

ORDINANCE NO. 504

FOOD SERVICE WARE, POLYSTYRENE, AND PLASTIC BOTTLE RESTRICTIONS

5.03.010. Purpose.

The City of Solana Beach is a coastal community which strives to protect and improve the environment in many ways. Refuse found and collected along San Diego County coasts is primarily comprised of plastics. Regulating the use of single-use disposable items within the City will reduce the amount of plastics that enter the environment and the ocean. With the implementation of this Chapter, the City has the opportunity to reduce the amount of plastics that end up in the ocean. The goal is to eventually eliminate single-use products that are not recyclable or compostable within the City and reduce the use of single-use products in general. To that end, residents, visitors, and businesses in the City are encouraged to minimize the use and distribution of single-use plastic products and unnecessary plastic product packaging.

5.03.020. Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

- A. "Beverage provider" means any person, business, commercial business, organization, entity, group, or individual located in the city of Solana Beach that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption.
- B. "City facility" means any building, structure, park or vehicle owned or leased and operated by the city of Solana Beach.
- C. "City facility food provider" means a person that provides, but does not sell, prepared food at any city facility.
- D. "City manager" means the city manager and/or designees.
- E. "City-sponsored event" means any event organized or sponsored by the city of Solana Beach or any department of the city of Solana Beach.
- F. "Commercial business" means all non-residential facilities engaged in business or commerce, whether for profit or not-for-profit, or publicly or privately owned.
- G. "Compostable" means material:
 - 1. made solely of organic substances that break down into a stable product due to the action of bacteria in a controlled, aerobic commercial process that results in a material safe and desirable as a soil amendment. Compostable food service ware must be found to degrade satisfactorily

at the composting facility receiving the material. Compostable food service ware must be separable from solid waste by the generator or during collection for the purpose of composting as determined by the City's waste hauler; or

2. that is made of non-plastic plant material that will biodegrade in the environment (including bagasse/sugarcane pulp, palm leaf, wheat straw fiber, bamboo, wood, rye wheat, silver grass (miscanthus fiber), or paper that is either unlined or lined with a non-plastic material such as wax or clay).
- H. "Customer" means any person obtaining food or beverages from a restaurant or retail food vendor.
- I. "Disposable Cup" means a cup or other container designed for single use to serve beverages, such as water, cold drinks, hot drinks and alcoholic beverages.
- J. "Distribute" means the sale, offer for sale, or other transfer of possession of an item for compensation or for free, either as a separate transaction or as part of the sale, offer for sale, or other transfer of possession of another item.
- K. "Egg carton" means a carton commonly used to package eggs sold or distributed to consumers.
- L. "Event" means any gathering held on city property, including a city street, and subject to a city permit, where more than 30 people attend or participate.
- M. "Event food vendor" means any business selling or providing, based on ticket purchase or entrance fee, prepared food at an event.
- N. "Event producer" means a person or entity who contracts with or obtains a permit from the city, or an agent acting on the city's behalf, to hold its own event, or a city entity or department holding its own event.
- O. "Food service ware" means all containers, bowls, plates, cups, and other like items that are designed for one-time use for prepared foods, including, without limitation, service containers for takeout foods and/or leftovers from partially consumed meals prepared by food vendors. The term "food service ware" includes "food service ware accessories" and does not include items composed entirely of aluminum, or of metal foil or metal foil-faced papers used to wrap hot foods; or polystyrene foam coolers or ice chests.
- P. "Food service ware accessory" means all types of single-use items usually provided alongside prepared food in single-use plates, bowls or cups, including but not limited to utensils, chopsticks, napkins, cup lids, cup sleeves, food or beverage trays, condiment packets and saucers, ramekins, straws, stirrers,

splash sticks, cocktail sticks, and toothpicks, designed for a single use for prepared foods.

- Q. "Food vendor" means any restaurant, retail food vendor, event food vendor, or any business or commercial business that accepts orders on behalf of and delivers meals from a food vendor, located or operating within the city.
- R. "Meat and fish tray" means any tray for raw meat, fish, or poultry sold to consumers from a refrigerator case or similar retail appliance.
- S. "Packing material" means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage.
- T. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- U. "Polystyrene foam" means blown polystyrene and expanded and extruded foams which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion polymer spheres (expanded bead polystyrene), injection molding, foam-molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.
- V. "Prepared food" means food or beverages which are prepared and served on the food vendor's premises or within the city of Solana Beach by packaging, cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared food does not include any raw eggs or raw, butchered meats, fish or poultry sold from a butcher case, a refrigerator case, or similar retail appliance. Prepared food may be eaten either on or off the premises without further cooking.
- W. "Recyclable" means material that can be sorted, cleansed, and reconstituted using the city's available curbside collection programs for the purpose of reuse or remanufacture into the same or other products. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
- X. "Restaurant" means any establishment located within the city that sells or distributes prepared food for consumption on, near, or off its premises. The term includes a restaurant operating from a temporary facility, cart, vehicle, or mobile unit.
- Y. "Retail food vendor" or "vendor" means any store, shop, sales outlet or other establishment, including a grocery store, bar, theatre or delicatessen, located within the city of Solana Beach, which provides prepared food.

- Z. "Reusable Cup" means a cup or container for a beverage, 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.
- AA. "Single use" means designed to be used once and discarded, and not designed for repeated use and sanitizing.

5.03.030. Sale or distribution of non-compliant food service ware prohibited.

- A. Effective November 1, 2020 no person may sell, offer for sale, or otherwise distribute within the city:
 - 1. Any food service ware that is made, in whole or in part, from polystyrene foam; or
 - 2. Any food service ware that is not compostable or recyclable; or
 - 3. Any single-use beverage straws, utensils, stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic.

5.03.040. Use of non-compliant food service ware prohibited.

- A. Effective November 1, 2020 food vendors may not sell, offer for sale, or otherwise distribute prepared food using food service ware:
 - 1. If the food service ware is made, in whole or in part, from polystyrene foam; or
 - 2. If the food service ware is not compostable or recyclable; or
 - 3. Any single-use beverage straws, utensils, stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic.
- B. City facility food providers may not use food service ware to provide prepared food to city facilities:
 - 1. If the food service ware is made, in whole or in part, from polystyrene foam; or
 - 2. If the food service ware is not compostable or recyclable; or
 - 3. Any single-use beverage straws, utensils, stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic.

- C. City departments may not purchase, acquire, or use food service ware for prepared food:
1. If the food service ware is made, in whole or in part, from polystyrene foam; or
 2. If the food service ware is not compostable or recyclable; or
 3. Any single-use beverage straws, utensils, stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic.
- D. City contractors, lessees and permittees may not use or distribute food service ware for prepared food in city facilities or while performing under a city contract or lease:
1. If the food service ware is made, in whole or in part, from polystyrene foam; or
 2. If the food service ware is not compostable or recyclable; or
 3. Any single-use beverage straws, utensils, stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic.
- E. The use or distribution of non-compliant food service ware at special events sponsored or co-sponsored by the city of Solana Beach shall be prohibited. 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 or distribute prepared food at the event or otherwise provide an event related service.
- F. All facilities rental agreements for any city owned property or facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of non-compliant food service ware. The facility rental agreement shall provide that the violating contractor's security deposit will be forfeited if the city manager determines that non-compliant food service ware was utilized in the violation of the rental agreement.
- G. It shall not be a violation of this section to sell, distribute, provide or purchase prepared food packaged in food service ware otherwise prohibited by subsections A through E if the prepared food is packaged outside the city and is sold or otherwise provided to the consumer in the same food service ware in which it is originally packaged. Businesses packaging prepared food outside the city are encouraged to use food service ware that is compostable or recyclable and that is not made, in whole or in part, from polystyrene.

5.03.050. Other food service ware accessory use provisions.

- A. Effective November 1, 2020 food service ware accessory items shall be provided by a food vendor only upon request by the customer or at self-serve stations, except that for safety reasons disposable cups for delivery by a food vendor or food delivery service may include lids, spill plugs and sleeves without request.
- B. All food service ware accessory items that are distributed must comply with the provisions outlined in Section 5.03.040.
- C. Only at a drive-through facility, a food vendor may offer the customer food service ware accessory items prior to the customer request, but shall only provide food service ware accessory items in the quantities specified by the customer.
- D. Food vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.
- E. Effective November 1, 2020 no person shall distribute plastic food service ware accessories at any city facility or city-sponsored event.

5.03.060. Polystyrene foam products.

- A. Effective May 1, 2020, no person may sell, offer for sale, or otherwise distribute within the city the following materials if they are made in whole or in part from polystyrene, unless they are wholly encapsulated or encased within a more durable material:
 - 1. Packing materials, including shipping boxes and packing peanuts;
 - 2. Coolers, ice chests, or similar containers;
 - 3. Pool or beach toys; or
 - 4. Dock floats, mooring buoys, or anchor or navigational markers.
- B. Packing materials must be compostable or recyclable.
- C. No commercial business in the city shall use expanded polystyrene loose fill packaging and cushioning material, such as foam peanuts, packing peanuts, foam popcorn, or packing noodles, in the packaging of products, equipment or other items.
- D. Effective May 1, 2020, no polystyrene foam product listed in subsection A shall be allowed on any beach within the city.

- E. For purposes of subsection (A)(1), distribution of packing materials shall include using such materials to hold, cushion, or protect items to be packed in a container for shipping, transport, or storage, for compensation, where the packing takes place within the city. But it shall not include:
1. Receiving shipments within the city that include polystyrene foam, or some other non-compostable and non-recyclable product, used as packing material;
 2. Re-using packing materials for shipping, transport, or storage within the same distribution system, where the packing materials are not sent to a consumer or end user;
 3. Donating used packing materials to another person, where the donor receives nothing of value for the donated packing materials; or
 4. Using packing materials donated under subsection (D)(3) for shipping, transport, or storage, where the person using the packing materials receives nothing of value for the donated packing materials.
- F. Effective upon the availability of curbside composting within the city of Solana Beach or on November 1, 2021, whichever is earlier, no person may sell, offer for sale, or otherwise distribute for compensation within the city, meat and fish trays or egg cartons made, in whole or in part, from polystyrene foam, or that are not, compostable or recyclable, either as separate items or as part of the sale of raw meat, fish, poultry, or eggs sold to consumers from a refrigerator case or similar retail appliance.

5.03.070 - Reusable Customer Cups.

- A. Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, customers may provide their own reusable cups for beverage service in accordance with California State Health Code 114075(e) and as may be amended from time to time. Food vendors may refuse, at their sole discretion, any customer-provided reusable cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require the use of:
1. a reusable cup if typically available for a beverage consumed on the premises; or
 2. a disposable cup for a beverage to be consumed off the premises that complies with the provisions of Section 5.03.040.

- B. Event producers who provide beverages at events are encouraged to either make reusable cups available to their attendees, or make a strong effort to encourage the attendees to bring a reusable cup to the event.

5.03.080 Implementation.

- A. The city manager may waive the provisions of Sections 5.03.030., 5.03.040., 5.03.050., and 5.03.060. 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; or
 - 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; or
 - 3. The applicant 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.
- B. A person 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. Waiver determinations are effective immediately, final and not appealable. The city council may by resolution establish a fee for waiver determinations in an amount sufficient to cover the costs to administer the application.
- C. The city shall provide information about this chapter to new businesses and existing businesses during the business license application or business license renewal process.
- D. It shall not be a violation of this section to sell, provide, distribute, or use plastic food ware accessory items when:

1. Needed by customers due to medical or physical conditions.
2. The city manager determines that there is no reasonable alternative available.

5.03.090 Enforcement and penalties.

- A. The city manager, or designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this chapter, including, but not limited to, inspecting the premises of any commercial business, retail food vendor, or restaurant to verify compliance.
- B. Any person violating this chapter shall be guilty of an infraction, which shall be punishable by a fine in accordance with Chapter 1.16 of the Solana Beach Municipal Code, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment in the County Jail for a period not exceeding six months or by both such fine and imprisonment. In addition to criminal fines, any person violating this chapter shall also be subject to civil penalties or administrative fines or both under Chapters 1.16 and 1.18 of the Solana Beach Municipal Code.
- C. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. Administrative enforcement of this chapter shall proceed pursuant to Chapter 1.18 of the Solana Beach Municipal Code.
- E. Each violation of this chapter shall be considered a separate offense.
- F. The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this chapter shall preclude any person from pursuing any other remedies provided by law.
- G. Notwithstanding any other provision of this chapter, this chapter may be enforced through any remedy as provided for in this section upon its effective date.

Section 3. Chapter 5.05 is added to the Solana Beach Municipal Code as follows:

CHAPTER 5.05 BOTTLED BEVERAGES AND PACKAGED WATER

5.05.010 Definitions

For purposes of this chapter, the following terms shall have the following meanings:

- A. "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.
- B. "Bottled water" means drinking water in a sealed rigid plastic bottled having a capacity of one liter or less.
 - C. "City facility" means any building, structure, park or vehicle owned or leased and operated by the city of Solana Beach.
 - D. "City funds" means all monies or other assets received and managed by, or which are otherwise under the control of the Treasurer, and any notes, bonds, securities, certificates of indebtedness or other fiscal obligations issued by the city of Solana Beach.
 - E. "City property" means real property, including any buildings thereon, owned or leased by the city of Solana Beach and in the city of Solana Beach's possession or in the possession of a public or private entity under contract with the city of Solana Beach to perform a public purpose, including but not limited to public beaches and parks. "City property" includes a "city street."
 - F. "City street" means the public right-of-way owned by the city, including any area across, along, on, over, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, streets, and ways within the city.
 - G. "Mineral water" means drinking water containing more than 500 milligrams per liter of total dissolved solids and/or one or more chemical constituents in excess of the concentrations listed in the Federal Bottled Water Quality Standards (Title 21 Code of Federal Regs., Sec. 165.110).
 - H. "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.
 - I. "Participant athletic event" means an event in which a group of people collectively walk, jog, run, bicycle or otherwise participate in a sport or similar activity on city property.
 - J. "Rigid 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. "Rigid plastic bottle" includes compostable plastic bottles meeting these criteria.
 - K. "Water" includes: natural spring or well water; water taken from municipal or private utility systems or other sources; distilled, deionized, filtered, or other purified water; or any of the foregoing to which chemicals may be added.

"Water" does not include: mineral water; carbonated or sparkling water; soda, seltzer, or tonic water; or flavored water, also marketed as fitness water, vitamin water, enhanced water, energy water, or other similar products. "Water" does not include those food ingredients that are listed in ingredient labeling as "water," "carbonated water," "disinfected water," or "filtered water."

5.05.020 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 5.05.020 shall go into effect May 1, 2020.
- E. The above subsections A, B and C of this Section 5.05.020 shall not apply to restrict the sale and distribution of water in aluminum cans or glass bottles.

5.05.030 Bottled Beverages at City Events and on City Property

- A. The sale and distribution of bottled beverages at any city facility, including events held through rentals or leases, is prohibited.
- B. 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.
- 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 5.05.020 shall go into effect November 1, 2020.

5.05.040 Use of City Funds for Purchase of Bottled Beverages and Packaged Water.

- A. Effective May 1, 2020, 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 Chapter.

- B. The above subsection A, of this Section 5.05.020 shall not apply to restrict the purchase of water in aluminum cans or glass bottles.

5.05.050 Exclusions.

- A. The provisions of sections 5.05.020 and 5.05.030 shall not apply:

1. When the city manager finds that relying on bottled water, packaged water or bottled beverages is necessary in a given situation to protect the public health, safety and welfare, and no reasonable alternative to packaged water will serve the same purpose; or
2. To emergencies; or
3. To the distribution of bottled beverages to participants of a participant athletic event.

5.05.060 Implementation.

- A. The city manager or his or her designee may waive the provisions of this Chapter in full or in part if:

1. The event sponsor or lessee demonstrates a feasibility based hardship; or
2. The event sponsor or lessee demonstrates compliance is unreasonably financially prohibitive; or
3. The 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.

- B. A person 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. Waiver determinations are effective immediately, final and not appealable. The

city council may by resolution establish a fee for waiver determinations in an amount sufficient to cover the costs to administer the application.

5.05.070 Enforcement and penalties.

- A. The city manager, or his or her designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this chapter.
- B. Any person violating this chapter shall be guilty of an infraction, which shall be punishable by a fine in accordance with Chapter 1.16 of the Solana Beach Municipal Code, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment in the County Jail for a period not exceeding six months or by both such fine and imprisonment. In addition to criminal fines, any person violating this chapter shall also be subject to civil penalties or administrative fines or both under Chapters 1.16 and 1.18 of the Solana Beach Municipal Code.
- C. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. Administrative enforcement of this chapter shall proceed pursuant to Chapter 1.18 of the Solana Beach Municipal Code.
- E. Each violation of this chapter shall be considered a separate offense.
- F. The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this chapter shall preclude any person from pursuing any other remedies provided by law.
- G. Notwithstanding any other provision of this chapter, this chapter may be enforced through any remedy as provided for in this section upon its effective date.

Section 4. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment" and pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause

or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 6. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of Solana Beach, California held on the 28th day of August 2019, and thereafter,

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the 25th day of September 2019, by the following vote: