

**CITY OF NEWPORT
ORDINANCE NO. 2178
AN ORDINANCE ADDING CHAPTER 4.40
TO THE NEWPORT MUNICIPAL CODE RESTRICTING
THE USE OF SINGLE-USE EPS FOAM AND PLASTIC FOOD SERVICE WARE,
AND STATING AN EFFECTIVE DATE**

WHEREAS, the Newport City Council adopted Resolution No. 3780, on November 20, 2017, which approved the Vision 2040 Plan, and a focus area of this Plan is “Preserving and Enjoying Our Environment;” and

WHEREAS, the Newport City Council expressed interest in regulating the use of single-use expanded polystyrene, plastic, and plastic-lined food service ware, which directly impacts the implementation of the Vision 2040 Plan, and the focus area of “Preserving and Enjoying Our Environment;” and

WHEREAS, single-use EPS foam and plastic food service ware are made of nonrenewable resources which cause urban blight, land and marine litter, and damages wetland, estuarine, and oceanic habitats, and breaks down into micro-plastics that can create long-term environmental problems; and

WHEREAS, costs associated with the use, recycling, litter collection, and disposal of single-use EPS foam and plastic food service ware creates burdens on solid waste disposal facilities, and create a real, provable economic and environmental threat to the city’s natural resources and economy; and

WHEREAS, restaurants spend \$24 billion purchasing disposable food service ware items on average in the U.S.¹; and

WHEREAS, to significantly reduce waste generation and its budgetary impact, it is in the city’s interest to regulate the use of single-use EPS foam and plastic food service ware by retail and commercial establishments in the City of Newport; and

WHEREAS, on January 19, 2021, the City Council held a public hearing on the concept of regulating single-use EPS foam and plastic food service ware; and

WHEREAS, on February 1, 2021, the City Council held a work session, considered the public comment from the public hearing held on January 19, 2021, and determined that it is appropriate to develop an ordinance regulating single-use EPS foam and plastic food service ware.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Chapter 4.40 of the Newport Municipal Code is added as follows:

4.40.010 Purpose

4.40.020 Definitions

4.40.030 Regulations

4.40.040 Exemptions

4.40.050 Enforcement and Penalties

4.40.010 Purpose

¹ Upstream, based on Freedonia market research.

The purpose of this chapter is to prohibit the use of single-use EPS foam and plastic food service ware at retail establishments, including restaurants, city facilities, city managed concessions, city-sponsored events, and/or city-permitted events, and to require the use of biodegradable food service ware.

4.40.020 Definitions

- A. Cafeterias mean dine-in areas within corporations, government, education, and medical institutions. Cafeterias include ones managed by the institution or contracted food services.
- B. City Manager means the City Manager of the City of Newport or designee.
- C. Customer means every person who purchases food or beverage that is intended to be consumed using single-use containers and plastic service ware.
- D. Dine-In means food and beverages that are intended to be consumed inside the place of business where the food and beverages were purchased, including without limitation, cafeterias and food halls.
- E. Electronic Orders mean food purchases conducted by smart phone, email, or the website of a retail food and beverage establishment. This includes electronic ordering services that are independent of the retail food and beverage establishment.
- F. Fast Food means food that can be prepared quickly and easily and is sold by food providers as a quick meal or to be taken out for consumption. Fast food includes drive-through, take-out and delivery orders, and applies to orders transacted in person, by phone, or electronically.
- G. Food Providers mean any entity that sells prepared food for public consumption on or off its premises. This includes, but is not limited to, full service and limited service restaurants, food carts, bars, coffee and tea shops, grocery stores, convenience stores, hotels, motels, caterers, and food service contractors.
- H. Food Service Containers mean bowls, plates, clamshells, lids, or other containers, or any other items used for serving, containing, or consuming prepared food, including takeout food and leftovers from partially consumed meals prepared by food providers.
- I. Food Service Ware means service ware intended for consumption of food, which includes, but is not limited to stirrers, spoons, forks, knives, sporks, and chopsticks.
- J. Polystyrene Foam means any material composed of polystyrene and having a closed cell air capacity of 25 percent or greater, or a density of less than 0.787 grams per cubic centimeter based on an average polystyrene density of 1.05 grams per cubic centimeter, as determined by an analytical testing laboratory.

- K. Prepared Food means a food or beverage that:
1. A food provider prepares on the food provider's premises, or that another person prepares and provides to the food provider for sale to the public; and
 2. A person may consume immediately or without the need for further or additional preparation.
- L. Reusable Food Service Ware means food service ware designed and manufactured to be materially durable and maintain its shape and structure for a cycle of at least 1,000 uses including washing and sanitizing by immersion for at least 30 seconds in water at least 171 degrees Fahrenheit.
- M. Single-Use Condiments mean condiments packaged to deliver single-serving condiments to customers, including, but not limited to, single-serving packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly and jam, and soy sauce.
- N. Single-Use Cups mean cups made of any material that are intended for the consumption of beverages and are designed for one-time use.
- O. Single-Use Plastic Food Service Containers mean food service containers made of plastic, including polystyrene foam. This includes compostable and biodegradable plastic (petroleum or biologically based polymer) service containers, but does not include service containers that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.
- P. Single-Use Plastic Food Service Ware means food service ware made of plastic. This includes compostable and biodegradable plastic (petroleum or biologically based polymer) service ware, but does not include service ware that is made from non-plastic materials, such as paper, sugar cane, bamboo, etc.

4.40.030 Regulations

- A. No food provider shall serve prepared food in any single-use plastic food service containers.
- B. All food providers and cafeterias serving prepared food for the purposes of consumption on the premises shall only provide Reusable Food Service Ware (except that disposable paper food wrappers, sleeves; foil wrappers; paper napkins; straws, and paper tray and plate-liners shall be allowed for dining on the premises.)
- C. All food providers, and cafeterias, where beverages may be consumed at dine-in areas, shall provide single-use condiments only after customer request.
- D. All food providers and cafeterias, where customers order food for take-out or delivery, shall provide single-use plastic service ware and single-use condiments to customers

only upon customer request or after asking if the customer needs single-use plastic service ware and single-use condiments, and the customer responds affirmatively. For electronic ordering, the food providers are responsible for coordinating with any third-party ordering service to prompt the customer to opt-in to single-use plastic service ware and single-use condiments. Food providers may impose a fee to customers that opt-in for single-use plastic service ware and single-use condiments.

- E. All food providers serving prepared food for the purposes of consumption on the premises shall only provide Reusable Food Service Ware; (except that disposable paper food wrappers, sleeves; foil wrappers; paper napkins; straws and paper tray and plate-liners shall be allowed for dining on the premises.)
- F. Only as allowed by Subsection 4.40.040 (E) of this chapter: Food providers that distribute prepared food in single-use plastic food service containers shall: (1) distribute only disposables that exhibit a resin code other than 'No. 6' or 'PS'; and (2) maintain documentation about the composition of the disposable food service ware. Documentation may include information from the supplier, manufacturer, or bulk packaging for the disposables, and any other relevant information demonstrating that the disposable material is not polystyrene.
- G. Single-use cups shall not be made of polystyrene.

4.40.040 Exemptions

- A. Cafeterias and food providers designed for counter service may allow customers to access a self-service station for single-use plastic food service ware.
- B. When the single-use plastic food service ware is attached to, or packaged by, the manufacturer with a beverage container before the beverage container is offered for retail sale. For example, juice boxes.
- C. Products that include a single-use condiment as an ingredient are exempt from Subsection 4.40.030 (C). For example, a separate plastic container of dressing included within a larger salad container.
- D. When free, or reduced-price, meals are provided as part of a social service to vulnerable populations, including without limitation, free or reduced-price meals provided by school systems, shelters, and programs that deliver meals.
- E. Prepared food that is packaged and labeled by the manufacturer pre-sale by a food provider. This includes:
 - 1. Packaging for raw meat, raw poultry, raw seafood, unprepared produce, and uncooked eggs;
 - 2. Packaging for prepackaged food, shelf stable food, and catered food.

- F. The City Manager may exempt a food provider from the implementation deadline, i.e. the effective date of this chapter, for a period of not more than six months upon the food provider demonstrating to the City Manager's satisfaction, in writing, that this chapter would create an undue hardship, or practical difficulty, not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption will be in writing. The City Manager's decision will be final.
- G. Food containers and cups for spillable prepared foods and beverages for delivery or take out by a Food Provider may include lids, spill plugs and sleeves without request. Single use plastic lids, spill plugs, etc. shall only be used for the purposes of safety or spill containment and in conjunction with an allowable food or beverage container under this chapter.

4.40.050 Enforcement and Penalties

- A. The City Manager is authorized to administer and enforce the provisions of this chapter.
- B. If any food provider violates this chapter, the city may impose the following penalties and enforcement actions:
 - 1. On a first violation, the City Manager will issue a written warning notice to the food provider that a violation has occurred.
 - 2. On subsequent violations, the following penalties will apply:
 - a. \$100 for the first violation after the written warning within a 12-month period;
 - b. \$200 for the second violation within a 12-month period;
 - c. \$500 for any subsequent violation within a 12-month period.
- C. The city shall not impose more than one penalty on any single food provider within a seven-day period.
- D. If a food provider violates the provisions of this chapter, the City Manager will send a written notice of the violation by mail to the food provider specifying the violation and the applicable penalty.

Section 2. Effective Date.

This ordinance shall become effective on March 31, 2022.

Date adopted and read by title only: December 6, 2021.

Signed by the Council President on _____.

CM Hall, Council President

ATTEST:

Margaret M. Hawker, City Recorder