

#50  
1/8/19

ORDINANCE NUMBER O- 21030 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 24 2019

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 5 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW SECTION 22.0518, AMENDING CHAPTER 4, ARTICLE 4, DIVISION 2 BY REPEALING SECTIONS 44.0226, 44.0227, 44.0228, AND 44.0229, BY AMENDING CHAPTER 6, ARTICLE 6, BY ADDING NEW DIVISION 9, TITLED "SINGLE USE PLASTIC REDUCTION," AND BY ADDING NEW SECTIONS 66.0901, 66.0902, 66.0903, 66.0904, 66.0905, 66.0906, AND 66.0907, RELATING TO SINGLE USE PLASTIC REDUCTION.

WHEREAS, in accordance with the City of San Diego's Climate Action Plan, the City intends to achieve zero waste by 2040; and

WHEREAS, polystyrene foam does not biodegrade, but breaks into smaller pieces, which are easily mistaken for food by marine wildlife and create litter; and

WHEREAS, polystyrene foam is manufactured using the monomer styrene, a known animal carcinogen; and

WHEREAS, affordable alternatives exist to the uses of polystyrene foam for food service, grocery packaging, and other common uses; and

WHEREAS, single-use straws and eating utensils are made of plastics that also create waste and environmental hazards and therefore should only be made available upon request;

NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, Division 5 of the San Diego Municipal Code is amended by adding new section 22.0518, to read as follows:

**§22.0518 Purchase of Polystyrene Foam Food Service Ware**

City departments shall not purchase or acquire food service ware made, in whole or in part, from polystyrene foam. Food service ware and polystyrene foam have the same meaning as in San Diego Municipal Code section 66.0901.

Section 2. That Chapter 4, Article 4, Division 2 of the San Diego Municipal Code is amended by repealing sections 44.0226, 44.0227, 44.0228, and 44.0229.

Section 3. That Chapter 6, Article 6, of the San Diego Municipal Code is amended by adding new Division 9, titled “Single Use Plastic Reduction,” and by adding new sections 66.0901, 66.0902, 66.0903, 66.0904, 66.0905, 66.0906, and 66.0907, to read as follows:

**Division: 9 Single Use Plastic Reduction**

**§66.0901 Definitions**

For purposes of this Division, the following definitions apply. Words defined in this Division appear in text in italics.

*City facility* means any building, structure, park, beach, or vehicle owned or operated by the City of San Diego.

*Director* means the Director of the Environmental Services Department or successor department, or designee.

*Distribute* means to provide or offer to provide an item, either as a separate transaction or as part of a transaction for another item, regardless of whether compensation is received.

*Egg carton* means a container commonly used to package eggs sold to retail consumers.

*Food service ware* means containers, bowls, plates, trays, cups, lids, and other similar items that are designed for one-time use for *prepared food*, including containers for takeout food or leftovers. *Food service ware* does not include *polystyrene foam* coolers and ice chests.

*Food tray* means a tray commonly used for packaging food sold to retail consumers.

*Food vendor* means any retail establishment that sells *prepared food* for consumption, including from a temporary facility, cart, vehicle, or mobile unit.

*Polystyrene foam* means blown polystyrene and expanded and extruded foams, also known by the trademarked name Styrofoam, which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, without limitation, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

*Prepared food* means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared within the City of San Diego for individual consumers. *Prepared food* includes takeout food, but does not include raw eggs or raw, butchered meats, fish, or poultry.

*Recyclable* has the same meaning as in Municipal Code section 66.0102.

*Utensil* means a straw, fork, spoon, or knife made predominately of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources. Items made from non-plastic materials, including paper, pasta, sugar cane, wood, or bamboo, are not *utensils*.

**§66.0902 Distribution of Polystyrene Foam Prohibited**

- (a) No person may *distribute egg cartons, food service ware, or food trays* made, in whole or in part, from *polystyrene foam*.
- (b) No person may *distribute* the following items made, in whole or in part, from *polystyrene foam* that is not wholly encapsulated or encased within a non-*polystyrene foam* material:
  - (1) coolers, ice chests, or similar containers;
  - (2) pool or beach toys; or
  - (3) dock floats, mooring buoys, or anchor or navigation markers.

**§66.0903 Use of Non-Compliant Polystyrene Foam Prohibited**

No person shall use the products prohibited from distribution in section 66.0902 in or at *City facilities*.

**§66.0904 Exception from Prohibitions**

It shall not be a violation of section 66.0902(a) to *distribute prepared food* packaged in *food service ware* or use *food trays* made, in whole or in part, from *polystyrene foam*, if the *prepared food* is packaged outside the City and is provided to the consumer as originally packaged.

**§66.0905 Utensils Restricted**

- (a) A *food vendor* may only *distribute utensils* for takeout orders of *prepared food* upon the request of the person ordering the *prepared food*.
- (b) A *food vendor* may only *distribute* straws, as defined as a *utensil*, upon request of the person ordering the *prepared food*.

**§66.0906 Implementation**

- (a) The *Director* shall, within 30 days after [ FEB 23 2019 ], publish on the City's website and distribute to interested parties who have requested notice, information regarding acceptable alternative *food service ware* and *food tray* products that are not prohibited by section 66.0902(a).  
The person using a product as *food service ware* or a *food tray* will have the burden of establishing that the product complies with section 66.0902(a).
- (b) The *Director* shall maintain and update the published information referenced in section 66.0906(a), as may be appropriate.
- (c) An applicant may seek a waiver or a renewal of a waiver in accordance with this section by submitting a written application on a form approved by the *Director*. Applications for renewals must be submitted no later than 60 days prior to the expiration of the previous waiver. The *Director* may require the applicant to submit additional information or documentation before making a determination regarding the waiver.
- (d) The *Director* may waive the provisions of section 66.0902(a) regarding *food service ware* and *food trays* in accordance with the following:
- (1) Feasibility-based hardship. The applicant seeking the waiver must demonstrate to the *Director's* satisfaction that no reasonably feasible alternative exists to a specific non-compliant material.
  - (2) Financial hardship. An individual or an entity may seek a financial hardship waiver. The applicant seeking the waiver must

demonstrate to the *Director's* satisfaction that the following criteria are met:

- (A) The applicant has a gross income of less than \$500,000 on the applicant's annual Federal income tax filing for the most recent tax year, however, a waiver sought on behalf of an entity must be based on the entity's income, and
  - (B) With respect to each specific non-compliant product, there is no suitable and reasonably affordable alternative product available.
- (3) Contractual requirement. The applicant seeking a waiver based on an existing contractual requirement must demonstrate to the *Director's* satisfaction that a contract to purchase a non-compliant material was entered into within one year prior to FEB 23 2019, in which case the *Director* may waive the requirements of section 66.0902 for one year, until FEB 23 2020
- (e) The *Director* may grant feasibility-based or financial hardship waivers in whole or in part, with or without conditions, for up to 24 months if the applicant or City official seeking the waiver has demonstrated to the *Director's* satisfaction that strict application of the specific requirement would create a continued feasibility-based or financial hardship pursuant to section 66.0906(d)(1) or (2) or there are special circumstances or conditions that are peculiar to the applicant and these circumstances or conditions are not the result of any act of the applicant's after

[ FEB 23 2019 ] and the waiver is the minimum relief necessary to address the special circumstances or conditions. The *Director* shall base his or her determination on the most current information available. The *Director* may grant renewals for up to 24 months, based on the same criteria. Subsequent renewals for up to 24 months, based on the same criteria, may be applied for and granted.

- (f) The *Director's* determination regarding a waiver shall be final and shall not be subject to appeal.

**§66.0907 Enforcement and Penalties**

The *Director* shall issue a written warning to any person he or she determines is violating this Division as a first offense. If, after issuing a written warning of violation, the person continues to violate the same provision of this Division, the City may impose the other enforcement remedies set forth in San Diego Municipal Code Chapter 1.

Section 4. That the City Clerk is instructed to insert the effective date of this Ordinance, once known, in the blank space provided in Municipal Code section 66.0906(a), the first blank space in Municipal Code section 66.0906(d)(3), and the blank space provided in Municipal Code section 66.0906(e).

Section 5. That the City Clerk is instructed to insert the date that is one year after the effective date of this Ordinance, once known, in the second blank space provided in Municipal Code section 66.0906(d)(3).

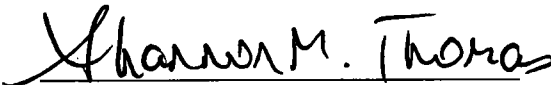
Section 6. That section 66.0902(a), prohibiting the distribution of food service ware and food trays made, in whole or in part, from polystyrene foam, is not operative until 90 days after the effective date in section 7.

Section 7. That this Ordinance shall take effect and be in force on January 1, 2019, if at least thirty days have passed from its date of final passage, or on the thirtieth day from and after its final passage, whichever is later.

Section 8. That individuals or entities with a gross income of less than \$500,000 on the individual or entity's Federal income tax filing for the most recent tax year are exempt from compliance with the Ordinance for 12 months from the effective date as set forth in section 7; however, an exemption for an entity must be based on the entity's income.

Section 9. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Shannon M. Thomas  
Senior Deputy City Attorney

SMT:nja  
08/29/18  
10/16/18 Rev. Copy  
02/25/19 Rev. Copy 2  
Or. Dept: City Council - District 3  
Doc. No.: 1823920\_6



I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JAN 08 2019.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

(See attached memo and signature page.)

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**DATE:** February 25, 2019  
**TO:** Office of the City Clerk  
**FROM:** Shannon Thomas, Senior Deputy City Attorney  
**SUBJECT:** Item 200 Subitem-A of October 15, 2018, Council Meeting

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Attached to this memorandum is a revised copy 2 of Ordinance O-2019-50, with corrections to this ordinance.

Subsequent to the final passage of Ordinance O-21030, an error was noted in Section 66.0906(d)(3), which allows the Director to grant a waiver, based on a contract to purchase non-compliant material that was entered into within one year prior to the effective date of the ordinance. The instructions to the City Clerk were to insert the date that was one year from the effective date in the second blank of Section 66.0906(d)(3).

A date that is one year from the effective date is February 23, 2020, which would create a one-year gap between the time the ordinance was effective, February 23, 2019, and when the Director could begin to issue waivers; a one-year gap for which there was no legislative intent.

The text of section 66.0906(d)(3) is corrected to read as follows:

- (3) Contractual requirement. The applicant seeking a waiver based on an existing contractual requirement must demonstrate to the *Director's* satisfaction that a contract to purchase a non-compliant material was entered into within one year prior to [\_\_\_\_\_], in

which case the *Director* may waive the requirements of section  
66.0902 for one year, ~~from~~ until [\_\_\_\_\_].

MARA W. ELLIOTT, CITY ATTORNEY

By Shannon M. Thomas  
Shannon M. Thomas  
Senior Deputy City Attorney

SMT:nja  
Doc. No.: 1939143

I hereby certify that the foregoing Ordinance was passed by the Council of the City of  
San Diego, at this meeting of JAN 08 2019.

ELIZABETH S. MALAND  
City Clerk

By *Connie Patterson*  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

(Note: This ordinance was returned unsigned by the Mayor's Office to the Office of the City Clerk on January 24, 2019. Pursuant to the San Diego Charter Section 295(a)(2), the Mayor has 10 business days from the date the ordinance was transmitted to sign or veto the ordinance, said deadline being close of business on January 24, 2019. Therefore, the date of expiration of that time shall be deemed the date of its final passage.)

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: ~~Struck Out~~**

**NEW LANGUAGE: Double Underline**

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 5 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW SECTION 22.0518, AMENDING CHAPTER 4, ARTICLE 4, DIVISION 2 BY REPEALING SECTIONS 44.0226, 44.0227, 44.0228, AND 44.0229, BY AMENDING CHAPTER 6, ARTICLE 6, BY ADDING NEW DIVISION 9, TITLED "SINGLE USE PLASTIC REDUCTION," AND BY ADDING NEW SECTIONS 66.0901, 66.0902, 66.0903, 66.0904, 66.0905, 66.0906, AND 66.0907, RELATING TO SINGLE USE PLASTIC REDUCTION.

**§22.0518      Purchase of Polystyrene Foam Food Service Ware**

City departments shall not purchase or acquire food service ware made, in whole or in part, from polystyrene foam. Food service ware and polystyrene foam have the same meaning as in San Diego Municipal Code section 66.0901.

**~~§44.0226~~      ~~Plastic Food Containers—Definitions~~**

~~In this Division the following definitions shall apply:~~

~~"Polystyrene Plastic" means a thermoplastic petrochemical material utilizing a styrene monomer and a blowing agent compound which is used to produce molded expanded or extruded expanded polystyrene plastic foam.~~

~~"Polystyrene Food Packaging" means a thermoplastic petrochemical material utilizing a styrene monomer and blowing agents used for packaging and containing food and drink materials, including, but not limited to, cups, bowls,~~

~~plates, hinge carry out and sandwich containers, egg cartons, and stock food containers.~~

**§44.0227 Plastic Food Containers—Prohibitions as to Certain Polystyrene**

~~On or after January 1, 1989, it shall be unlawful to manufacture, sell or distribute to any person in this City any polystyrene food packaging product made of or with polystyrene plastic using a fully—halogenated chlorofluorocarbon (CFC—12-dichlorodifluoromethane), except with the authorization of the City Manager.~~

**§44.0228 Plastic Food Containers—Exemptions**

- ~~(a) The City Manager may exempt an item or type of polystyrene packaging from the requirements of this Division, upon a showing that the item or type has no acceptable non—CFC-processed equivalent.~~
- ~~(b) Polystyrene food packaging manufactured prior to January 1, 1989 is exempt from the provisions of this ordinance.~~

**§44.0229 Plastic Food Containers—Penalty**

~~In addition to any other applicable civil or criminal penalty, any person convicted of a violation of section 44.0227 is guilty of an infraction, which is punishable by a fine not to exceed \$50.00 for the first violation, \$100.00 for the second violation within one (1) year, and \$250.00 for each additional violation within one (1) year. Each incident in violation of section 44.0227 shall constitute a separate violation.~~

**Division: 9 Single Use Plastic Reduction**

**§66.0901 Definitions**

For purposes of this Division, the following definitions apply. Words defined in this Division appear in text in italics.

*City facility* means any building, structure, park, beach, or vehicle owned or operated by the City of San Diego.

*Director* means the Director of the Environmental Services Department or successor department, or designee.

*Distribute* means to provide or offer to provide an item, either as a separate transaction or as part of a transaction for another item, regardless of whether compensation is received.

*Egg carton* means a container commonly used to package eggs sold to retail consumers.

*Food service ware* means containers, bowls, plates, trays, cups, lids, and other similar items that are designed for one-time use for *prepared food*, including containers for takeout food or leftovers. *Food service ware* does not include *polystyrene foam* coolers and ice chests.

*Food tray* means a tray commonly used for packaging food sold to retail consumers.

*Food vendor* means any retail establishment that sells *prepared food* for consumption, including from a temporary facility, cart, vehicle, or mobile unit.

*Polystyrene foam* means blown polystyrene and expanded and extruded foams, also known by the trademarked name Styrofoam, which are thermoplastic

petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, without limitation, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

Prepared food means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared within the City of San Diego for individual consumers. Prepared food includes takeout food, but does not include raw eggs or raw, butchered meats, fish, or poultry.

Recyclable has the same meaning as in Municipal Code section 66.0102.

Utensil means a straw, fork, spoon, or knife made predominately of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources. Items made from non-plastic materials, including paper, pasta, sugar cane, wood, or bamboo, are not utensils.

**§66.0902**      **Distribution of Polystyrene Foam Prohibited**

- (a)      No person may distribute egg cartons, food service ware, or food trays made, in whole or in part, from polystyrene foam.
  
- (b)      No person may distribute the following items made, in whole or in part, from polystyrene foam that is not wholly encapsulated or encased within a non-polystyrene foam material:
  - (1)      coolers, ice chests, or similar containers;
  - (2)      pool or beach toys; or
  - (3)      dock floats, mooring buoys, or anchor or navigation markers.



**§66.0903**      **Use of Non-Compliant Polystyrene Foam Prohibited**

No person shall use the products prohibited from distribution in section 66.0902 in or at City facilities.

**§66.0904**      **Exception from Prohibitions**

It shall not be a violation of section 66.0902(a) to distribute prepared food packaged in food service ware or use food trays made, in whole or in part, from polystyrene foam, if the prepared food is packaged outside the City and is provided to the consumer as originally packaged.

**§66.0905**      **Utensils Restricted**

- (a) A food vendor may only distribute utensils for takeout orders of prepared food upon the request of the person ordering the prepared food.
- (b) A food vendor may only distribute straws, as defined as a utensil, upon request of the person ordering the prepared food.

**§66.0906**      **Implementation**

- (a) The Director shall, within 30 days after [ \_\_\_\_\_ ], publish on the City's website and distribute to interested parties who have requested notice, information regarding acceptable alternative food service ware and food tray products that are not prohibited by section 66.0902(a).  
The person using a product as food service ware or a food tray will have the burden of establishing that the product complies with section 66.0902(a).
- (b) The Director shall maintain and update the published information referenced in section 66.0906(a), as may be appropriate.

(c) An applicant may seek a waiver or a renewal of a waiver in accordance with this section by submitting a written application on a form approved by the *Director*. Applications for renewals must be submitted no later than 60 days prior to the expiration of the previous waiver. The *Director* may require the applicant to submit additional information or documentation before making a determination regarding the waiver.

(d) The *Director* may waive the provisions of section 66.0902(a) regarding *food service ware* and *food trays* in accordance with the following:

(1) Feasibility-based hardship. The applicant seeking the waiver must demonstrate to the *Director's* satisfaction that no reasonably feasible alternative exists to a specific non-compliant material.

(2) Financial hardship. An individual or an entity may seek a financial hardship waiver. The applicant seeking the waiver must demonstrate to the *Director's* satisfaction that the following criteria are met:

(A) The applicant has a gross income of less than \$500,000 on the applicant's annual Federal income tax filing for the most recent tax year, however, a waiver sought on behalf of an entity must be based on the entity's income, and

(B) With respect to each specific non-compliant product, there is no suitable and reasonably affordable alternative product available.

- (3) Contractual requirement. The applicant seeking a waiver based on an existing contractual requirement must demonstrate to the Director's satisfaction that a contract to purchase a non-compliant material was entered into within one year prior to [ \_\_\_\_\_ ], in which case the Director may waive the requirements of section 66.0902 for one year, until [ \_\_\_\_\_ ].
- (e) The Director may grant feasibility-based or financial hardship waivers in whole or in part, with or without conditions, for up to 24 months if the applicant or City official seeking the waiver has demonstrated to the Director's satisfaction that strict application of the specific requirement would create a continued feasibility-based or financial hardship pursuant to section 66.0906(d)(1) or (2) or there are special circumstances or conditions that are peculiar to the applicant and these circumstances or conditions are not the result of any act of the applicant's after [ \_\_\_\_\_ ] and the waiver is the minimum relief necessary to address the special circumstances or conditions. The Director shall base his or her determination on the most current information available. The Director may grant renewals for up to 24 months, based on the same criteria. Subsequent renewals for up to 24 months, based on the same criteria, may be applied for and granted.
- (f) The Director's determination regarding a waiver shall be final and shall not be subject to appeal.

**§66.0907**      **Enforcement and Penalties**

The Director shall issue a written warning to any person he or she determines is violating this Division as a first offense. If, after issuing a written warning of violation, the person continues to violate the same provision of this Division, the City may impose the other enforcement remedies set forth in San Diego Municipal Code Chapter 1.

SMT:nja  
08/29/18  
10/16/18 Rev. Copy  
02/25/19 Rev. Copy 2  
Or. Dept: City Council - District 3  
Doc. No.: 1823945\_6

Passed by the Council of The City of San Diego on JAN 08 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 24 2019

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.  
By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

OCT 15 2018, and on JAN 24 2019

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.  
By [Signature], Deputy

Office of the City Clerk, San Diego, California  
Ordinance Number O- 21030