

ORDINANCE NO. 19-016

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE
AMENDING CHAPTERS 11.98 AND 11.99
OF THE PACIFIC GROVE MUNICIPAL CODE
REGARDING PROHIBITIONS ON SINGLE-USE PLASTICS AND FOOD
PACKAGING**

WHEREAS, the state Legislature has recognized that littered plastic products cause significant environmental harm and have burdened local governments with significant environmental cleanup costs (California Public Resources Code Section 42355); and

WHEREAS, the state Legislature has further declared its intent to ensure environmental marketing claims, including claims of biodegradation of plastics, do not lead to increased environmental harm associated with plastic litter by providing consumers with a false belief that certain plastic products are less harmful to the environment (California Public Resources Code Section 42355); and

WHEREAS, each year, an average of eight million tons of plastic waste – most of which is single-use – is discharged into the oceans of the world from coastal regions; and

WHEREAS, sunlight and wave action break plastics down into smaller bits, known as microplastics, which further degrade the ocean environment; and

WHEREAS, according to the 2018 Ocean Conservancy Report, straws, stirrers, take-out containers, and lids are among the top 10 items found on the beach, which end up in streets, storm drains, the beach, and the ocean, and which are composed of different types of plastic, not just polystyrene; and

WHEREAS, more than one hundred municipalities in California, including the City, have adopted ordinances prohibiting or restricting polystyrene food service ware and requiring the utilization of cost-effective reusable, recyclable, or compostable alternatives, which have reduced the volume of polystyrene products in waste streams and throughout the natural environment; and

WHEREAS, the City has always been a leader in setting goals to protect natural resources, passing Ordinance 08-010 in 2008, which prohibited the use of Polystyrene Foam and required disposable food service ware to be biodegradable, compostable, or recyclable as set forth in Pacific Grove Municipal Code (PGMC or Municipal Code) Chapter 11.99; and

WHEREAS, in 2014, the City began regulating single-use plastic and paper carryout bags to reduce consumption of single-use bags as set forth in PGMC Chapter 11.98; and

WHEREAS, the City has determined that it is appropriate to impose further restrictions on single-use plastics to protect the health, safety and security of the public, and protect the environment; and

WHEREAS, notice of the public hearing was published or posted [**where**] on [date] and [date]; and

WHEREAS, this ordinance amends Chapter 11.98 of the Municipal Code to further reduce the use of single-use plastic bags and disposable food service ware; and

WHEREAS, this ordinance repeals Chapter 11.99 of the Municipal Code prohibiting the use of single-use disposable food service ware, and combines these provisions with other single-use plastic prohibitions in Chapter 11.98; and

WHEREAS, in the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.; and

WHEREAS, enactment of this Ordinance prohibiting single-use plastics and disposable food service ware is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15061(b)(3) [project is exempt when it can be determined with certainty that there is no potential for causing a significant effect on the environment] and Sections 15307 and 15308 [actions taken by regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment where regulatory process involves procedures for the protection of the environment.].

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. Existing Municipal Code Chapter 11.98, entitled “Reduction Of Single-Use Plastic and Paper Carryout Bags” shall be retitled “Reduction Of Single-Use Plastics” and shall be amended by the deletion of all text shown in strikeout text (~~strikeout text~~) and by the addition of all text shown in bold, italic text (***bold italic text***), as follows:

Sections:

- 11.98.010 Purpose and findings.
- 11.98.020 Definitions.
- 11.98.030 Ban on ***single-use*** plastics bags and charge for ***single-use paper*** carryout bags.

- 11.98.035 *Ban on single-use disposable food service ware.*
- 11.98.040 *Ban on single-use personal care products by lodging providers.*
- 11.98.0405 Implementation.
- 11.98.050 Enforcement.
- 11.98.055 *Exemptions.*

11.98.010 Purpose and findings.

(a) It is the intent of the City of Pacific Grove in enacting this chapter to eliminate the ~~common-use of plastic single-use plastics carryout bags,~~ to encourage the use of reusable *or Compostable bags-products* by consumers, *food and lodging providers*, and retail *establishments*, and to reduce the consumption of single-use *plastics bags* in general. ~~It is the further purpose of this chapter that by promoting reusable bags it will further the city's overall waste reductions goals as may be amended from time to time by the state of California.~~

(b) By promoting Compostable materials and reusable products, the City positions itself to meet State mandated waste diversion targets.

(c) Single-use disposable packaging and food ware (SUDs) are a major contributor to street litter, ocean pollution, marine and other wildlife harm, and greenhouse gas emissions.

(d) Plastics in waterways and oceans break down into smaller pieces known as microplastics, which are not biodegradable and are present in most of the world's oceans.

(e) Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that are eventually sold for human consumption.

(f) The City finds that the addition of this chapter to the municipal code qualifies as a regulation for the protection of natural resources and the environment as defined by the California Environmental Quality Act (CEQA).

11.98.020 Definitions.

For the purposes of this chapter, the following definitions apply:

“Affordable” means that a Compostable product may cost up to 15 percent more than the purchase cost of the nonbiodegradable, non-compostable or nonrecyclable material.

“ASTM Standard” means meeting the standards of the American Society for Testing and Materials International Standards D6400, as may be amended.

“Biodegradable” means the ability of organic matter to break down from a complex to a simpler form through the action of bacteria or to undergo this process.

“BPI” means Biodegradable Product Institute.

“City contractor” means any person or entity that has a contract with the City for work or improvement to be performed, for a franchise, concession, for grant moneys, goods and services, or supplies to be purchased at the expense of the City.

“City facility” means any building, structure, street, park, open space, golf links, or vehicle owned and operated by the City, its agents, and departments.

“Compostable” means a material that meets BPI certified standards or undergoes degradation by biological processes during composting to yield carbon dioxide (CO₂), water, inorganic compounds, and biomass within a nominal timeframe. Compostable food service ware must be clearly labeled Compostable in accordance with California Public Resources Code Section 42357 et seq., as may be amended, and all State and Federal labeling laws pertaining to the identification of Compostable products.

“Disposable” means products intended for single or a limited number of uses, used in the restaurant, food service and retail industries.

“Exempted uses” means those points of sale purchase or delivery sales that have received a special exemption, through the community and economic development director City Manager or the director’s designee, allowing single-use bags.

Food service provider means any restaurant or vendor located or providing food within the City that provides prepared food for public consumption on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, super market, delicatessen, catering truck, special events vendor, or vehicle, or any other person who provides prepared food; and any organization, group or individual which regularly provides food as a part of its services.

“Food service ware” means products used by a Food service provider or in the food service industry for serving or transporting prepared ready-to-consume food or beverages. This includes but is not limited to plastic plates, straws, cups, lids, bowls, utensils, stirrers, beverage plugs, trays and hinged or lidded containers. This does not include single-use packaging for unprepared foods.

“Lodging provider” means any hotel, motel, bed and breakfast inn, short-term rental, or any other establishment that provides overnight lodging.

“Person” means an individual, business, event promoter, special events vendor, trust, firm, joint stock company, corporation, nonprofit, including a government corporation, partnership, or association, and public or private school.

“PLA” (Polylactic acid or polylactide) means a biodegradable and bioactive thermoplastic aliphatic polyester derived from renewable biomass, typically from fermented plant starch such as from corn, cassava, sugarcane or sugar beet pulp.

“Plastic” means a material derived from either petroleum or a biologically-based polymer, such as corn or other plant sources.

“Plastic bag” or “plastic carryout bag” means a single-use carryout bag of any size that is provided at point of sale to customers by a retail establishment or food provider. Plastic bags include both ~~both compostable and non-compostable~~ carryout bags. After December 31, 2020, this definition shall include “dry cleaning film bags”.

“Point of sale” means a physical or virtual place where sales transactions are made, typically a cash register, check stand or online shopping cart.

“Polystyrene Foam” includes expanded polystyrene that 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, form molding, and extrusion-blown molding (extruded foam polystyrene). This includes but is not limited to Polystyrene Foam plate, bleached paperboard plate with low density polyethylene coating and bleached paperboard plate with polystyrene coating.

“Prepared food” means food or beverage prepared for consumption on the food provider’s premises, or elsewhere, using any cooking or food preparation technique. This does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation. This does not include food prepared and packaged outside the City.

“Recyclable” means any material that is accepted by the City recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs. Recyclable plastics comprise those plastics coded with the recycling symbols Nos. 1 through 5.

“Recycled paper bag” means a bag that contains no old growth fiber and ~~a minimum of 40 percent post-consumer recycled content~~, is made up of 100 percent post-consumer recyclable materials, and has printed in a highly visible manner on the outside of the bag the words “100 percent Compostable”. “Reusable” and “Recyclable,” the name and location of the manufacturer, and the percentage of post-consumer recycled content.

“Restaurant” is defined as a food provider doing business in the City of Pacific Grove whose principal business is the sale of prepared food for consumption either on or off premises, which includes a restaurant, cafe, bakery, food cart, take-out establishment, home kitchens, delicatessen, or catering truck.

“Retail establishment” or “retail store” means all sales outlets, stores, shops, vehicles, *non-profits, resale businesses* or other places of business located within the City of Pacific Grove that operate primarily to sell or convey goods directly to the ultimate consumer. Restaurants, as defined herein, are exempt from the requirements of this chapter. Also exempt from the requirements of this chapter is prepared food sold at grocery and convenience stores’ food counters.

“Reusable” means designed or intended for more than a single use or few uses, or intended for reuse, in contrast to Disposable.

“Reusable bag” means any bag with handles that is specifically designed and manufactured for multiple reuse, and is either: (1) made of cloth or other washable woven fabric; or (2) made of durable material that is at least 4.0 mils thick that can be cleaned or disinfected at least 125 times. A reusable bag may be made of recyclable plastic such as high-density polyethylene (HDPE), low density polyethylene (LDPE), or polypropylene.

“Single-use carryout bag” is defined as a bag, other than a reusable bag, or recyclable bag, or *Compostable bag*, provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single-use carryout bags do not include bags, a maximum size of 11 inches by 17 inches, without handles, provided to the customer to (1) transport produce, bulk food or meat from a product, bulk food or meat department within a store to the point of sale; (2) hold prescription medication dispensed from a pharmacy; or (3) segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a bag.

“Single-use amenities” means plastic containers less than eight (8) ounces in size that contain personal care products intended to applied to or used on the human body in the shower, bath or any part thereof, and includes body wash, lotion or hair products provided by lodging providers.

“Single-use plastics” means single-use carryout plastic bags or containers that are provided at the point of sale to customers. These typically include plates, cutlery, cups, lids, straws, “clamshells” and other containers, as well as products with plastic lining. This also includes single-use amenities.

“Special events promoter” means an applicant for any special events permit issued by the City or any City employee(s) responsible for any City-sponsored or organized special event.

“Straw” means a tube through which beverages, slurries, smoothies, and similar ingestible products may be ingested by the consumer.

“SUDs” means single use disposable packing and Food service ware.

11.98.030 Ban on *single-use* plastics and plastic bags and charge for single-use paper carryout bags.

(a) No retail establishment, *dry cleaner, laundry service, food service provider, or lodging provider* shall provide *single-use* plastics or plastic carryout bags to customers at the point of sale, except as permitted in this chapter.

(b) No ~~City of Pacific Grove~~ contractors, special events promoters, or their vendors, while performing under contract or permit *within the City limits*, shall provide *single-use* plastics carryout or plastic bags to customers at the point of sale.

(c) ~~Single-use~~ Paper carryout bags provided to customers shall contain a minimum of 100 percent post-consumer recycled paper fiber and must be *certified Compostable as defined in this chapter*. ~~recyclable in the city of Pacific Grove's curbside recycling program.~~

(d) Retail establishments shall charge a minimum 10-cent fee for each ~~single-use~~ paper carryout bag provided to customers at the point of sale. Retail establishments shall keep annual records of paper bag distribution to be made available to the ~~community and economic development director~~ *City Manager* or designee upon request. From time to time, the *City* may review the annual records of paper bag distribution to ensure the effectiveness of these regulations.

(e) The charge imposed pursuant to this chapter shall not be charged to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, the State Department of Social Services Food Stamp program, or other government-subsidized purchase programs for low-income residents.

(f) *Bags used to protect wet items or for carry-out protection must be made of BPI compliant materials.* ~~The ban on single-use plastic bags and the charge for single-use paper bags do not apply to plastic or paper bags used to protect produce or meat, or otherwise used to protect items as they are put into a carryout bag at checkout. Other examples or exemptions~~ *This includes: paper bags to protect bottles, plastic bags around meat, produce, ice cream or other wet items, paper bags used to weigh candy, paper pharmacy bags, or paper bags used to protect greeting cards.*

(g) Retail establishments are strongly encouraged to make reusable bags available for sale to customers at a reasonable price.

(h) Retail establishments shall indicate on the customer transaction receipt the number of paper carryout bags provided, and the total amount charged.

(i) *It shall be a policy of the City that retail establishments located outside the City shall not package any nonfood product in a container that utilizes Polystyrene Foam,*

both block polystyrene or packaging peanuts, or purchase, obtain, keep, distribute or sell for home or personal use, or give, or otherwise provide to customers any packaging that utilizes Polystyrene Foam. The City shall promote and require elimination of all SUD and Polystyrene Foam packaging.

11.98.035 Ban on single-use disposable Food service ware.

(a) All food service providers within the City shall provide reusable Food service ware for dine-in customers.

(b) BPI Certified Compostable Food service ware required for prepared food other than dine-in customers.

(1) All food service providers within the City shall use BPI certified Compostable Food service ware products for prepared food. This includes City contractors and special events promoters performing under a City contract or permit.

(2) No person may sell, offer for sale, or otherwise distribute within the City, and may not provide prepared food in any disposable Food service ware that is not BPI certified Compostable or that contains Polystyrene Foam. This includes City contractors in the performance of City contracts and special events promoters in the City.

(3) Food service providers may charge a “take-out fee” to cover the difference in cost from SUDs.

(c) Straws shall be provided only upon request. All SUD straws, including PLA/bioplastic are prohibited. Exceptions shall only be made to the consumer self-identifying as a person with a disability, whereupon a plastic straw may be provided to the consumer.

(d) Foods prepared or packaged outside the City and sold within the City are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the City are encouraged to follow the provisions of this chapter as it is a policy goal of this City to eliminate the use of single-use plastics and Polystyrene Foam for packaging prepared food.

(e) Penalties.

(1) The City, in accordance with applicable law, may inspect any food service provider’s premises to verify compliance with this chapter.

(2) Food service providers shall confirm compliance with this chapter on their annual business license renewal forms.

(3) Violations of this section shall be enforced as follows:

(A) For the first violation, the City Manager or designee shall issue a written warning to the food provider specifying that a violation of this chapter has occurred and notifying the food provider of the appropriate penalties to be assessed in the event of future violations.

(B) The following penalties shall apply for subsequent violations of this chapter:

i. A citation imposing a fine in the sum of \$200 for the first violation that occurs more than 30 days after the warning issued pursuant to subsection (A) of this section. In lieu of payment, the person cited may submit receipts to the City Manager that demonstrate the purchase, following the service of the citation, of at least \$100 worth of BPI certified Compostable products appropriate as an alternative to the disposable Food service ware that led to the violation.

ii. A fine in the sum of \$400 for a violation that occurs after issuance of the citation referenced in subsection (B)i. of this section.

iii. A fine in the sum of \$900 for the third and each subsequent violation which occurs after issuance of the citation referenced in subsection (B)i. of this section.

(4) Food service providers who violate this chapter in connection with Special events, defined in this chapter, shall be issued a citation imposing fines as follows:

(A) A fine of \$200 for each violation associated with an event of one to 200 persons;

(B) A fine of \$400 for each violation associated with an event of more than 200 but less than 400 persons;

(C) A fine of \$600 for each violation associated with an event of more than 400 but less than 600 persons; and

(C) A fine of \$1,000 for each violation associated with an event of more than 600 persons.

11.98.040 Ban on Single-use Amenities by lodging providers.

(a) Single-use Amenities are prohibited for distribution by lodging providers within the City except to persons specifically requesting accommodations for a disability or other special need.

~~(b) For purposes of this Chapter, Single-use Amenities include plastic containers less than 12 ounces in size containing of personal care products such as shampoo, conditioner, lotion, and other similar products intended for personal use.~~

11.98.0405 Implementation.

The City shall make available a copy of this chapter, or a link to this chapter on the City's website, to every new retail establishment, *dry cleaner, laundry service, lodging provider or food provider* that applies for a business license.

11.98.050 Enforcement.

~~(a) Beginning March 1, 2015~~ **April 22, 2020**, violations of this chapter may be enforced in accordance with Chapters 1.16 and 1.19 PGMC.

~~(b) The city's code compliance program shall be responsible for enforcing this chapter and shall have authority to issue citations for violations.~~

~~(c) Anyone violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction.~~

~~(d) The city attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter.~~

~~(e) The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.~~

~~(f) The city may inspect any vendor's premises to verify compliance.~~

(b) Violation of this chapter will be considered a public nuisance. In addition to any other remedies or penalties that may be available, any violation described in the preceding paragraphs shall be subject to abatement by the city, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by an injunction issued by the superior court in a civil action, based upon a showing by the city that said violation exists.

(c) The City Manager is authorized to establish regulations or administrative procedures to obtain compliance with this chapter.

11.98.055 Exemptions

(a) The City Manager or designee may exempt a person from the requirements of this chapter for a period not to exceed 12 months per request upon a showing, in

writing, that this chapter creates an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances.

(b) The City Manager shall confirm the decision to grant or deny each exemption in writing; the City Manager decision shall be final.

(c) There shall be no exemptions to allow for the use of recyclable, biodegradable, or Polystyrene Foam disposable Food service ware.

SECTION 3. Existing Municipal Code Chapter 11.99, entitled "Food Packaging" shall be repealed in its entirety.

SECTION 4. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
THIS 6th day of November 2019, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Huitt, Councilmembers Amelio, Garfield, McAdams and Tomlinson.

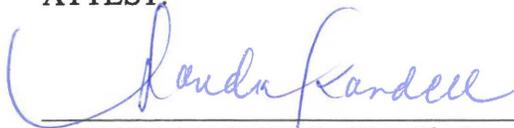
NOES: None.

ABSENT: Councilmember Smith.

APPROVED:

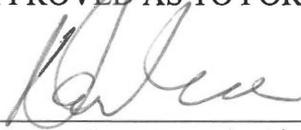

BILL PEAKE, Mayor

ATTEST:


SANDRA KANDELL, City Clerk

DATED: 11/7/19

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "D. Laredo", written in black ink.

DAVID C. LAREDO, City Attorney