

#679
12/08/22
(O-2023-77)

ORDINANCE NUMBER O- 21587 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 08 2022

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 6, BY REPEALING DIVISION 9, TITLED "SINGLE USE PLASTIC REDUCTION," BY REPEALING SECTIONS 66.0901, 66.0902, 66.0903, 66.0904, 66.0905, 66.0906, AND 66.0907, RELATING TO SINGLE USE PLASTIC REDUCTION.

WHEREAS, in January 2019, the City Council passed San Diego Ordinance O-21030 (Jan. 24, 2019), the Single Use Plastic Reduction ordinance, to restrict the distribution of polystyrene foam products and plastic utensils throughout the City; and

WHEREAS, the City was sued in the case of *Jose Gameros, et al. v. The City of San Diego* after Ordinance O-21030 passed; and

WHEREAS, the City agreed with Plaintiff to settle the case; and

WHEREAS, as part of the Settlement Agreement the City agreed to stay enforcement of Ordinance O-21030, to prepare an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act, and to: (1) certify the EIR, (2) repeal the Ordinance O-21030, (3) re-adopt that Ordinance, and/or (4) adopt a new ordinance regulating, prohibiting or relating to the distribution or use of polystyrene foam in the City of San Diego under any terms the City deems appropriate pending public consideration; and

WHEREAS, pursuant to the Settlement Agreement, the City prepared an EIR that is being presented to the City Council for certification along with a request directing the Clerk to file a Notice of Determination, to repeal sections 66.0901, 66.0902, 66.0903, 66.0904, 66.0905, 66.0906, and 66.0907, which were added to the Municipal Code by the 2019 ordinance, and then re-adopt those sections from the Single Use Plastic Reduction Ordinance with minor clarifications and a delayed effective date; and

WHEREAS, this ordinance repeals Ordinance O-21030 by amending the Municipal Code to repeal sections added by Ordinance O-21030, namely sections 66.0901, 66.0902, 66.0903, 66.0904, 66.0905, 66.0906, and 66.0907; and

WHEREAS, the Office of the City Attorney has drafted this ordinance based on the information provided by City staff with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

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

Section 1. That Chapter 6, Article 6, Division 9 of the San Diego Municipal Code is amended by repealing Division 9, titled "Single Use Plastic Reduction," and by repealing sections 66.0901, 66.0902, 66.0903, 66.0904, 66.0905, 66.0906, and 66.0907.

Section 2. 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.

Section 3. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Noah J. Brazier
Noah J. Brazier
Deputy City Attorney

NJB:nja
09/23/2022
Or. Dept: ESD
Doc. No.: 3125695

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of DEC 06 2022

ELIZABETH S. MALAND
City Clerk

By Kristell Medina
Deputy City Clerk

Approved: 12/8/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 6, BY REPEALING DIVISION 9, TITLED "SINGLE USE PLASTIC REDUCTION," BY REPEALING SECTIONS 66.0901, 66.0902, 66.0903, 66.0904, 66.0905, 66.0906, AND 66.0907, RELATING TO SINGLE USE PLASTIC REDUCTION.

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 February 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 February 23, 2019, in which case the *Director* may waive the requirements of section 66.0902 for one year, until February 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 February 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.~~

NJB:nja
09/23/2022
Or. Dept: ESD
Doc. No.: 3125693

Passed by the Council of The City of San Diego on DEC 06 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<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"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 08 2022.

AUTHENTICATED BY: TODD GLORIA
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Kristell Medina, 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 NOV 15 2022, and on DEC 08 2022.

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 Kristell Medina, Deputy

Office of the City Clerk, San Diego, California
21587
Ordinance Number O-_____