compensation within the City 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. Food Providers and Beverage Providers that distribute Prepared Food or Raw Food or Beverages in Disposable Food Service Ware shall: (1) distribute only Disposables that exhibit a resin code other than 'No. 6' or 'PS'; and (2) maintain documentation about the composition of the Disposable Food Service Ware. Documentation may include information from the supplier, manufacturer, or bulk packaging for the Disposables, and any other relevant information demonstrating that the disposable material is not Polystyrene.
- F. No Person shall distribute or sell Prepared Food or Raw Food or Beverages in any Polystyrene Food Service Ware 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. All facility rental agreements for any City facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of Polystyrene Food Service Ware while using City Facilities. The facility rental agreement shall indicate that a violating contractor's security deposit will be forfeited if the City Manager or his designee determines that Polystyrene Food Service Ware was used in violation of the rental agreement.
- G. No Person shall use or distribute Polystyrene Food Service Ware at City-Sponsored Events, City-Managed Concessions and City meetings open to the public. This subsection shall apply to the function organizers, agents of the organizers, 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 Raw Food or Beverages or otherwise provide a service related to the function.

- H. The City, its Departments, and its City Contractors, Agents, and Employees Acting in their Official Capacity, shall not purchase or acquire Polystyrene Food Service Ware, or distribute it for public use.

5.80.040 - Single-Use Plastic Straws, Stirrers, and Utensils prohibition; "Upon-Request" policy for Non-Plastic single use Straws, Stirrers, and Utensils.

- A. **Prohibition on single-use plastic.** Food Providers and Beverage Providers shall not use or distribute Plastic Beverage Straws, Plastic Stirrers or Plastic Utensils, whether for use on-site, to-go, or delivery. Disposable straws, stirrers, and utensils must be non-plastic, made from non-plastic materials, such as paper, pasta, sugar cane, wood, or bamboo.
- B. **"Upon request"** policy for non-plastic single use straws, stirrers and utensils. No Food Provider or Beverage Provider shall provide non-plastic, single-use straws, utensils or stirrers, except upon the request of the customer.
- C. **Accommodations.** Food Providers and Beverage Providers, as well as City Facilities, City-Managed Concessions, City-Sponsored Events, and City-Permitted Events, may retain and dispense plastic straws as an accommodation to people with disabilities who request them to enjoy equal access to food and beverage services within the City.

5.80.050 - Extensions and Exemptions.

- A. The following are exempt from the provisions of this Chapter:
 - 1. Food prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits. This exemption does not apply to raw produce, meat, or eggs.
 - 2. Coolers and ice chests, other than those defined as polystyrene coolers in this chapter.
 - 3. Food brought by individuals for personal consumption to City Facilities, including but not limited to City parks and the beach, 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 that is otherwise governed by Section 5.80.030.
- B. The City Manager or his/her designee may provide extensions of time for compliance or exempt any person from the requirements of Ordinance No. 19-0003 codified in this Chapter, as follows:
 - 1. A request for an extension or claimed exemption shall be filed in writing with the City Manager or his/her designee and shall include documentation of the reason for the requested extension or exemption and any other information necessary for the City

to make its decision. The City may require the applicant to provide additional information as necessary to make the required determinations.

2. The City Manager or his/her designee may approve the extension or exemption for a maximum of one year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship may include but not be limited to situations where:
 - a. There are no reasonable alternatives for reasons that are unique to the applicant; or
 - b. Compliance with the requirements of Ordinance No. 19-0003 codified in this Chapter would deprive a person of a legally protected right. The extension or exemption may be extended for additional terms of up to one year each, upon a showing of the continuation of the legal right.
- C. The City Manager's written decision on the extension or exemption is effective within 10 days of the decision.
- D. Decisions of the City Manager may be appealed by the person applying for the extension or exemption to the City Council. Appeals shall be filed in writing with the City Clerk within 10 days of the decision and shall be accompanied by a fee set by resolution of the City Council. Notice of hearing shall be given to the applicant at least 10 days prior to the hearing. The City Council shall make its decision within 60 days of receiving the appeal.

5.80.060 - Certification of compliance.

All businesses that are subject to this chapter shall certify compliance with this chapter on the annual business license renewal application.

5.80.070 - Infraction.

In addition to any other applicable civil or criminal penalty, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable pursuant to the penalty provisions set forth in Chapter 1.04 of this Code.