

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING CHAPTER 5.87 TO TITLE 5 OF THE PALM SPRINGS MUNICIPAL CODE REGARDING REUSABLE FOOD SERVICE WARE AND PLASTIC WASTE REDUCTION

WHEREAS, The City has a goal of diverting over 90% of its solid waste from landfills.

WHEREAS, The production and disposal of single-use disposable food and beverage packaging has significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable polluting fossil fuels, greenhouse gas emissions, and the increased clean-up and end of life management costs; and

WHEREAS, Food and beverage packaging comprises approximately one quarter of California's disposed waste stream annually,¹ accounts for 14 of the top 20 marine plastic items,² and an estimated 70% of street litter³; and

WHEREAS, Plastics released to land, waterways, and oceans break down into smaller pieces that are not biodegradable and can be easily consumed by animals and people; 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, 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, Styrene used to manufacture polystyrene products is identified by the State of California as a carcinogen under Proposition 65 chemicals, the state advises that individuals limit consumption of hot food and beverages from polystyrene containers, and containers made from alternative materials that are reusable, recyclable, or compostable are readily available.⁴

WHEREAS, The market for alternative forms of disposable food and beverage packaging and food service ware continues to evolve, and there is no ideal replacement for all current plastic disposable food ware.

WHEREAS, Reusable food ware, packaging, and products are more environmentally sound alternatives to disposables and saves businesses money.

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

¹ CalRecycle Packaging Reform Workshop Background Document (2017) citing CalRecycle waste characterization study entitled "2014 Disposal Facility-Based Characterization of Solid Waste in California."

<https://www2.calrecycle.ca.gov/PublicNotices/Documents/8345>

² Better Alternatives Now, List 2.0. UPSTREAM. <https://www.upstreamolutions.org/reports>

³ Clean Water Fund (2012), Taking out the Trash: Identifying Sources of Trash in the Bay Area- <http://www.rethinkdisposable.org/resources>

⁴ <https://www.p65warnings.ca.gov/fact-sheets/styrene>

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 5.87 is hereby added to Title 5 of the Palm Springs Municipal Code to read as follows:

5.87.001 Definitions

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

“Aluminum Foil-based” mean any Non-reusable Food Service Ware composed entirely of aluminum, including but not limited to aluminum tray liners, aluminum foil, and aluminum foil baskets.

“Biodegradable Products Institute” refers to a certification program that ensures that products and packaging displaying the BPI logo have been independently tested and verified accordingly to scientifically based standards to successfully break down in professionally managed industrial composting facilities. BPI-certified products meet the standards of the American Society for Testing Materials (ASTM) D6400 or D6868 for compostability. All BPI-certified products are also required to have (1) a limit of 100 parts per million (ppm) total Fluorinated Chemicals as the upper threshold for acceptance and (2) no intentionally added Fluorinated Chemicals.

“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.

“Compostable” means an item or material (1) will break down, or otherwise become part of a usable compost in a safe and timely manner and (2) is Natural Fiber-based or made from other materials approved by the City Manager or designee. Compostable items may include those that are made entirely of Natural Fiber or Natural Fiber-based items that are coated or lined with biologically based polymer, such as corn or other plant sources (e.g., compostable plastics), if certified by the Biological Products Institute (BPI) or by another independent third party approved by the City Manager or designee. ~~any non-Plastic 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) such as products certified by the Biodegradable Products Institute or a different third party as specified by the City. Compostable items may include those that are made entirely of Natural Fiber or Natural Fiber-based items that are coated or lined with biologically based polymer, such as corn or other plant sources as long as they meet ASTM standards for compostability and are accepted in the City’s organic waste collection system.~~

“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 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 along ~~with side Prepared Food in single use plates, containers, bowls, or cups~~ Food Service Ware, 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.

“Natural Fiber/Natural Fiber-based” means a plant or animal-based, non-synthetic fiber, including but not limited to products made of paper, sugarcane, bamboo, wheat stems/stalks, hay, wood, etc.

"Non-reusable" means products that do not meet the definition of “Reusable” as defined in this section.

“Non-reusable cup” is a beverage cup that does not meet the definition of “Reusable” that is used to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages, and other drinks.

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

“Person” means any individual, trust, firm, joint stock company, corporation including a government corporation, partnership or association.

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

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

“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).

“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; raw, butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance; or food that is prepared and packaged on site such as breads, baked goods, and deli items that are not intended for immediate consumption.

"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, bar, 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 any mobile store, food vendor, caterer, food truck, or similar mobile outlet. This includes Prepared Food Vendors at City facilities and City contractors and lessees acting pursuant to a City contract, lease, or permit at a City Facility.

“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).

“Reusable” means products designed and manufactured to maintain its shape and structure and be materially durable to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing by mechanical and/or manual ware washing methods that meet the requirements of the California Retail Food Safety Code for cleaning and sanitizing of equipment and utensils.

“Reuse System” means a closed loop service or program provided by a third party to a Food Vendor that includes the provision of Reusable Food Ware and the collection, cleaning, and redistribution of the Reusable Food Ware to said Food Vendor or other Food Vendors. Any operative third-party Reuse System provider in the City of Palm Springs shall meet regulatory requirements that the City of Palm Springs may set forth in guidelines or regulations with a public hearing.

"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.

5.87.002 On-Site Food and Beverage Consumption

- a) Prepared Food Vendors shall use Reusable Food Service Ware and Reusable Food Service Ware Accessories for Prepared Food served for on-site food and beverage consumption, unless the Food Vendor qualifies for a waiver as described in Section 5.87.008006. This requirement does not prohibit a Prepared Food Vendor from providing leftover Prepared Food in Non-reusable Food Service Ware with Non-reusable Food Service Ware Accessories that are compliant with Section 5.87.003 of this Chapter when requested by a customer.
- b) The following Non-reusable Food Service Ware Accessories items are allowed for on-site food consumption and must be non-Plastic: paper food wrappers, sleeves and bags; foil wrappers; paper napkins; straws, stirrers, cocktail sticks; toothpicks; and paper tray and plate-liners shall be allowed for on-site food consumption. -Any additional Non-reusable items not listed in this section or identified elsewhere in the Ordinance must be approved by the City Manager, or designee.
- c) All Prepared Food Vendors offering condiments must offer those items in Reusable containers, bulk dispensers or individual Non-plastic paper packaging for on-site food and beverage consumption. Individual single use plastic condiment packages are prohibited for on-site use.
- d) Although Reusable options are preferred, Prepared Food Vendors may use Non-reusable straws, stirrers, cocktail sticks, and toothpicks that are not Plastic for on-site food consumption. Straws and stirrers shall be made available only upon request.
- e) As of January 1, 2023, Any Non-reusable Food Service Ware and Food Service Ware Accessories items listed in paragraph (b) that are Compostable must meet the definition of Compostable in this Chapter and be free of added Fluorinated Chemicals.

5.87.003 Food Service Ware for Off-site Food and Beverage Consumption

- a) No Prepared Food Vendor may use any Non-reusable Food Service Ware or Food Service Ware Accessories made in whole or in part from Polystyrene or Polystyrene Foam.
- b) Non-reusable straws and stirrers shall not be made of Plastic.
- ~~e) Any Non-reusable Food Service Ware and Food Service Ware Accessories that are Compostable must meet the definition of Compostable in this Chapter and shall be free of added Fluorinated Chemicals.~~
- ~~d)c) _____~~ Prepared Food Vendors shall provide, sell, or otherwise distribute only those Food Service Ware Accessories that comply with this Section, and only (1) upon a customer's specific request for such items, (2) in a self-service area or dispenser – except for Non-reusable straws and stirrers, which shall be made available by request only, or (3) when Prepared Food is assembled for takeout or delivery, to accommodate for safety and to prevent spills.
- ~~e)d) _____~~ Food prepared for off-site consumption or leftovers of partially consumed food on premises shall not be provided to customers in single-use plastic bags.
- ~~f)e) All Prepared Food Vendors must should allow for the use of customer-supplied Reusable Food Service Ware consistent with California Food Retail Code, unless any customer-~~

supplied Reusable Food Service Ware appears to be soiled, unsanitary, or otherwise appears inappropriate in size, material, or condition for the intended use.

- f) Prepared Food Vendors and Takeout Food delivery services must provide options for customers to affirmatively request Food Service Ware Accessories ~~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. Prepared Food Vendors and Takeout Food delivery services shall not automatically include Food Service Ware Accessories.
- g) As of January 1, 2023, any Non-reusable Food Service Ware and Food Ware Accessories provided for off-site Food and Beverage Consumption must meet the definition of Compostable in this Chapter. The following Food Service Ware must also be certified Compostable by the Biodegradable Products Institute or another independent third party approved by the City Manager or designee, in collaboration with local waste processors and haulers:
1. Plates
 2. Bowls
 3. Cups
 4. Clamshells, boxes, deli containers and other containers used for the sale and/or distribution of Prepared Food

5.87.004 Food Service Ware for Retail Sale

- a) No Person may sell, offer for sale, or otherwise distribute for compensation within the City any Non-reusable Food Service Ware or Food Service Ware Accessories made in whole or in part from Polystyrene or Polystyrene Foam.

5.87.005 Promoting the Use of Reusable Beverage Cups and Food Containers

- a) Food Vendors must ~~either~~ charge a Non-reusable Food Service Ware fee of \$.25 for any Non-reusable cups ~~and or~~ containers ~~or~~ provided to a customer. This fee is a fee per order, not a fee per item.
- b) Food Vendors must provide a \$.25 credit to customers that provide an appropriate Reusable cup or container that is used consistent with California Food Retail Code. This credit does not apply to a Reusable cup or container provided by the Food Vendor through a Reusable cup or container service.
- c) Nothing in this section shall prevent a Food Vendor from charging a fee for a Reusable cup or container provided through a Reusable cup or container service. ~~provide an incentive for customers to use a Reusable alternative, if viable Reusable alternatives are available. The incentive must result in the Reusable alternative being less expensive for the consumer than the use of Non-reusable cups or containers.~~
- a)d) ~~A Food Vendor shall provide notice of any charge for Non-reusable cups and containers to each customer prior to completing the customer's order. Fees for Non-reusable cups and containers shall not exceed \$.25 per cup or container with a maximum charge of \$.50 per order.~~

- b)e) _____ Any Non-reusable cup ~~and Non-reusable food or~~ container charges ~~and Reusable cup and Reusable food container charges~~ imposed under subsection (a) of this Section shall be retained by the Food Vendor. Third-party food delivery services that process and/or deliver orders on behalf of Food Vendors and collect payment on behalf of Food Vendors shall remit the full amount of the charge to the Food Vendor.
- e)f) A Food Vendor shall provide notice of any charge for Non-reusable cups and containers to each customer prior to completing the customer's order. The amount(s) charged pursuant to subsection (a) shall be separately stated on any receipt provided to the customer at the time of sale and shall be identified respectively as the Non-Reusable Cup or Container Charge.

5.87.006 Waivers and Exemptions

- a) Non-reusable Food Service Ware that is entirely Aluminum Foil-based is exempt from the provisions of this Chapter.
- a)b) ~~Any charges under Section 5.87.005 Subsection (a) do not apply to Food Vendors when they are providing Prepared Food to a customer who receives state assistance as part of the Special Supplemental Food Program for Women, Infants, and Children or the (California Department of Social Services) CalFresh Program, or California Department of Health Care Services MediCal Program. All Customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the charges under Section 5.87.005.~~
- b)c) _____ The City Manager or designee may waive the provisions of this Chapter if any of the following are met:
1. The applicant demonstrates a feasibility-based hardship. The person seeking the waiver must demonstrate to the City Manager's satisfaction that it is not feasible to meet a specific requirement or 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 compliant 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.
- e)d) _____ An applicant seeking a waiver under subsection a must submit a written application on a form approved by the City Manager or designee. The City Manager or designee may require the applicant to submit additional information or

documentation to make a determination 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. In no case shall a waiver be retroactive or continue past January 1, 2023.

d)e) _____ Nothing in this chapter shall restrict the availability of single-use plastic straws, cups, or containers to individuals who may require and request them due to disability or other medical or physical conditions or circumstances. Prepared Food Vendors that customarily offer plastic straws, cups, or containers may maintain a small supply of plastic products to accommodate such requests.

5.87.010 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. The City Council 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 on January 1, 2022. The requirement that all Non-reusable Food Service Ware and Food Service Ware Accessories be fiber-based-Compostable or Certified Compostable shall become effective on January 1, 2023.

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.

Ordinance No. _____

Page 9

PASSED, APPROVED AND ADOPTED this 8 day of April, 2021, by the following
vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MAYOR Christy Holstege

ATTEST:

Anthony J. Mejia, MMC
City Clerk

APPROVED AS TO FORM:

Jeff Ballinger, City Attorney

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 XXXXX, 2021. Ordinance No. _____ was passed, approved and adopted at a regular City Council meeting held at the ___ day of XXXXX, 2021.

WITNESS my hand and official seal of the City of Palm Springs this ___ day of XXXXX, 2021.

Anthony J. Mejia, MMC
City Clerk