

**Chapter 6.05**  
**USE OF EXPANDED POLYSTYRENE DISPOSABLE FOOD SERVICE WARE**

Sections:

- [6.05.005 Purpose and Intent.](#)
- [6.05.010 Definitions.](#)
- [6.05.020 Prohibited Food Service Ware.](#)
- [6.05.022 Single-Use Reduction.](#)
- [6.05.030 Exemptions.](#)
- [6.05.040 Undue Hardship.](#)
- [6.05.050 Enforcement.](#)

**[6.05.005 Purpose and Intent.](#)**

~~A. that the regulations contained in this chapter are necessary and appropriate to protect the health, safety and welfare of the citizens of the City by reducing waste and plastic pollution at the source;~~

[A. Disposable food service ware is a major contributor to street litter, ocean pollution, marine and other wildlife harm, and greenhouse gas emissions. Production, consumption and disposal of these products contributes significantly to the depletion of natural resources and climate change.](#)

[B. Plastic is a non-biodegradable product that contains chemicals, breaks down to micro-plastics, ends up in the water and air, and negatively affects human health and the economy.](#)  
~~that the~~  
~~The regulations contained in this chapter are necessary and appropriate to protect the health, safety and welfare of the citizens of the City by reducing waste and plastic pollution at the source.;~~

[C.](#)

**6.05.010 Definitions.**

~~A. "Biodegradable" refers to the ability of a material to decompose into elements normally found in nature within a reasonably short period of time after disposal.~~

[A. "City facilities" means any building, structure or vehicles owned or operated by the City of Newport Beach, its agent, agencies, departments and franchisees.](#)

~~A.B. "Compostable" means that an item or material is either certified compostable and fluorinated chemical free by the Biodegradable Product Institute or other third party recognized by the City of Newport Beach, or is a stirrer, utensil, lid plug, pick or skewer made entirely of natural fiber.~~

~~B.C. "Customer" means any person obtaining prepared food from a restaurant or retail food vendor.~~

~~C.D.~~ "Disposable food service ware" means all containers, bowls, plates, trays, cartons, cups, lids, lid plugs, straws, stirrers, utensils, picks, skewers and other items that are designed for ~~one-time single~~ use and on, or in, which any ~~restaurant or retail~~ food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at ~~restaurants or retail~~ food vendors.

~~E.~~ "Expanded polystyrene" (EPS) means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam. EPS is sometimes called "Styrofoam"; a Dow Chemical Co. trademarked form of polystyrene foam insulation.

~~D.F.~~ "Fluorinated chemical" means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as perfluoroalkyl and polyfluoroalkyl substances, or PFAS chemicals.

~~G.~~ "Food vendor" means any restaurant or retail food vendor located or operating within the City of Newport Beach.

~~E.H.~~ "Person" means any person, business, corporation, or event organizer or promoter; public, non-profit or private entity, agency or institution; or partnership, association or other organization or group, however organized.

~~F.I.~~ "Polystyrene" means and includes expanded polystyrene which is a thermoplastic petrochemical material 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).

~~G.J.~~ "Prepared food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food vendor's premises ~~and within the City of Newport Beach~~ with the intent of consumption on or off the premises, ~~as the balance of an unfinished meal or as "takeout food."~~ For the purposes of this ~~chapter ordinance~~, "prepared food" does not include raw, butchered, ground, chopped, or sliced meats, fish and/or poultry sold from a butcher case or similar retail appliance for subsequent preparation.

~~H.K.~~ "Restaurant" means any establishment located within the City of Newport Beach that sells prepared food for consumption on, near, or off its premises by customers. "Restaurant," for purposes of this chapter, includes mobile food preparation units as defined in Section 6.08.020 ~~Sections 6.08.120 and 6.08.130~~ of the City of Newport Beach Municipal Code.

~~L.~~ "Retail food vendor" means any store, shop, sales outlet, sidewalk vendor as defined in Chapter 5.97, or any successor chapter, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the City of Newport Beach that sells prepared food. ~~{Ord. 2018-19 § 4, 2018; Ord. No. 2008-17, § 1, 10-28-2008}~~

~~M.~~ "Natural fiber" means a plant- or animal-based, non-synthetic fiber, including but not limited to paper, wood, or bamboo. ~~"Natural Fiber"~~ does not include plastic of any kind.

N. "Vendor" means any food vendor or other commercial establishment located or operating within the City of Newport Beach, ~~which that~~ sells perishable or nonperishable goods.

#### **6.05.020 Prohibited Food Service Ware.**

A. Except as provided in Section 6.05.030 of this chapter, food vendors are prohibited from providing ~~(1)~~ prepared food ~~to customers~~ in disposable food service ware ~~made from expanded polystyrene that is not compostable, (2) any straw, stirrer, lid plug, pick or skewer made with plastic, including compostable, bio or plant based plastic.~~

B. No vendor shall provide a cooler, ice chest or egg carton made from expanded polystyrene, in whole or in part.

A. ~~No person shall use, distribute or sell any expanded polystyrene product restricted in this chapter on public property, including beaches, piers, parks and harbor.~~

C. All City facilities, City-managed concessions, City-sponsored events, and City-permitted events are prohibited from using ~~(1)~~ disposable food service ~~ware~~ ~~containers made from expanded polystyrene. (Ord. No. 2008-17, § 1, 10-28-2008)~~ that is not compostable, ~~(2) any straw, stirrer, lid plug, pick or skewer made with plastic, including compostable, bio or plant based plastic.~~

#### **6.05.022 Single-Use Reduction.**

A. Food vendors shall only provide straws, utensils, lid plugs and ~~to-go~~ condiment packages to customers upon request.

B. Food vendors are encouraged to charge a fee of twenty-five cents (\$0.25) for straws, utensils, cups, and/or lids. Funds collected shall be retained by the food vendor.

**Commented [J11]:** Dine-in ok?

**Commented [J12]:** Exact amount, min or max? Per item, or per transaction?

**Commented [J13]:** Specify that money may only be used for compliance costs or actual cost of the items?

#### **6.05.030 Exemptions.**

A. ~~Prepared foods prepared or packaged outside the City of Newport Beach are exempt from the provisions of this chapter the requirement to use compostable food service ware, but expanded polystyrene ware is prohibited.~~

A. Emergency Supply and Services Procurement. In a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety, City facilities, food vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this chapter. ~~(Ord. No. 2008-17, § 1, 10-28-2008)~~

B. ~~Food vendors, as well as City facilities, City-managed concessions, City-sponsored events, and City-permitted events, may retain and dispense p~~Plastic straws may be provided upon request as an accommodation to people with disabilities in order to allow ~~who request them to enjoy~~ equal access to food and beverage services within the City.

**Commented [J14]:** Exemption is unnecessary because by definition, "prepared foods" applies only to food prepared in the City.

The prohibition on EPS is unnecessary b/c the other proposed code amendments impose a general ban on it.

#### **6.05.040 Undue Hardship.**

A. The City Manager or his/her designee may exempt a food provider from the requirements of this ordinance for up to a one-year period, based upon a written request from the applicant containing sufficient information to determine that the conditions of this ordinance would cause undue hardship. An "undue hardship" shall be found in the following situations:

1. Situations unique to the food provider where there are no reasonable alternatives to ~~expanded polystyrene~~ disposable food service ware and compliance with this chapter would cause significant economic hardship to that food provider;
2. Situations where no reasonably feasible available alternatives exist to a specific and necessary ~~expanded polystyrene~~ disposable food service ware.

B. A food vendor granted an exemption by the City must reapply prior to the end of the exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

C. An exemption application shall include all information necessary for the Assistant City Manager or his/her designee to make his/her decision, including but not limited to documentation showing the factual support for the claimed exemption. The Assistant City Manager or his/her designee may require the applicant to provide additional information to permit the Director to determine facts regarding the exemption application.

D. The Assistant City Manager or his/her designee may approve the exemption application, in whole or in part, with or without conditions.

~~E.—Exemption decisions are effective within thirty (30) days, unless appealed to the City Manager within fifteen (15) days. The City Manager's decision shall be final. (Ord. No. 2008-17, § 1, 10-28-2008)~~

**E. 6.05.050 Enforcement.**

A. Any person violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction pursuant to Section ~~1.04.040~~ 1.04.010, and shall be subject to citation and fines pursuant to Chapter ~~1.051.05~~, Newport Beach Municipal Code.

B. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter. ~~(Ord. No. 2008-17, § 1, 10-28-2008)~~