

ORDINANCE NO. 2022-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AMENDING CHAPTER 8.24 OF THE EL CERRITO MUNICIPAL CODE ENTITLED "FOODWARE ORDINANCE" PROHIBITING A FOOD FACILITY FROM PROVIDING ANY SINGLE-USE FOODWARE ACCESSORY OR STANDARD CONDIMENT PACKAGED FOR SINGLE USE UNLESS REQUESTED BY CONSUMER AND AUTHORIZING ENFORCEMENT AND PENALTIES

WHEREAS, the City of El Cerrito adopted a Foodware Ordinance in 2013 prohibiting Expanded Polystyrene Foam and amended the ordinance in November 2021 to phase out all single-use plastic foodware items in the city and require the use of reusable or compostable containers; and

WHEREAS, the City of El Cerrito's amended ordinance additionally required permitted beverage straws to only be provided upon request; and

WHEREAS, in October 2021, the State of California passed Assembly Bill 1276 prohibiting a food facility from providing any single-use foodware accessory or standard condiment, as defined, to a consumer unless requested by the consumer, and requiring cities to authorize enforcement of the requirements of the bill on or before June 1, 2022; and

WHEREAS, additional amendments to the Foodware Ordinance, as proposed here, would incorporate the language required under Assembly Bill 1276; and

WHEREAS, in addition to complying with this State mandate, updating the City's ordinance to enforce these new requirements aligns with the City's goals to reduce waste; and

WHEREAS, improperly discarded single-use foodware can result in blocked storm drains, fouled waterways, and increased marine debris; 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, reducing the use of single-use foodware is consistent with the El Cerrito Strategic Plan goal 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 with the following additions and deletions to read as follows (additions in underline, deletions in strikethrough):

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. Additionally, it is the intent of this Chapter to comply with the requirements of California Assembly Bill 1276 (2021) and to require Single-use Foodware Accessories and Condiments packaged for Single use to be provided only if requested by a Consumer.

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. "Consumer" has the same meaning as in Section 113757 of the Health and Safety Code and is currently defined as a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food facility, and does not offer the food for resale.
- C. "City facilities" means any park, building, structure or vehicle owned or operated by the City of El Cerrito, its agents, agencies, departments or franchisees.
- D. "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.
- E. "City-sponsored event" means any event organized or sponsored by the City of El Cerrito or any department of the City of El Cerrito.
- F. "Customer" means any member of the public obtaining Prepared Food from a Food Provider.

G. "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.

H. "Food facility" has the same meaning as in Section 113789 of the Health and Safety Code and is currently defined as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level.

I. "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.

J. "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.

K. "Permitted beverage straw" means straws that are Compostable or Reusable.

L. "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.

M. "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.

N. "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."

O. "Ready-to-eat food" has the same meaning as in Section 113881 of the Health and Safety Code and is currently defined as food that is in a form that is edible without additional preparation to achieve food safety.

- P. "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.
- Q. "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.
- R. "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.
- S. "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.
- T. "Single-use" means designed to be used once and then discarded, and not designed for repeated use and sanitizing.
- U. "Single-use foodware accessory" means all of the following Single-use items provided alongside Ready-to-eat Food:
- (1) Utensils, which is defined as forks, knives, spoons, and sporks.
 - (2) Chopsticks.
 - (3) Condiment cups and packets.
 - (4) Straws.
 - (5) Stirrers.
 - (6) Splash sticks.
 - (7) Cocktail sticks.
- V. "Standard condiment" means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes.
- W. "Third-party food delivery platform" has the same meaning as in Section 113930.5 of the Health and Safety Code and is currently defined as a business engaged in the service of online food ordering and delivery from a Food Facility to a Consumer.

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.

8.24.070 Foodware by Request and Third-Party Food Delivery.

- A. Except as provided in subdivision (C) of this section, a Food Facility, for on-premises dining or when using a Third-party Food Delivery Platform, shall not provide any Single-use Foodware Accessory or Standard Condiment packaged for Single-use to a Consumer unless the Single-use Foodware Accessory or Standard Condiment is requested by the Consumer.
- B. Single-use Foodware Accessories and Standard Condiments packaged for Single use provided by Food Facilities for use by Consumers shall not be bundled or packaged in a manner that prohibits a Consumer from taking only the type of Single-use Foodware Accessory or Standard Condiment desired without also having to take a different type of Single-use Foodware Accessory or Standard Condiment.
- C. A Food Facility may ask a drive-through Consumer if the Consumer wants a Single-use Foodware Accessory if the Single-use Foodware Accessory is necessary for the Consumer to consume Ready-to-eat Food, or to prevent spills of or safely transport Ready-to-eat Food.
- D. (1) A Third-party Food Delivery Platform shall provide Consumers with the option to request Single-use Foodware Accessories or Standard Condiments from a Food Facility serving Ready-to-eat Food.

(2) If a Food Facility uses any Third-party Delivery Platform for Ready-to-eat Food, the Food Facility shall customize its menu with a list of available Single-use Foodware Accessories and Standard Condiments, and only those Single-use Foodware Accessories or Standard Condiments selected by the Consumer shall be provided by the Food Facility. If a Consumer does not select any Single-use Foodware Accessories or Standard Condiments, no Single-use Foodware Accessory or Standard Condiment shall be provided by the Food Facility for delivery of Ready-to-eat Food.
- E. Nothing in this section shall prohibit a Food Facility from making unwrapped Single-use Foodware Accessories available to a Consumer using refillable self-service dispensers that dispense one item at a time to allow for Single-use Foodware Accessories to be obtained.
- F. Nothing in this section shall prohibit a Food Facility from making Standard Condiments available to a Consumer using refillable self-service dispensers to allow for Standard Condiments to be obtained. A Food Facility that offers Standard Condiments is encouraged to use bulk dispensers for the condiments rather than condiments packaged for Single-use.
- G. A Food Facility is encouraged, but not required, to take actions in addition to the requirements of this section that support a goal of reducing the use of and waste generated by all Single-use food service products.
- H. This section does not apply to any of the following:

 - (a) Correctional institutions, which has the same meaning as in Section 7502 of the Penal Code.

(b) Health care facilities licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or facilities that are owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(c) Residential care facilities licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(d) Public and private school cafeterias, as referenced in paragraph (1) of subdivision (b) of Section 113789 of the Health and Safety Code.

8.24.080 Exemptions to Section 8.24.050 and Section 8.24.060.

- 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 Section 8.24.050 and Section 8.24.060 of this chapter. Purveyors of food prepared or packaged outside the City of El Cerrito are encouraged to follow ~~the~~ all provisions of this chapter.
- B. Food Providers may be exempted from the provisions of Section 8.24.050 and Section 8.24.060 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 Section 8.24.050 and Section 8.24.060 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 Section 8.24.050 and Section 8.24.060 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. As of January 1, 2024, any violation of Section 8.24.050 and Section 8.24.060 ~~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. The City Manager or designee may authorize another public agency and its agents to take any and all actions reasonable and necessary to enforce this chapter.
- C. The first and second violations of Section 8.24.070 shall result in a notice of violation, and any subsequent violation of that section shall constitute an infraction punishable by a fine of twenty-five dollars (\$25) for each day in violation, but not to exceed three hundred dollars (\$300) annually.

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 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 and be enforced thirty (30) days after the date of its adoption. 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 July 19, 2022, and passed by the following vote:

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

ADOPTED AND ORDERED published at a regular meeting of the City Council held on August 16, 2022 and passed by the following vote:

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

APPROVED:

Gabe Quinto, Mayor

ATTEST:

Holly Charl  ty, City Clerk

ORDINANCE CERTIFICATION

I, Holly M. Charl  ty, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2022-02 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 August, 2022; 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 August 2022.

Holly M. Charl  ty, City Clerk