

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA PROHIBITING THE USE, SALE AND DISTRIBUTION OF DESIGNATED POLYSTYRENE PRODUCTS, SINGLE-USE PLASTIC BEVERAGE BOTTLES LESS THAN ONE LITTER AT CITY-SANCTIONED EVENTS, CARRYOUT PLASTIC BAGS, BALLOONS FILLED WITH GAS LIGHTER THAN AIR AND LIMITING THE DISTRIBUTION OF ~~DISPOSABLE FOOD WARE, DISPOSABLE FOOD WARE ACCESSORIES OR DISPOSABLE PLASTIC PRODUCTS. PLASTIC UTENSILS, SINGLE-USE PLASTIC CUPS AND BEVERAGE STRAWS.~~

Purpose and Intent.

The purpose of this section of the Chula Vista Municipal Code is to establish standards and procedures for the distribution, sale and use of designated single-use plastic products to reduce litter in the City.

Section 1 Definitions

For the purposes of this section, the following words and phrases used below are defined as follows unless it is apparent from the context that a different meaning is intended:

“Balloon” means a flexible bag, including but not limited to, those made from rubber, latex, polychloroprene (neoprene), Mylar, or nylon fabric, that is designed to be inflated with a gas lighter than air, causing it to float, or designed to be filled with water. A balloon may be used for decorative, toy, or entertainment purposes. Balloons used for medical, industrial, or scientific purposes are not subject to the provisions of this ordinance.

“Bottled beverage” means drinking water, sparkling water, enhanced water, soda, sport drinks, juice, or other similar product in a rigid plastic bottle having a capacity of one liter or less and intended primarily as a single-service container.

“Beverage Straw” means any straw or tube that is used for transferring a beverage from its container to the mouth of the drinker.

“Bottled water” means drinking water in a sealed rigid plastic bottle having a capacity of one liter or less.

“Biodegradable” means the ability of organic matter to break down from a complex to a simpler form through the action of bacteria. Biodegradable materials may vary greatly in the amount of time taken to break down and do not necessarily produce soil nutrients.

“Carryout bag” means a bag provided at the check stand, cash register, point of sale, or other location for the purpose of transporting food or merchandise out of a retail establishment or food service provider's premises. For the purposes of this chapter, carryout bags do not include produce bags or product bags.

“City” means the City of Chula Vista.

“City Facility” means any building, structure, property, park, or open space, owned, leased or operated by the City, its agents, agencies, departments or franchisees.

“City Contractor” means any person that enters into an agreement with the City to furnish products or services to or for the City including all franchisees, contractors, and vendors doing business with the City.

“City-Sanctioned Event” means any event, activity or meeting organized, sponsored, permitted, in whole or in part, by the City or any department of the City. This includes events at rented or borrowed City Facilities, City- managed concessions, and City co-sponsored events.

“Customer” means any person obtaining Prepared Food from a Restaurant or Food Provider.

“Disposable Food Ware **Product**” or **“Disposables”** means single-use, disposable products used for **containing**, serving, transporting, or consuming Prepared Food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, hinged food containers, cups or drink ware, or any other container in or on which Prepared Foods are placed or packaged for consumption. **Disposable food ware does not include accessory items used as part of or alongside prepared food.**

“Disposable Food Ware Accessory” means food ware items, including utensils (e.g. forks, knives, spoons, sporks, and chopsticks), straws, stirrers, condiment cups and packets, cup lids, cup sleeves, cocktail sticks, toothpicks, splash sticks, spill plugs, and other similar accessory items used as part of or alongside prepared food.

“Disposable Plastic Product” means a polymer-based product or nondurable plastic-based product with a use lifespan of less than three years.

“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.

“Encapsulated Expanded Polystyrene Product” means Expanded Polystyrene products that have been completely encased by a more durable material that protects the EPS material from disintegration and makes the product suitable for reuse multiple times.

“Event” means an organized recreational or cultural activity promoted or sponsored by a business or non-profit group.

“Expanded Polystyrene” or “EPS” means polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam. EPS is sometimes called “Styrofoam”, a Dow Chemical Co. trademark form of polystyrene foam insulation.

“Expanded Polystyrene Product” means any item such as a cooler, ice chest, cup, bowl, plate, hinged food container (clamshell), shipping box, or any other merchandise made from expanded polystyrene.

“Food Provider” means any Person or establishment that provides or sells Prepared Food within the City to the 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, delicatessen, restaurant, drive-thru, café, cafeteria, coffee shop, snack shop, public food market, farmers’ market, convenience store, or similar fixed place where Prepared Food 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 business,

organization, group, or individual that regularly provides Prepared Food to its members or the public as a part of its activities or services.

“Food Tray” means a tray commonly used for packaging food for retail sale.

“Gas Lighter Than Air” means a gas that has a lower density than normal atmospheric gases and rises above them as a result, including, but are not limited to, helium, hydrogen, methane, oxygen, and nitrogen.

“Packaged water” means drinking water in a sealed box, bag, rigid plastic bottle or other container intended primarily for single service use and having a capacity of one liter or less. This definition specifically excludes aluminum cans and glass bottles.

“Plastic bottle” means any formed or molded container comprised predominantly of plastic resin, having a relatively inflexible fixed shape or form, having a neck that is smaller than the container body, and intended primarily as a single service container.

“Produce bag” or “product bag” means any bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.

“Plastic Straw” or “Plastic Beverage Straw” means a Beverage Straw made of plastic derived from fossil fuel or biologically based polymer.

“Plastic Utensil” means fork, spoon, knife, chopstick or stirrer, or other eating implement made predominantly of plastic derived from fossil-fuel or a biologically based polymer.

“Polystyrene” means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion- blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The recycle code for polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies to all polystyrene food ware, regardless of whether it exhibits a recycle code.

“Prepared Food” means any food or beverage that is (1) ready to consume without any further 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. For purposes of this ordinance, Prepared Food does not include (1) any raw uncooked meat, poultry, fish unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers’ markets and other food vendors.

“Reusable carryout bag” means a bag that is specifically designed and manufactured for multiple uses and meets the reusable bag requirements set forth in California Public Resources Code Section 42281.

“Recyclable paper bag” means a carryout bag that meets all of the following requirements:

1. Does not contain a plastic lining;

2. Is accepted for recycling in the city's curbside recycling program;
3. Is capable of composting consistent with the timeline and specifications of ASTM Standard D6400;
4. Has printed on the bag the name of the manufacturer, the country where the bag was manufactured, and the minimum percentage of postconsumer content; and,
5. Displays the word "recyclable" on the outside of the bag, to the extent permitted under applicable law regarding recyclability claims.

"Single-use carryout plastic bag" means any bag made predominantly of plastic derived from either petroleum or a biologically based source, such as corn or other plant sources, which is provided to a customer at the point of sale. "Single-use carryout plastic bag" does not include reusable bags, produce bags, or product bags.

Section 2 Distribution of disposable food ware accessories, and disposable food ware products.

(a) Disposable food ware accessories and disposable food ware products shall not be automatically distributed to customers eating at food provider's premises or for takeout, including when using a third-party delivery platform. A food provider may only distribute disposable food ware accessories (non-polystyrene) upon request by the customer or by the food provider to the customer, and upon offer at a drive-thru.

(b) Plastic beverage straws shall not be automatically distributed to customers eating or drinking at the food provider's premises unless the straw is pre-packaged with the beverage by a manufacturer.

Section 3 Sales and distribution of expanded or rigid polystyrene products, disposable plastic products and balloons filled with gas lighter than air.

(a) No food provider shall distribute or sell any polystyrene disposable food ware in conjunction with the sale of prepared food or beverages at any location within the City of Chula Vista.

(b) No person shall sell or distribute, disposable food ware made, in whole or in part, from polystyrene at any location within the City of Chula Vista.

(c) No person shall distribute or sell expanded polystyrene loose fill packaging and cushioning material, such as foam peanuts, packing peanuts, foam popcorn or packing noodles, intended for the packaging of products, equipment, or other items at any location within the City of Chula Vista.

(d) No person shall distribute or sell any at disposable plastic products any location within the City of Chula Vista.

(e) No person shall distribute, or sell products made in whole or in part, from expanded polystyrene that is not wholly encapsulated or encased within a non-Polystyrene material at any location within the City of Chula Vista.

(f) No person shall sell distribute or use balloons filled with gas lighter than air at any location within the City of Chula Vista.

(g) This Section shall not apply to manned hot air balloons, or to balloons used in governmental or scientific research projects.

Section 4 Distribution of single-use carryout bags.

This Chula Vista Municipal Code section is meant to work in conjunction with state law related to single-use carryout bags and any stores already in compliance with state law related to single-use carryout bags shall continue to follow state law on this matter.

(a) Commercial businesses and food providers in the City of Chula Vista shall not provide a carryout bag to a customer at the point of sale, except as provided for in this chapter.

(b) Commercial businesses may distribute only reusable carryout bags or recyclable paper carryout bags for the purpose of carrying away goods, merchandise, or other items from the point of sale, in accordance with this chapter. Food service providers located within retail establishments shall comply with the requirements of subsection (c) below.

(c). Food providers may distribute only reusable carryout bags or recyclable paper bags for the purpose of carrying away prepared food or other goods from the point of sale, in accordance with this chapter. Food service providers shall comply with the requirements of this chapter for both on-premises and off-premises consumption of prepared food; and, for any method of ordering, including in-person, telephone, drive-through, self-serve, digital order, or through a third-party food delivery platform. Food service providers may use product bags or produce bags for takeout or delivery orders to hold containers of prepared food items that are liquids susceptible to spilling, such as soups, if specifically needed to prevent spilling during transport.

(d) This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to produce bags or product bags.

(e) Nothing in this Chula Vista Municipal Code section prohibits customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

(f) All stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both, at the store's option, to any customer participating either in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code.

(g) No person shall sell or distribute a carryout plastic bag at City facilities, City-managed concessions, or City-sponsored events.

Section 5 Carryout bag charge

(a) Commercial businesses or food service providers that provide recyclable paper bags or reusable carryout bags at the point of sale may charge the customer no less than 10 cents for each bag provided.

(b) Commercial business and food providers shall inform the customer of the 10-cent charge prior to completing the transaction and shall separately itemize such charge on the sales receipt.

Section 6 Sale and distribution of Bottled Beverages and Packaged Water at City Events and on City Property.

- (a) The sale and distribution of packaged water at any city facility, including events held through rentals or leases, is prohibited.
- (b) The sale and distribution of packaged water at any event held on city property, including a city street, and including events held through rentals or leases, is prohibited.
- (c) All new, renewed, and amended leases, permits or other agreements awarded by the city allowing any person to use city property or operate a mobile food facility shall require compliance with the prohibition.
- d) The above subsections A, B and C of this Section shall not apply to restrict the sale and distribution of water in aluminum cans or glass bottles
- e) The sale and distribution of bottled beverages at any city facility, including events held through rentals or leases, is prohibited.
- f) The sale and distribution of bottled beverages at any event held on city property, including a city street, and including events held through rentals or leases, is prohibited.
- (g) No City officer, department, or agency (collectively, department) shall use city funds to purchase plastic bottled beverages or packaged water for its own general use. A department may use city funds to purchase those products for uses specifically exempted from or allowed under this Chula Vista Municipal Code Section.
- (h) The city shall take appropriate steps to replace the use of single-use plastic bottles at food service facilities with non-plastic, recyclable, and reusable alternatives, including, but not limited to, aluminum cans, glass bottles, water fountains, or water bottle refill stations for reusable or refillable beverage containers.

Section 7 Standard Exemptions

The following exemptions of products apply to provisions of this Chula Vista Municipal Code Section:

- (a) Prepared food packaged outside the City, provided such food is not altered, packaged, or repackaged within the City limits.
- (b) Expanded polystyrene insulated containers designed to safely transport by mail or common carrier prepared food, frozen goods, perishables, pharmaceuticals, biotech, and medical supplies in compliance with the Food and Drug Administration or other regulatory agency recommended temperatures.
- (c) Containers, plates or trays for raw, butchered meats, fish and/or poultry.
- (d) Food ware, plastic utensils, or plastic beverage straws brought by individuals for personal consumption or use at public facilities, including but not limited to schools and parks, provided the facility use is not part of an event.

(e) The City may exempt a food provider or beverage provider when there is a public health and safety requirement or medical necessity to use an otherwise prohibited food ware product.

(f) During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and Food Providers shall be exempt from the provisions of this Chula Vista Municipal Code Section.

(g) Construction products made from Polystyrene/Plastic Foam are exempted from this Chula Vista Municipal Code Section if the products are used in compliance with City of Chula Vista Municipal Code Title 15 (Buildings and Construction).

Section 8 Waivers

(a) The City Manager or his/her designee may consider a waiver filed by any food provider or person.

(b) A request for a waiver shall be filed in writing with the City Manager or designee annually and shall include documentation of the reason for the claimed waiver and any other information necessary for the City to make its decision, including, but not limited to the factual support for the claimed waiver as follow:

(c) Situations unique to the food provider where there are no reasonable alternatives to polystyrene disposable food ware.

(d) Situations where no reasonably feasible available alternatives exist to a specific and necessary expanded polystyrene use.

(e) The City Manager or designee's written decision on the waiver application is effective within 30 days of the decision and is not appealable.

(f) The City Council may by resolution establish a fee for waiver applications. The application fee shall be an amount sufficient to cover the costs of processing the waiver application.

(i) An event sponsor or lessee demonstrates that strict application of the specific requirement would create an undue hardship, or practical difficulty, not generally applicable to other persons in similar circumstances, and good cause is shown.

(j) A person seeking a waiver must submit the request in writing. The City Manager or designee may require the applicant to submit additional information or documentation to decide regarding the waiver requested. The City Manager or designee shall review requests for waivers on a case-by-case basis and may grant the waiver in whole or in part, with or without conditions, for a period of up to twelve (12) months. An applicant for renewal of a waiver must apply for a new waiver period no later than sixty (60) days prior to the expiration of the then-current period to preserve a continuous waiver status. The City Manager or designee shall review each application anew and base his or her determination on the most current information available.

(k) Waiver determinations are effective immediately, final, and not appealable. City Council may by resolution establish a fee for waiver determinations in an amount sufficient to cover the costs to administer the application.

Section 9 Compliance

The City may inspect and monitor affected locations to determine compliance with this Chula Vista Municipal Code Section.

Section 10 Severability

If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are hereby declared to be severable.

Section 11 Implementation.

This Chula Vista Municipal Code section shall take effect on April 22, 2023 after adoption by Chula Vista City Council, the City Clerk of the City of Chula Vista shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

Section 12 Enforcement

(a) It shall be unlawful for any person or entity to fail to comply with this section of the Chula Vista Municipal Code.

(b) Each violation of this Code or other ordinance of the City shall constitute a separate offense.

(c) The City may also seek to enforce violations of this Chula Vista Municipal Code Section through the City's civil penalty procedure pursuant to Chula Vista Municipal Code Section 1.41.100. et seq. of this Code.

(d) Upon a first violation of any provision of this section of the Chula Vista Municipal Code, the City shall issue a written Notice of Violation to the offending establishment, person, or entity. The notice of violation shall specify the violation(s), a date by which the violation(s) must be ceased and abated. If, after the specified correction period, the violation is not ceased or abated, the City may issue a civil penalty assessing fines in accordance with Chula Vista Municipal Code Section 1.41.100.

The remedies and penalties provided in this Chula Vista Municipal Code Section are cumulative and not exclusive and nothing in this section shall preclude the City from pursuing any other legal remedies available. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this section and any regulations or administrative procedures developed pursuant hereto.