

ORDINANCE NO. 2021-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AMENDING CHAPTER 8.24 OF THE EI CERRITO MUNICIPAL CODE ENTITLED "FOODWARE ORDINANCE" TO UPDATE THE FOODWARE REGULATIONS TO REQUIRE FOODWARE TO BE RESUABLE OR COMPOSTABLE AND PROHIBIT THE USE, DISTRIBUTION OR SALE OF PLASTIC STRAWS AND PLASTIC STIRRERS

WHEREAS, single-use plastic foodware has been associated with considerable environmental impacts, including being a problematic component of litter, which is unsightly and costly to clean up; and

WHEREAS, improperly discarded single-use plastic foodware can result in blocked storm drains, fouled waterways, and increased marine debris; and

WHEREAS, plastic litter and debris that accumulates in local waterways and the ocean can harm fish, birds, and other marine life throughout the ecosystem; and

WHEREAS, the reduction of single-use plastics in the environment will advance compliance with federal and state mandates, as well as City goals, relating to stormwater quality; and

WHEREAS, reducing single-use plastics from foodware supports the City's goals to reduce waste and reduce greenhouse gas emissions; and

WHEREAS, single-use plastic foodware is commonly used by food providers in the City of El Cerrito, and has limited to no recycling potential; and

WHEREAS, due to recent changes in the international recycling markets, it is challenging and costly, and in some cases no longer feasible, to recycle single-use plastic containers that are typically used for foodware; and

WHEREAS, single-use foodware may threaten public health as many types contain a number of additives that are known or suspected carcinogens or endocrine disruptors, such as phthalates, perchlorate, and fluorinated chemicals that are known to leach from foodware into the food and beverages they contain; and

WHEREAS, fluorinated chemicals, also known as per- and polyfluorinated alkyl substances ("PFAS"), are synthetic chemicals commonly used in and on single-use foodware products to repel water and grease; and

WHEREAS, the City of El Cerrito has a substantial interest in protecting its waterways, environment, and taxpayers from the negative impacts of single-use foodware; and

WHEREAS, a variety of expanded foodware ordinances have been adopted in nearby communities, including the City and County of San Francisco, the City of Berkeley, the Town of San Anselmo, the Town of Fairfax, and the County of San Mateo; and

WHEREAS, restricting the use of single-use plastic foodware products and replacing non-compostable or non-reusable foodware with compostable or reusable foodware products, that are certified to not contain intentionally-added fluorinated chemicals, will further protect waterways, public health, and promote environmental sustainability; and

WHEREAS, reducing the use of single-use plastic foodware is consistent with the El Cerrito Strategic Plan goals to “ensure the public’s health and safety by supporting initiatives that decrease pollution and improve the health and prosperity of future generations”, and to “foster environmental sustainability citywide”; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of El Cerrito and is exempt from the requirements of the California Environmental Quality Act (“CEQA”), as amended, pursuant to Section 15061(b)(3) or Section 15308 of the CEQA Guidelines.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Incorporation of Recitals. The City Council finds that the above Recitals are true and correct and are incorporated herein by reference

Section 2: Amendment of Municipal Code: Chapter 8.24 of the El Cerrito Municipal Code is hereby amended and replaced in its entirety to read as follows:

8.24.010 - Title.

This chapter shall be known as the El Cerrito Foodware Ordinance. The City of El Cerrito hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City.

8.24.030 - Purpose.

It is the intent of the City of El Cerrito in enacting Chapter 8.24 to eliminate the use of Expanded Polystyrene foodware and single-use plastic foodware items and to require the use of Reusable, or Compostable, food containers by Food Providers and Customers in El Cerrito.

8.24.040 - Definitions.

The following definitions apply to this chapter:

- A. "Compostable" means the product is capable of composting using the City of El Cerrito's available composting and green-waste collection programs as determined by the City manager or designee and identified on the City's website, and the product is 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 on the City's website.
- B. "City facilities" means any park, building, structure or vehicle owned or operated by the City of El Cerrito, its agents, agencies, departments or franchisees.
 - C. "City project" means any work that is undertaken by the City, contractors, or other agencies on behalf of, or in partnership with, the City of El Cerrito and taking place within the city of El Cerrito.
 - D. "City-sponsored event" means any event organized or sponsored by the City of El Cerrito or any department of the City of El Cerrito.
 - E. "Customer" means any member of the public obtaining Prepared Food from a Food Provider.
 - F. "Disposable foodware" means all containers, bowls, plates, trays, cartons, plate liners, cups, napkins, drink plugs, beverage trays, condiment containers, cup sleeves, lids, utensils, forks, spoons, knives, straws, stirrers, toothpicks, cocktail sticks, and other items that are designed for one-time use for Prepared Foods, including service ware for take-out foods and/or leftovers from partially consumed meals prepared by Food Providers.
 - G. "Food provider" means any vendor, business, organization, entity, group, or individual, including any restaurant or retail food establishment, located or operating within the City of El Cerrito or providing food or beverage to the public, and any provider of prepared food at organized or special events occurring within the boundaries of the City of El Cerrito.
 - H. "Expanded polystyrene" or "EPS" 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). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.
 - I. "Permitted beverage straw" means straws that are Compostable or Reusable.
 - J. "Plastic beverage straw" means a tube made predominantly of plastic derived from petroleum, silicone, or a biologically based polymer, such as corn or other plant sources, for transferring a beverage from its container to the mouth of the drinker. "Plastic beverage straw" does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, metal, or glass.
 - K. "Plastic stirrer" means a device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum, silicone, or a biologically based polymer, such as corn or other plant sources. "Plastic stirrer" does not include stirrers that are made from non-plastic materials, such as wood, paper, sugar cane, or bamboo.
 - L. "Prepared food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Provider's premises. For the purposes of this chapter, prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared food may be eaten either on or off the premises, also known as "take-out food".

- M. "Restaurant" means a restaurant, take-out food establishment, or any other business that receives ninety percent or more of its revenue from the sale of prepared food or beverages to be eaten on or off its premises.
- N. "Retail food establishment" means any store, shop, sales outlet, or other establishment, other than a restaurant, including, but not limited to, a grocery store, delicatessen, mobile food preparation and sale unit, drive-in, coffee shop, cafeteria, short-order cafe, luncheonette, grill, sandwich shop, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out prepared food place, industrial feeding establishment, catering kitchen, commissary, special event, food market, produce stand, food stand, or similar place in which food or drink is prepared for sale, or for service, on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served or provided to customers.
- O. "Reusable" means all materials in the product or package will be used more than once in its same form by the Customer, food vendor, or other reuse programs. Reusable foodware includes: food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor by the Customer that is provided Take-out containers. Reusable also includes durable containers, packages or trays used on premises or returnable containers brought back to the Food Provider.
- P. "Reusable foodware" means all containers, bowls, plates, trays, cartons, cups, and other items that are designed for prolonged use, including, but not limited to, ceramic, glass, porcelain, and metal foodware. The City Manager or designee has the authority to make a final determination on if a foodware item is designed for prolonged use; the determination shall be in writing and will be final.

8.24.050 - Prohibited foodware.

- A. Except as provided in this chapter, Food Providers are prohibited from providing Prepared Food to Customers in foodware that is not Compostable or Reusable.
- B. Except as provided in this chapter, all City facilities are prohibited from using foodware that is not Compostable or Reusable and all City departments and agencies shall not purchase or acquire such foodware for use at City facilities or city-sponsored events.
- C. Except as provided in this chapter, all City franchisees, contractors, vendors and caterers doing business with the City shall be prohibited from using foodware that is not Compostable or Reusable in City facilities, at City events or on City projects within the City of El Cerrito.
- D. Except as provided in this chapter, no Food Provider, City franchisees, contractors, vendors and caterers doing business with the City, City facilities, or any City-sponsored event shall use, provide, distribute, or sell Plastic Beverage Straws or Plastic Stirrers, except as allowed under this chapter to meet the needs of persons who require and request them due to disability or other medical or physical conditions or circumstances. All Permitted Beverage Straws shall only be provided upon request by the customer.

8.24.060 - Permitted foodware.

- A. All Food Providers using any Disposable Foodware will use Compostable or Reusable foodware. All Food Providers are strongly encouraged to use Reusable Foodware in place of using Disposable Foodware for all food served on premises. A Food Provider may price its products or services to customers in a manner to cover any cost differential. All Permitted Beverage Straws shall only be provided upon request.
- B. All City facilities and City-sponsored events using any foodware will use Compostable or Reusable Foodware. All City facilities are strongly encouraged to use Reusable Foodware in place of using Disposable Foodware for all food served on premises.
- C. All City franchisees, contractors, vendors and caterers, when doing business with the City, will use Compostable or Reusable Foodware in City facilities, at City events, or on City projects within the City of El Cerrito. All City facilities are strongly encouraged to use Reusable Foodware in place of using Disposable Foodware for all food served on-premises.
- D. All individuals, entities or organizations using City facilities for public or private events shall comply with the requirements in this chapter.
- E. Food providers that provide Compostable or Reusable straws may provide single-use Plastic Beverage Straws to Customers by request to accommodate needs of persons who require and request them due to disability or other medical or physical conditions or circumstances

8.24.080 - Exemptions.

- A. Prepared Foods that are prepared or packaged outside the City of El Cerrito as well as prepared foods prepared and packaged in the City of El Cerrito for use outside of the City of El Cerrito are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the City of El Cerrito are encouraged to follow the provisions of this chapter.
- B. Food Providers may be exempted from the provisions of this chapter for specific items or types of Disposable Foodware if the City Manager or designee finds that a suitable Compostable or Reusable alternative does not exist for a specific application and/or that imposing the requirements of this chapter on that item or type of Disposable Foodware would cause undue hardship. A list of exempted items will be located on the City's website.
- C. Any Food Provider or City facility may seek an exemption from the requirements of this chapter by filing a request in writing with the City Manager or designee. The City Manager or designee may waive any specific requirement of this chapter for a period of not more than one year if the Food Provider or City facility seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship.
- D. A Food Provider or City facility granted an exemption must reapply prior to the end of the one year exemption period and demonstrate continued undue hardship if the Food Provider or City facility wishes to have the exemption extended. The City Manager or designee's decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.
- E. Expanded Polystyrene coolers and ice chests that are intended for reuse are exempt from the provisions of this chapter.

- F. In a situation deemed by the City Manager or designee to be an emergency, or in the event that a local emergency or disaster has been declared in effect, for the immediate preservation of the public peace, health or safety, City facilities, Food Providers, City franchisees, contractors, vendors and caterers doing business with the City shall be exempt from the provisions of this chapter.
- G. Nothing in this chapter shall restrict, or be construed to restrict, the availability of single-use Plastic Beverage Straws to individuals who may require and request them due to disability or other medical or physical conditions or circumstances. It shall not be a violation of this chapter for any Food Provider, City facility or City-sponsored event vendor to provide single-use Plastic Beverage Straws to such individuals who request them. Instances where compliance with the chapter would interfere with accommodating for any person's medical needs shall be exempt from the provisions of this chapter.

8.24.140 - Enforcement and violation—Penalty.

- A. Any violation of this chapter is punishable as specified in Chapters 1.08 or 1.14 of the El Cerrito Municipal Code or by any other applicable law.
- B. The City Manager or designee has primary responsibility for enforcement of this chapter. The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any Food Provider during business hours. Other City of El Cerrito staff may assist with this enforcement responsibility by entering the premises of a Food Provider as part of their regular inspection functions and reporting any alleged violations to the City Manager.

Section 3. Compliance with the California Environmental Quality Act.

Pursuant to Title 14 of the California Administrative Code, the City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons: (1) under Section 15061 (b)(3), it is not a project which has the potential for causing a significant effect on the environment; (2) under Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration, enhancement, or protection of the environment.

Section 4. Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

Section 5. No Conflict with Federal or State Law.

Nothing in this Ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

Section 6. Effective Date.

This Ordinance shall take effect on July 1, 2022, and shall be enforced beginning January 1, 2024. The ordinance or a summary thereof shall be posted or published as may be required by law.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on November 2, 2021, and passed by the following vote:

AYES: Mayor Fadelli; Mayor Pro Tem Quinto; Councilmembers Abelson, Motoyama, and Rudnick
NOES: None
ABSENT: None
ABSTAIN: None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on November 16, 2021 and passed by the following vote:

AYES: Mayor Fadelli; Mayor Pro Tem Quinto; Councilmembers Abelson, Motoyama, and Rudnick
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:

Paul Fadelli, Mayor

ATTEST:

Holly Charléty, City Clerk

ORDINANCE CERTIFICATION

I, Holly M. Charléty, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2021-04 of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the 16th Day of November 2021; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ____ day of November, 2021.

Holly M. Charléty, City Clerk