

ORDINANCE NUMBER O- 21588 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 08 2022

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 6, BY ADDING NEW DIVISION 9, TITLED "SINGLE USE PLASTIC REDUCTION," 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 (City) Climate Action Plan, the City intends to achieve zero waste; and

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

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 that case has now settled; and

WHEREAS, as part of the settlement, the City agreed to stay enforcement of Ordinance O-21030 and to prepare an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act; and

WHEREAS, the Final EIR is being presented to the City Council for certification along with a request to direct the City Clerk to file a Notice of Determination, repeal sections 66.0901, 66.0902, 66.0903, 66.0904, 66.0905, 66.0906, and 66.0907, which were added to the San Diego Municipal Code (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 readopts all Municipal Code sections added by Ordinance O-21030 by amending the Municipal Code to add all sections added by Ordinance O-21030 with minor clarifications; 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, 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 JAN 04 2023, 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 applicant 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 [_____] **APR 01 2023**, in which case the *Director* may waive the requirements of section 66.0902 for one year, until [_____] **APR 01 2024**.
- (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 [**APR 01 2023**] 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 or a renewal of 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 2. 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 3. 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 4. That this Ordinance shall take effect and be in force on April 1, 2023, 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 5. That individuals or entities with a gross income of less than \$500,000 on the individual's or entity's Federal income tax filing for the most recent tax year are exempt from compliance with this Ordinance for 12 months from the effective date as set forth in section 4; however, an exemption for an entity must be based on the entity's income.

Section 6. 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 /s/ Noah J. Brazier
Noah J. Brazier
Deputy City Attorney

NJB:nja
09/23/2022
Or. Dept: ESD
Doc. No.: 3125697

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 *Kristeel 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 _____

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Division: 9 Single Use Plastic Reduction

§66.0901

Definitions

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

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containers for takeout food or leftovers. *Food service ware* does not include *polystyrene foam* coolers and ice chests.

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§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 applicant 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 or renewal of 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.: 3125696

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 Krystell 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 Krystell Medina, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 21588