



# City of Palm Springs

## Office of Sustainability

**TO:** Sustainability Commission

**FROM:** Patrick Tallarico, Manager

**SUBJECT:** Draft Ordinance Language Limiting Single-use Plastics

**DATE:** October 14, 2019

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Attached is a draft of the ordinance for limiting single-use plastics. The document is based on the concepts presented at the recent stakeholder meeting and was developed with input from our legal team.

The draft is based on example language from other existing or developing city ordinances such as Berkley, Alameda, and San Francisco. The draft goes beyond the ideas proposed in the original Sustainability Subcommittee report and basically would eliminate all petroleum-based plastic food service ware at restaurants and encourages or requires the reusable items for in-house dining.

In addition to any overall questions or concerns that Commissioners may have, I am hoping to get some specific input on the following:

- 1) I have set the cutoff for requiring reusable food service ware at 50 seat restaurants. This was a bit arbitrary but seems to be a good number to indicate size of establishments that would have the capabilities for this. Other cities I believe have more of a square footage cutoff, but it really all depends on whether they have room for a dishwasher. We can discuss whether the Commission has a preference for this.
- 2) I have included a prohibition on sale and distribution of food service ware made of polystyrene foam in the city. This would certainly go beyond restaurants and impact retail establishments as well. I would like to get the Commission's input on this broader prohibition.

City Staff will produce a revised version following the October Commission meeting and begin the analysis required to prepare the staff report.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING CHAPTER 5.XX TO TITLE 5 OF THE PALM SPRINGS MUNICIPAL CODE REGARDING SINGLE USE PLASTICS**

**WHEREAS**, Food and beverage packaging accounts for 14 of the top 20 marine plastic items, 30% of municipal solid waste, and 70% of street litter; and

**WHEREAS**, Plastics contribute to greenhouse gas emissions because they are derived from petroleum products and because they release methane emissions when they degrade; and

**WHEREAS**; The production, consumption and disposal of single use disposable plastics contributes significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans; and

**WHEREAS**, Polystyrene foam food and beverage service ware is a distinctive litter concern because it is lightweight, easily blown into streets and waterways, and floats in water; and

**WHEREAS**, Polystyrene foam food and beverage service ware breaks apart easily into small pieces, is difficult to collect, and is often mistaken as food by birds, fish, and wildlife; and

**WHEREAS**, Polystyrene foam food and beverage service ware is made from a nonrenewable resource, but containers made from alternative materials that are reusable, recyclable, or compostable are readily available.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference as material findings in support of this Ordinance.

**SECTION 2.** Chapter 5.XX is hereby added to Title 5 of the Palm Springs Municipal Code to read as follows:

**5.XX.010 Definitions**

For the provisions of this Chapter, the following definitions shall apply:

“City” means the City of Palm Springs, California.

“City-sponsored event” includes any event, activity or meeting organized or sponsored, in whole or in part by the City or any department of the City.

"Disposable food service ware" means all bags, sacks, wrappers, paper or foil liners, containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids and any other food contact items used to hold, serve, eat, or drink Prepared Food, which are

designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises

“Disposable cup” is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.

“Fluorinated Chemicals” means perfluoroalkyl and polyfluoroalkyl substances or fluorinated chemicals, which for the purposes of food packaging are a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

“Food Service Ware” means all containers, bowls, plates, trays, cups, lids, and other like items that are designed for a single use used for consuming prepared foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by prepared food vendors.

“Food Service Ware Accessory” means all types of single-use items usually provided alongside Prepared Food in single-use plates, containers, bowls, or cups, including but not limited to utensils, chopsticks, napkins, cup lids, cup sleeves, food or beverage trays, condiment packets and saucers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks designed for a single use for Prepared Foods.

“Packing Material” means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage.

“Plastic” means a synthetic material made from fossil fuel based polymers such as polyethylene, polystyrene, polypropylene, and polycarbonate that can be molded or blown into shape while soft and then set into a rigid or slightly elastic form.

“Prepared Food” means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, poured, or otherwise prepared (collectively “prepared”) for individual customers or consumers. Prepared Food does not include raw eggs or raw, butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance. .

"Prepared Food Vendor" means any person or place that provides or sells prepared food within the City to the general public to be consumed on the premises or for take-away consumption. Prepared Food Vendor includes but is not limited to: a grocery store, supermarket, restaurant, fast-food restaurant, drive-thru, cafe, coffee shop, snack shop, public food market, farmers market, convenience store, or similar place where prepared food is available for sale on the premises or for takeaway consumption, and (2) any mobile store, food vendor, caterer, food truck, or similar mobile outlet.

“Rapidly Biodegradable” means any product that meets the standards of ASTM D6400 or ASTM D6868 for compostability, as adopted or subsequently amended by the American Society for Testing and Materials (ASTM)

“Reusable Food Service Ware” shall mean all food ware, including plates, bowls, cups, trays, glasses, straws, stirrers, and utensils, that is manufactured of durable materials and that is

specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations. ALTERNATIVE: “Reusable” means designed and manufactured to maintain its shape and structure, and to be materially durable for repeated (at least 1,000 times each) sanitizing in water at 171 degrees Fahrenheit for at least 30 continuous seconds, washing via commercial dishwashing machine, and reuse.

“Polystyrene foam” means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of expanded polystyrene insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion blow molding (extruded foam polystyrene). Polystyrene foam is commonly made into disposable food service ware products. Polystyrene foam does not include clear or solid polystyrene (oriented polystyrene).

“Prepackaged” means food or beverages that are properly labeled and arrive at the premises of the food seller, vendor, or server in a container or wrapper in which the food or beverage is wholly encased, enclosed, contained or packaged and is not removed from such container or wrapper (other than an outer container or wrapper that encloses multiple units of food) before its sale or provision at the premises. Prepackaged food and beverages may be sold, vended, or served in the same container (e.g., ramen noodles in a foam cup).

“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.

“Reusable food service ware” means all food ware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations

"Takeout food" means Prepared Food requiring no further preparation which is purchased to be consumed off a Prepared Food Vendor’s premises. Takeout Food includes Prepared Food delivered by a Prepared Food Vendor or by a third-party delivery service.

#### **5.XX.010 On-Site food consumption**

- a) Prepared food vendors with seating capacity **of more than 50** shall use reusable food service ware for prepared food served for consumption on the premises. Disposable paper food wrappers, sleeves and bags; foil wrappers; paper napkins; and paper tray and plate-liners shall only be allowed for dining on the premises if they are rapidly biodegradable and are free of all intentionally added fluorinated chemicals, as certified by the

Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City. Fiber-based materials are preferred.

- b) All prepared food vendors offering condiments must use dispensers rather than pre-packaged disposable condiment packets for on-site food and beverage consumption.
- c) Disposable paper food wrappers, sleeves and bags; foil wrappers; paper napkins; and paper tray and plate-liners shall be allowed for on-site food consumption.

#### **5.XX.010 Off-Site food consumption**

- a) Prepared food vendors offering food for off-site consumption, or providing leftover from partially consumed food on the premises, shall only use disposable food service ware that is rapidly biodegradable and are free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City. Fiber-based materials are preferred.
- b) The following are also considered acceptable Disposable Food Service Ware:
  - 1. Non-compostable foil that is accepted in the City of Palm Springs recyclable collection program to contain and form the food item and for takeout containers.
  - 2. Biodegradable paper bags made of 100% recycled content. Bags must be free of stickers and other modifications that would render them unrecyclable.
- c) Food service ware accessories shall only be provided upon request by the customer or at self-serve stations, except that for safety reasons Disposable Cups may include lids, spill plugs and sleeves without request.
- d) Prepared food vendors and takeout food Delivery Services must provide options for customers to affirmatively request Food Service Ware Accessory items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.

#### **5.XX.010 Sale, distribution, or use of non-compliant disposable food service ware**

- a) No person may sell, offer for sale, or otherwise distribute within the City any disposable food service ware made, in whole or in part, from polystyrene foam.
- b) No City-sponsored event shall use disposable food service ware for prepared food:
  - 1. Where the disposable food service ware is made, in whole or in part, from polystyrene foam;
  - 2. Where the disposable food service ware is not rapidly biodegradable and is not free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City.
  - 3. This prohibition shall apply to the event organizers, agents of the event organizers, event food vendors and any other party (including non-profit organizations) who enter into an agreement with one or more of the co-

sponsors of the event to sell prepared food at the event or otherwise provide an event related service.

- c) City contractors and lessees shall not use disposable food service ware for prepared foods in City facilities or while performing under a city contract or lease:
  - 1. Where the disposable food service ware is made, in whole or in part, from polystyrene foam;
  - 2. Where the disposable food service ware is not rapidly biodegradable and is not free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City.

### **5.XX.010 Waiver/Exemption**

- a) The City Manager may waive the provisions of this Chapter if:
  - 1. The applicant demonstrates a feasibility based hardship. The person seeking the waiver must demonstrate to the City Manager's satisfaction that no reasonably feasible alternative exists to a specific non-compliant product.
  - 2. The applicant demonstrates compliance is unreasonably financially prohibitive. The person seeking the exemption must demonstrate to the City Manager's satisfaction that with respect to each specific non-compliant product, there is no suitable and reasonably affordable alternative product available, , including, but not limited to, good faith efforts to obtain a substantially similar complaint item at a non-prohibitive price.
  - 3. 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.
- b) An applicant seeking a waiver under subsection a must submit a written application on a form approved by the City Manager. The City Manager may require the applicant to submit additional information or documentation to make a determination regarding the waiver requested. The City Manager 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 shall review each application anew and base his or her determination on the most current information available. In no case shall a waiver be retroactive or continue past January 1, 2021.

### **5.XX.010 Violation**

- a) Any person, firm or corporation violating any provision of this chapter shall be guilty of an infraction for such violation and shall be subject to penalties as provided in Section 1.01.155.

SECTION 3. CEQA. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. IT also finds the Ordinance is exempt from the requirements of CEQA pursuant to State CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 4. Severability. If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this ordinance shall remain valid. The City Council hereby declares that it would have adopted this Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

SECTION 5. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 6. Publication. The City Clerk shall certify to the adoption of this Ordinance and shall cause a summary of the same to be published in the official newspaper of the City of Palm Springs within fifteen (15) days following its adoption.

PASSED, APPROVED AND ADOPTED this \_\_\_ day of **XXXXXX**, 2019, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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MAYOR ROBERT MOON

ATTEST:

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Anthony J. Mejia, MMC  
City Clerk

APPROVED AS TO FORM:

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Jeff Ballinger, City Attorney

DRAFT



**CERTIFICATION**

**STATE OF CALIFORNIA** )  
**COUNTY OF RIVERSIDE** ) ss  
**CITY OF PALM SPRINGS** )

I, Anthony Mejia, City Clerk, hereby certify that the attached is a true copy of Ordinance No. \_\_\_\_\_, introduced by the City Council of the City of Palm Springs, California, at a City Council meeting held the \_\_\_ day of **XXXXXX**, 2019. Ordinance No. \_\_\_\_\_ was passed, approved and adopted at a regular City Council meeting held at the \_\_\_ day of **XXXXXX**, 2019.

WITNESS my hand and official seal of the City of Palm Springs this \_\_\_ day of **XXXXXX**, 2019.

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Anthony J. Mejia, MMC  
City Clerk

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