

ORDINANCE SUMMARY FOR PUBLICATION

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THOUSAND OAKS AMENDING TITLE 6 AND ADDING CHAPTER 6 TO THE THOUSAND OAKS MUNICIPAL CODE PROHIBITING THE USE, DISTRIBUTION, AND SALE OF DESIGNATED POLYSTYRENE PRODUCTS, AND LIMITING THE DISTRIBUTION OF PLASTIC UTENSILS AND BEVERAGE STRAWS


NOTICE IS HEREBY GIVEN that at a regular meeting held on October 13, 2020, the City Council of the City of Thousand Oaks introduced an Ordinance relating to use, distribution and sale of polystyrene products and the use and distribution of plastic utensils and straws. The second reading for adoption is scheduled for October 27, 2020.

This Ordinance shall go into full force and effect at 12:01 a.m. on January 1, 2022.

A full copy of the full text of this Ordinance is available in the office of the City Clerk of the City of Thousand Oaks.

  
Cynthia M. Rodriguez, City Clerk

APPROVED AS TO FORM:

  
Felicia Liberman, Assistant City Attorney

Publish Date: October 20, 2020

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THOUSAND OAKS AMENDING TITLE 6 AND ADDING CHAPTER 6 TO THE THOUSAND OAKS MUNICIPAL CODE PROHIBITING THE USE, DISTRIBUTION, AND SALE OF DESIGNATED POLYSTYRENE PRODUCTS, AND LIMITING THE DISTRIBUTION OF PLASTIC UTENSILS AND BEVERAGE STRAWS

WHEREAS, plastics persist in the environment for hundreds of years, breaking down into ever smaller pieces through photo, physical, and biological degradation, and enter the food chain when ingested by animals that mistake them for food; and

WHEREAS, harmful chemicals associated with plastics can leach into soils and water; and

WHEREAS, there are few facilities in the State of California that recycle polystyrene; and

WHEREAS, many environmental groups are requesting local government to limit or ban the use of polystyrene and single-use plastics in their jurisdictions; and

WHEREAS, more than one hundred municipalities in California have adopted ordinances prohibiting or restricting the distribution of polystyrene products and requiring their replacement with cost-effective reusable, recyclable, or biodegradable alternatives; and

WHEREAS, the California Coastal Commission developed "A Plan of Action from The Plastic Debris Project" in 2006 with funding from the State Water Resources Control Board, that recommends local government impose limits, bans, and prohibitions on materials that commonly become litter and marine debris; and

WHEREAS, according to the California Department of Transportation, Expanded Polystyrene comprises approximately fifteen percent (15%) of storm drain litter; and

WHEREAS, the policy goal of the state is to source-reduce, recycle, or compost at least seventy-five percent (75%) of solid waste by the year 2020; and

WHEREAS, the City of Thousand Oaks has a long history of environmental stewardship, the implementation of sustainability practices, and planning for a sustainable future; and

WHEREAS, the regulation of single-use disposable items within the City is an action that would reduce the amount of pollution that ends up in local waterways; and

WHEREAS, this Ordinance amends Title 6 of the Thousand Oaks Municipal Code by adding Chapter 6 to provide for expanded prohibitions on the use and distribution of single-use materials that pollute the environment and ocean.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Thousand Oaks does hereby ordain as follows:

#### PART 1

##### Recitals

The above recitals are true and correct and incorporated herein by this reference as the findings of the City Council.

#### PART 2

##### Environmental Determination

The proposed ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for the protection of the environment because, among other things, it will regulate the use and sale of expanded polystyrene products and reduce the amount of expanded polystyrene that enters local landfill and waterways. Thus, this Ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title

14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

### PART 3

Title 6 of the Thousand Oaks Municipal Code is amended to add Chapter 6 to read as follows:

### **CHAPTER 6**

#### PROHIBITION ON THE USE, DISTRIBUTION, AND SALE OF EXPANDED AND RIGID POLYSTYRENE PRODUCTS, FOOD SERVICE WARE AND UTENSILS, AND RESTRICTION ON THE DISTRIBUTION OF PLASTIC BEVERAGE STRAWS

#### **Article 1. General Provisions**

Sec. 6-6.101 Title. This Chapter shall be known as the “City of Thousand Oaks Single-Use Plastics and Litter Reduction Ordinance”.

Sec. 6-6.102 Purpose and Intent. The purpose of this Chapter is to establish standards and procedures for distribution, sale and use of plastic single-use disposable products and food ware to reduce litter and implement environmentally sustainable practices in the City by prohibiting the distribution, sale and use of expanded and rigid polystyrene disposable products and limiting the distribution of Plastic Utensils and Plastic Beverage Straws by Food Providers within the City of Thousand Oaks.

#### **Article 2. Definitions**

##### Sec. 6-6.201 Definitions

For the purposes of this Chapter, the following words and phrases used in this Chapter are defined as follows unless it is apparent from the context that a different meaning is intended:

- (a) “Beverage Straw” means any straw or tube that is used for transferring a beverage from its container to the mouth of the drinker.
- (b) “Biodegradable” means the ability of organic matter to break down from a complex to a simpler form through the action of bacteria. Biodegradable materials may vary greatly in the amount of time taken to break down and do not necessarily produce soil nutrients.
- (c) “Bio-plastic” means plastic materials produced from renewable biomass sources, such as vegetable fats and oils, corn starch, straw, woodchips,

sawdust, recycled food waste, etc. Bio-plastic can be made from agricultural by-products and from used plastic bottles and other containers using microorganisms. Not all bio-plastics are biodegradable.

- (d) "City" means the City of Thousand Oaks.
- (e) "City Facility" means any building, structure, property, park, or open space, owned, leased or operated by the City, its agents, agencies, departments or franchisees.
- (f) "City Contractor" means any person that enters into an agreement with the City to furnish products or services to or for the City including all franchisees, contractors, and vendors doing business with the City.
- (g) "City-Sponsored Event" means any event, activity or meeting organized, sponsored, permitted, in whole or in part, by the City or any department of the City. This includes events at rented or borrowed City Facilities, City-managed concessions, and City co-sponsored events.
- (h) "Compostable" means all the materials in the product or package will break down, or otherwise become part of usable compost (e.g. soil-conditioning material, mulch). To be considered "Compostable", disposable food containers must meet ASTM Standards for compostable materials and must be certified by the Biodegradable Products Institute (BPI) as such.
- (i) "Customer" means any person obtaining Prepared Food from a Restaurant or Food Provider.
- (j) "Disposable Food Ware" or "Disposables" means single-use, disposable products used for serving, transporting, or consuming Prepared Food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, hinged food containers, condiment containers, utensils, cups or drink ware, or any other container in or on which Prepared Foods are placed or packaged for consumption.
- (k) "Distribute" means to provide or offer to provide an item, either as a separate transaction or as part of a transaction for another item, regardless of whether compensation is received.
- (l) "Encapsulated Expanded Polystyrene Product" means Expanded Polystyrene products that have been completely encased by a more durable material that protects the EPS material from disintegration and makes the product suitable for reuse multiple times.
- (m) "Event" means an organized recreational or cultural activity promoted or sponsored by a business or non-profit group.

- (n) “Expanded Polystyrene” or “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. trademark form of polystyrene foam insulation.
- (o) “Expanded Polystyrene Product” means any item such as a cooler, ice chest, cup, bowl, plate, hinged food container (clamshell), shipping box, or any other merchandise made from expanded polystyrene.
- (p) “Food Provider” means any Person or establishment that provides or sells Prepared Food within the City to the public to be consumed on the premises or for take-away consumption. Food Provider includes but is not limited to (1) a grocery store, supermarket, delicatessen, restaurant, drive-thru, café, cafeteria, coffee shop, snack shop, public food market, farmers’ market, convenience store, or similar fixed place where Prepared Food is available for sale on the premises or for take-away consumption; and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food Provider also includes any business, organization, group or individual that regularly provides Prepared Food to its members or the public as a part of its activities or services.
- (q) “Food Tray” means a tray commonly used for packaging food for retail sale.
- (r) “Person” means any person, business, corporation, or event organizer or promoter; public, nonprofit or private entity, agency or institution; or partnership, association or other organization or group, however organized.
- (s) “Plastic Straw” or “Plastic Beverage Straw” means a Beverage Straw made of plastic derived from fossil fuel or biologically based polymer (Bio-plastic).
- (t) “Plastic Utensil” means fork, spoon, knife, chopstick or stirrer, or other eating implement made predominately of plastic derived from fossil-fuel or a biologically based polymer.
- (u) “Polystyrene” means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion- blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The Recycle Code for polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies to all Polystyrene Food Ware, regardless of whether it exhibits a Recycle Code.

- (v) “Prepared Food” means any food or beverage that is (1) ready to consume without any further preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a Food Provider using any cooking, packaging or food preparation technique. Prepared Food may be eaten either on or off the Food Provider’s premises. For purposes of this ordinance, Prepared Food does not include (1) any raw uncooked meat, poultry, fish unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers’ markets and other food vendors.
- (w) “Recyclable” means any material that is specified in the exclusive franchise agreement with the City’s solid waste service provider where such list exists, or, in the absence of such includes, but is not limited to, aluminum, tin and bi-metal cans, clear and colored glass containers, corrugated cardboard, mixed paper and Plastics with Recycling Codes 1-7 with the exception of #6 or PS.
- (x) “Restaurant” means any person or establishment doing business within the City of Thousand Oaks that provides prepared food or beverages for consumption on or off its premises such as a, dining establishment, café, bakery, grocery or convenience store counter or delicatessen, or catering truck vehicle. “Restaurant” for the purposes of this Chapter, includes mobile food preparation units and employee cafeterias operated at businesses located within the City.
- (y) “Recycling Code” is used to identify the material from which an item is made to facilitate processing. Generally, codes are indicated as a number from 1-7 within a recycling mobius or chasing arrows logo. Codes can also be in the form of an abbreviation. PS and No. 6 are both used to indicate a Polystyrene product. Number 7 indicates a product that does not fit within the other six classifications and is designated as “Other”. Compostable plastics are designated as No. 7 plastics. The presence of a Recycling Code is not an indicator that the item is recyclable.
- (z) “Reusable Food Ware” means all Food Ware, including plates, bowls, cups, trays, glasses, hinged food containers (clamshells), straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and 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 Health Department regulations.
- (aa) “Undue Hardship” means that alternative Food Ware products that meets the same functional requirements are not available or result in a significant cost increase to operations.

(bb) "Vendor" means any store or business, located or operating within the City of Thousand Oaks, that sells or offers goods or merchandise including those referenced in "Food Provider."

### **Article 3. Disposable Food Ware**

#### **Sec. 6-6.301 Prohibition on Polystyrene Disposable Food Service Wares.**

- (a) No Food Provider shall distribute or sell any Polystyrene Disposable Food Ware in conjunction with the sale of Prepared Food or beverages at any location within the City of Thousand Oaks.
- (b) Food Providers that distribute Prepared Food or beverages with Disposable Food Ware shall:
  - (1) distribute only those Disposables that exhibit a Recycle Code (1,2,3,4,5,7). At no time shall Disposables with a Recycle Code of No. 6 or PS be permitted for distribution or use; and
  - (2) maintain documentation about the composition of any Disposable Food Ware that does not exhibit a Recycle Code. Documentation may include information from the supplier or manufacturer or provided in the product packaging or any other relevant information that demonstrates that the material is not Polystyrene or comprising of a material containing Recycle Code No. 6 or PS.

#### **Sec. 6-6.302 Distribution of Plastic Utensils.**

- (a) Plastic Utensils shall not be automatically distributed to Customers eating at the Food Provider's premises. A Food Provider may only Distribute Plastic Utensils (non-polystyrene) upon request by the Customer or upon offer by the Food Provider to the Customer and acceptance of that offer.
- (b) A Food Provider may have Plastic Utensils (non-polystyrene) available for Customers for self-help at locations within the Restaurant.
- (c) At the discretion of Food Providers, Plastic utensils may be automatically distributed to Customers ordering takeout food.

#### **Sec. 6-6.303 Distribution of Plastic Beverage Straws.**

- (a) Plastic Beverage Straws shall not be automatically distributed to Customers eating or drinking at the Food Provider's premises unless the straw is pre-packaged with the beverage by the manufacturer. A Food Provider may only Distribute Plastic Beverage Straws upon request by the Customer or upon offer by the Food Provider to the Customer and acceptance of that offer.



- (b) A Food Provider may have Plastic Beverage Straws available for Customers for self-help at locations within the Restaurant.
- (c) At the discretion of Food Providers, Plastic beverage straws may be automatically distributed to Customers ordering takeout food.

#### **Article 4. Sale and Distribution of Expanded or Rigid Polystyrene Products**

##### **Sec. 6-6.401 Prohibition on the distribution or sales of Polystyrene Products.**

- (a) No person shall Distribute, or sell Disposable Food Ware made, in whole or in part, from Polystyrene.
- (b) No person shall distribute or sell Expanded Polystyrene loose fill packaging and cushioning material, such as foam peanuts, packing peanuts, foam popcorn or packing noodles, intended for the packaging of products, equipment, or other items.
- (c) No person shall distribute, or sell products made in whole or in part, from Expanded Polystyrene that is not wholly encapsulated or encased within a non-Polystyrene material.

#### **Article 5. Standard Exemptions**

##### **Sec. 6-6.501 The following Polystyrene products are exempt from the provisions of this chapter:**

- (a) Prepared food packaged outside the City, provided such food is not altered, packaged or repackaged within the City limits.
- (b) Expanded Polystyrene insulated containers designed to safely transport by mail or common carrier prepared food, frozen goods, perishables, pharmaceuticals, biotech, and medical supplies in compliance with the Food and Drug Administration or other regulatory agency recommended temperatures.
- (c) Containers, plates or trays for raw, butchered meats, fish and/or poultry.
- (d) Food Ware, Plastic Utensils, or Plastic Beverage Straws brought by individuals for personal consumption or use at Public Facilities, including but not limited to schools and parks, provided the facility use is not part of an Event.
- (e) Public Health and Safety. The City may exempt a Food Provider or beverage provider when there is a public health and safety requirement or medical necessity to use an otherwise prohibited Food Ware product.

- (f) During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and Food Providers shall be exempt from the provisions of this Chapter.
- (g) Construction products made from Polystyrene/Plastic Foam are exempted from this chapter if the products are used in compliance with City of Thousand Oaks Municipal Code Title 8, Building Regulation, or Title 7, Chapter 8, Storm Water Quality Management, and used in a manner preventing the Polystyrene/Plastic Foam from being released into the environment.
- (h) Polystyrene/Plastic Foam packaging products which have been received from sources outside the City may be reused to keep them out of the waste stream.
- (i) Shipping of manufactured goods produced within the City where viable alternatives are not available.

## **Article 6. Waivers**

Sec. 6-6.601        The City Manager or his/her designee may consider a waiver filed by any Food Provider or Person as detailed below.

- (a) A request for a waiver shall be filed in writing with the City Manager or his/her designee annually and shall include documentation of the reason for the claimed waiver and any other information necessary for the City to make its decision, including, but not limited to the factual support for the claimed waiver as follow:
  - (1) Situations unique to the food provider where there are no reasonable alternatives to Polystyrene Disposable Food Ware;
  - (2) Situations where no reasonably feasible available alternatives exist to a specific and necessary Expanded Polystyrene use.
  - (3) Compliance with this chapter would cause Undue Hardship to that Food Provider.

Sec. 6-6.602.        The City Manager or his/her designee's written decision on the waiver application is effective within 30 days of the decision and is not appealable.

Sec. 6-6.603. The City Council may by resolution establish a fee for waiver applications. The application fee shall be an amount sufficient to cover the costs of processing the waiver application.

## **Article 7. Compliance**

Sec. 6-6.701 The City may inspect and monitor affected locations to determine compliance with this chapter.

## **Article 8. Enforcement**

Sec. 6-6.801 Civil liability and penalties.

- (a) It shall be unlawful for any person or entity to fail to comply with this Chapter.
- (b) Each violation of this Code or other ordinance of the City shall constitute a separate offense.
- (c) The City may also seek to enforce violations of this Chapter through the City's civil penalty procedure pursuant to section 1-2.201 et seq. of this Code.

Upon a first violation of any provision of this chapter, the City shall issue a written Notice of Violation to the offending establishment, person or entity. The Notice of Violation shall specify the violation(s), a date by which the violation(s) must be ceased and abated. If, after the specified correction period, the violation is not ceased or abated, the City may issue a civil penalty assessing fines in accordance with Section 1-2.205.

Sec. 6-6.802 The remedies and penalties provided in this chapter are cumulative and not exclusive and nothing in this Chapter shall preclude the City from pursuing any other legal remedies available. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter and any regulations or administrative procedures developed pursuant hereto.

## Part 4

### Severability (Uncodified)

If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this title; it being

hereby expressly declared that this title, and each section, subsection, sentence, clause and phrase hereof, would have been prepared, proposed, adopted, approved and ratified irrespective of the fact that anyone or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Part 5

Effective Date

This Ordinance shall take effect on January 1, 2022.

PASSED AND ADOPTED THIS

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Al Adam, Mayor  
Thousand Oaks City Council

ATTEST:

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Cynthia M. Rodriguez, City Clerk  
Thousand Oaks City Council

APPROVED AS TO FORM:  
Office of the City Attorney

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Felicia Liberman, Assistant City Attorney

APPROVED AS TO ADMINISTRATION:

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Andrew P. Powers, City Manager