

REPORT TO CITY COUNCIL

DATE: NOVEMBER 13, 2024

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NATHAN HAMBURGER, CITY MANAGER

BY: LOUIS CELAYA, DEPUTY CITY MANAGER
AMBER VICTORIA, MANAGEMENT ANALYST

SUBJECT: INTRODUCE AND WAIVE FURTHER READING OF ORDINANCE NO. 24-477, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, ADDING A NEW PART 10 (REUSABLE FOODWARE REGULATIONS) TO CHAPTER 3 (SOLID WASTE) OF ARTICLE V (SANITATION AND HEALTH) OF THE AGOURA HILLS MUNICIPAL CODE, REQUIRING ALL FOOD FACILITY VENDORS TO USE REUSABLE FOODWARE FOR DINE-IN OPERATIONS AND COMPLIANT COMPOSTABLE FOODWARE FOR TAKE-OUT SERVICES, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTIONS 15307, 15308, AND 15061(B)(3)

During the City Council Fiscal Year 2024-2025 Goal Setting and Budget Workshop, one of several goals approved was the establishment of regulations addressing the discontinued use of non-reusable foodware (i.e., plastics), non-reusable food packaging, and expanded polystyrene foam (EPS) products within the City, specifically with businesses that serve or sell food and beverages in a dine-in or take-out capacity. As the City continues to implement policies and practices toward environmental consciousness in compliance with the City's Climate Action and Adaption Plan (C.A.A.P), the establishment of regulations addressing the discontinued use of non-reusable foodware and the elimination of the use of EPS will be one more practice within the City toward improved sustainability.

Currently, existing state legislation has been adopted addressing plastics and EPS reductions, and over 129 cities in California have existing regulations regulating plastic foodware and accessories and prohibiting EPS (poly styrene) use.

City staff has discussed the ordinance development with the Environmental Responsibility Subcommittee (Subcommittee) since October 2023, and in subsequent meetings on February 7, 2024, to review and discuss components of the ordinance, and soliciting comments and suggestions on its development. City staff met with the Subcommittee to review the final draft ordinance on August 27, 2024, and received full support on the

proposed ordinance. The City also held a Public Workshop on October, 24, 2024, to present the ordinance and solicit any comments from the business community. There was one business attendee at the workshop, and City staff received one comment via email prior to workshop asking for clarification on permissible “to go” drinkware, where a response was provided by staff. Also, the workshop presentation link for viewing was sent to all business non-attendees.

The proposed ordinance establishes reusable foodware regulations for businesses that provide dine-in and dine-out consumption whereby those businesses who sell or provide food and beverages must use reusable foodware and reusable utensils, (i.e., forks, spoons, etc.), provide compliant non-reusable foodware accessories made of natural fibers only on request (i.e., napkins, food wrappers, straws, stirrers, etc), offer condiments in reusable container or dispensers in lieu of single-use condiment packets, and establishes prohibitions for distributing foodware or foodware accessories made of EPS.

The proposed ordinance also establishes regulations for off-site consumption (take out) whereby businesses or food vendors must:

- provide takeout food in reusable foodware, or compliant non-reusable foodware, or items composed entirely of glass or aluminum.
- provide all other compliant non-reusable foodware accessories, which are made from natural fibers only on request or at self-serve stations
- use takeout food bags made of paper or reusable materials
- provide the option for Compliant Non-Reusable Foodware Accessories and single-use condiments only on request
- not distribute foodware or foodware accessories made of EPS/polystyrene foam

The proposed ordinance also establishes requirements for businesses that utilize digital order platforms connected with their services, whereby businesses using these platforms shall:

- include a statement that communicates the compliant non-reusable foodware, compliant non-reusable foodware accessories, and single-use condiments, will be provided only on request,
- have on the platform customize menu with a list of available compliant non-reusable foodware and foodware accessories, etc., for customers to select from

The regulations above also apply to non-food establishment businesses where the business may sell or provide food or beverages (i.e., gas stations, convenience stores, etc.), and the City facilities and City sponsored events.

It should be noted that there are exemptions with the proposed ordinance for certain types of facilities as dictated by Health and Safety Code, Section 113789. The following facilities will receive exemption from the regulations established by this ordinance:

- A child day care facility, as defined in Health and Safety Code Section 1596.750.

- A community care facility, as defined in Health and Safety Code Section 1502.
- A residential care facility for the elderly, as defined in Health and Safety Code Section 1569.2.
- A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Health and Safety Code Section 1568.01.
- An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Health and Safety Code Section 1250, with a capacity of six beds or fewer.”
- Public and private school cafeterias

Additionally, exemptions may be given by the City Council or its designee (City Manager) to food vendors, contractors, etc., operating in the City to preserve public peace, health, or safety as a response to an emergency of natural disaster.

During the discussions with the Subcommittee on the ordinance development, the Subcommittee felt strongly that the affected businesses/food vendors must be given a grace period before implementation and enforcement of when the ordinance would begin. City staff is in concurrence with this position. The Subcommittee recommended the grace period of one year to allow affected businesses/food vendors to go through any existing inventory of non-compliance plastic or EPS products. This has been the standard grace period other agencies who have passed a similar ordinance afforded their impacted businesses. City staff would provide educational information and additional notices to local businesses during this time. After one year from the adoption date, the City would then enforce the ordinance requirements. The attached ordinance details the process for enforcement and fines. It should be noticed the enforcement will be on a reactive basis, based on complaints received and the City’s Solid Waste Consultant will act as the inspecting entity for complaint reviews.

Assuming the ordinance is adopted at the December 11, 2024, City Council meeting, and the ordinance published in the local newspaper, as required, enforcement would begin in January 2026.

FISCAL IMPACT

The ordinance adoption will have no direct fiscal impact to the City Council approved Fiscal Year 2024-25 budget.

RECOMMENDATION

Staff respectfully recommends the City Council approve the following:

- 1) Introduce and Waive Further Reading of Ordinance No. 24-477, an Ordinance of the City Council of the City of Agoura Hills, California, Adding a New Part 10 (Reusable Foodware Regulations) to Chapter 3 (Solid Waste) of Article V (Sanitation And Health) of the Agoura Hills Municipal Code, Requiring All Food Facility Vendors to Use Reusable Foodware for Dine-In Operations and Compliant

Compostable Foodware for Take-Out Services, and Finding that this Ordinance is Exempt from the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Sections 15307, 15308, And 15061(B)(3)

Attachment: Ordinance No. 24-477

ORDINANCE NO. 24-477

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA ADDING A NEW PART 10 (REUSABLE FOODWARE REGULATIONS) TO CHAPTER 3 (SOLID WASTE) OF ARTICLE V (SANITATION AND HEALTH) OF THE AGOURA HILLS MUNICIPAL CODE, REQUIRING ALL FOOD FACILITY VENDORS TO USE REUSABLE FOODWARE FOR DINE-IN OPERATIONS AND COMPLIANT COMPOSTABLE FOODWARE FOR TAKE-OUT SERVICES, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTIONS 15307, 15308, AND 15061(B)(3)

WHEREAS, the City of Agoura Hills, California ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California;

WHEREAS, in accordance with AB 1276 (Single-Use Foodware Accessories and Standard Condiments Program), the City intends to regulate single-use plastics and polystyrene products;

WHEREAS, the proliferation of non-reusable (or disposable) foodware, packaging, and plastics has contributed to street litter, ocean pollution, marine, and other wildlife harm along with the greenhouse gas emissions from the production of the disposable materials;

WHEREAS, using reusable dishware significantly reduces the generation of unnecessary waste, and in most applications saves money, reduces disposal costs, and improves customer experience;

WHEREAS, reducing the generation of non-reusable foodware including plastic utensils, plastic cups, plastic clamshells, and plastic straws maximizes the operating life of landfills, reduces litter, and helps to lessen the economic and environmental costs of managing waste. This will also help protect the City's environment from contamination and degradation, thereby making it a cleaner, healthier region to all citizens and visitors;

WHEREAS, non-reusable foodware threatens public health because many types contain fluorinated chemical additives are known or suspected carcinogens or endocrine disruptors. These additives are known to leach from foodware into food and beverage containers and into compost, soil, and water; and

WHEREAS, reducing the use of non-reusable foodware and non-reusable foodware accessories, etc., will assist the City in achieving reductions of greenhouse gas emissions through reducing solid waste generation, a goal identified in the City's Climate Action and Adaption Plan;

WHEREAS, numerous California municipalities have adopted legislation reducing the use of non-reusable food packaging with local and national businesses successfully replacing single-use food packaging with affordable durable and reusable foodware or, when needed, compliant compostable fiber foodware products.

WHEREAS, because the City understands that education about and compliance with this Reusable Foodware Ordinance (“Ordinance”) will take some time, the City Council desires to provide a grace period for enforcement of this Ordinance and therefore directs City to delay enforcing this Ordinance until no earlier than January 11, 2025.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3 (Solid Waste) of Article V (Sanitation and Health) of the Agoura Hills Municipal Code is hereby amended to add a new Part 10 (Reusable Foodware Regulations) to read as follows:

“PART 10 – REUSABLE FOODWARE REGULATIONS

5363. Definitions.

- (a) “City” means the City of Agoura Hills.
- (b) “City Facility” means any building or structure owned, leased, or operated by the City of Agoura Hills.
- (c) “Compliant Non-Reusable Foodware” means Foodware intended for disposal after one use and is: (1) accepted by the City of Agoura Hills municipal compost collection program as Compostable; (2) certified by another third party product certification organization recognized by the City through its City Manager or their designee to ensure the item is free of harmful chemicals including but not limited to Fluorinated Chemicals, that may have been used in foodware manufacture, and (3) made entirely of Natural Fiber, as that term is defined below, and including but not limited to paper, wood, or sugarcane fibers.
- (d) “Compliant Non-Reusable Foodware Accessory” means a Foodware Accessory that is intended for disposal after one use and is: (1) accepted by the City of Agoura Hills municipal compost collection program as Compostable; and is (2) made entirely of Natural Fiber.
- (e) “Compost Facility” means permitted compost facilities used by the City’s current waste haulers for composting organic material.
- (f) “Compostable” means an item or material (1) will break down, or otherwise become part of usable compost in a safe and timely manner; and (2) is made

entirely of Natural Fiber or made from other materials accepted by the City of Agoura Hills municipal compost collection program.

- (g) "*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.
- (h) "*Customer*" means a person who is a member of the public, takes possession of food from a Food Vendor, is not functioning in the capacity of an operator of a food facility, and does not offer the food for resale.
- (i) "*Digital Ordering Platform*" means the digital technology provided by an Internet website or mobile application used by Customers of Food Vendors to order food or schedule food delivery.
- (j) "*Director*" means the City Manager or their designee.
- (k) "*Disposable or Non-Reusable Cup*" means a beverage cup designed for single-use to serve beverages such as water, hot and cold drinks, and alcoholic beverages.
- (l) "*Effective Date*" means thirty (30) days after the adoption of the ordinance.
- (m) "*EPS*" means expanded polystyrene, also known as Polystyrene Foam.
- (n) "*Fluorinated Chemical*" means a class of fluorinated organic compounds containing at least one (1) fully fluorinated carbon atom, also known as perfluoroalkyl (PFOA) and polyfluoroalkyl (PFOS) substances, or PFAS chemicals. California Prop 65 lists PFOA and PFOS as reproductive toxicants.
- (o) "*Foodware*" means all containers, bowls, plates, food trays, cups, lids, boxes, and other like items that are used for Prepared Foods, including without limitation, Foodware for takeout foods or leftovers from partially consumed meals prepared by Food Vendors.
- (p) "*Foodware Accessory (ies)*" means items typically provided alongside Prepared Food including but not limited to forks, spoons, knives, chopsticks, napkins, cup sleeves, food wrappers, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, toothpicks, tray-liners, and plate-liners.
- (q) "*Food Vendor*" means a food facility as that term is defined in Health & Safety Code section 113789, or its successor, including but not limited to a restaurant, bar, grocery store, delicatessen, bakery, food service establishment (including carry-out, quick service, and full-service establishments), food truck, itinerant restaurant, pushcart, farmers market, caterer, microenterprise home kitchen operation, or

cottage food operation, that stores, prepares, packages, serves, vends, or otherwise provides Prepared Food to be consumed on or off the premises located or operating within the City.

- (r) *"Natural Fiber"* means a plant-based, non-synthetic fiber, including but not limited to paper, wood, bamboo, palm leaf, wheat straw, or sugarcane. Natural Fiber does not include plastic or Polystyrene Foam of any kind.
- (s) *"Non-Reusable"* means a Foodware or Foodware Accessory that is not Reusable or Durable.
- (t) *"On Request"* means that only at the request of a customer shall the compliant product be provided.
- (u) *"Polystyrene Foam"* means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam 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). Polystyrene Foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, coolers, packing peanuts, and egg cartons.
- (v) *"Prepared Food"* means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of a Food Vendor and is in a form that is edible without additional preparation to achieve food safety, as specified in Health and Safety Code sections 114004 or Section 114008, is a raw or partially cooked food of animal origin and the consumer is advised as specified under Health and Safety code section 114093, or may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes For the purposes of this chapter, Prepared Food includes Takeout Food.
- (w) *"Reusable or Durable"* means manufactured of durable materials and specifically designed and manufactured to be washed and sanitized and used repeatedly over an extended period of time, and are safe for washing and sanitizing according to applicable regulations.
- (x) *"Takeout Food"* means food or beverages requiring no further preparation to be consumed and which generally are purchased to be consumed off the premises of the Food Vendor.

5364. Dine-in Foodware regulations for On-site Consumption.

Food Vendors located or operating within the incorporated areas of the City selling or providing food or beverages for on-site consumption:

- (a) Shall sell or provide food and beverages using Reusable Foodware and Reusable utensils (forks, spoons, knives and chopsticks) except as otherwise provided in section 5364(b);
- (b) May provide all other Compliant Non-Reusable Foodware Accessories, which are made of Natural Fibers, including napkins, food wrappers, straws, stirrers, cocktail sticks, toothpicks, tray-liners, and plate-liners only On Request or at self-serve stations;
- (c) Shall offer condiments in reusable containers or dispensers rather than pre-packaged single-use condiment packets; and
- (d) Shall not distribute Foodware or Foodware Accessories made of EPS/Polystyrene Foam.

5365. Takeout Foodware regulations for Off-site Consumption.

Food Vendors within the incorporated areas of the City selling or providing Takeout Food for off-site consumption shall:

- (a) Provide takeout food in Reusable Foodware, or Compliant Non-Reusable Foodware, or items composed entirely of glass or aluminum;
- (b) Provide all other Compliant Non-Reusable Foodware Accessories, which are made from Natural Fibers, including napkins, cup sleeves, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks only On Request or at self-serve stations;
- (c) Use Takeout food bags that are made of paper or Reusable materials;
- (d) For Takeout Food delivery services, shall provide the option for Compliant Non-Reusable Foodware Accessories and single-use condiments only On Request. A Food Vendor or a Takeout Food delivery service may include lids, spill plugs, and sleeves without request for Non-Reusable Cups for delivery; and
- (e) Not distribute Foodware or Foodware Accessories made of EPS/Polystyrene Foam.

5366. Digital Ordering Platforms.

- (a) A Digital Ordering Platform offering Prepared Food from a Food Vendor, whether operated by a third party or by a Food Vendor, shall include a statement that communicates that Compliant Non-Reusable Foodware, Compliant Non-Reusable Foodware Accessories, and single-use Condiments are offered only On Request, and shall provide Customers with the option to select the Compliant Non-Reusable Foodware and Compliant Non-Reusable Foodware Accessories and single-use Condiments of their choice.
- (b) If a Food Vendor uses any third party Digital Ordering Platform for Prepared Food, the Food Vendor shall customize its menu with a list of available Compliant Non-Reusable Foodware and Compliant Non-Reusable Foodware Accessories and single-use Condiments, and only those Compliant Non-Reusable Foodware and Compliant Non-Reusable Foodware Accessories and single-use Condiments selected by the Customer shall be provided by the Food Vendor.

5367. City of Agoura Hills purchasing, facilities, and City-sponsored events.

The following regulations apply to City purchases, facilities, and City -sponsored events:

- (a) All City facilities that involve food service shall use Reusable Foodware and Compliant Non-Reusable Foodware Accessories.
- (b) At City-managed concessions and city-sponsored events, only Reusable Foodware or Compliant Non-Reusable Foodware and Compliant Non-Reusable Foodware Accessories shall be used.
- (c) The City shall not purchase, acquire, or use Non-Reusable Polystyrene Foam Foodware and plastic Foodware, including Compostable Plastics or Biodegradable Plastics, at City-managed concessions, city-sponsored events, or city-permitted events. No City department shall purchase, acquire or use Non-Reusable Polystyrene Foam Foodware or Non-Reusable plastic Foodware at any City facility or City-sponsored event. Organizations or individuals using City facilities shall use Reusable or Compliant Non-Reusable Foodware and Compliant Non-Reusable Foodware Accessories.
- (d) The distribution of EPS/Polystyrene Foam and Non-Reusable plastic Foodware by vendors, franchisees, lessees, contractors, or other commercial food and beverage purveyors at all City facilities and City parks is prohibited. Prohibited products include, but are not limited to, EPS/Polystyrene Foam and Non-Reusable straws, bowls, plates, trays, utensils, clamshells, and cups which are not intended for reuse, on or in which any foods or beverages are placed or packaged. This prohibition shall not apply to private events held at City facilities, where EPS or Non-Reusable plastics are provided from outside the City limits.

5368. Separate waste receptacles required.

- (a) All Food Vendors who provide solid waste containers for customer use must provide separate receptacles in accordance with Assembly Bill 827 (McCarty, 2019) for: 1) solid waste; 2) recyclables; and 3) compost/organics. Receptacles shall be colored black or grey for garbage, blue for recycling, and green for compost/organics.
- (b) To the extent possible given space constraints, all receptacles for solid waste, recyclables, and organics should be placed adjacent to one another.
- (c) Graphic-rich signage must be posted on or above each receptacle following the waste hauler's guidelines.

5369. Exemptions.

- (a) Entities packaging Prepared Foods outside of the City are exempt from the provisions of this chapter. Such entities are, however, urged to follow the provisions of this chapter.
- (b) Correctional institutions, which has the same meaning as in Section 7502 of the Penal Code, are exempt from this chapter.
- (c) 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 are exempt from this chapter.
- (d) Residential care facilities licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code are exempt from this chapter.
- (e) Public and private school cafeterias, as referenced in paragraph (1) of subdivision (b) of Section 113789 of the Health and Safety Code are exempt from this chapter.
- (f) For the immediate preservation of the public peace, health, or safety due to an emergency or natural disaster, the City Council, or its designee, may exempt Food Vendors, persons operating City facilities, and agents, contractors, and vendors doing business with the City, from the provisions of this chapter.

5370. Enforcement and Penalties.

- (a) Compliance with this chapter is required as of the Effective Date.
- (b) The Director, or their designee, shall have primary responsibility for enforcement of this chapter and shall have authority to issue citations for violation of any

provision of this chapter. The Director, or their designee, may establish regulations or administrative procedures and take any actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, without limitation, performing an inspection of a Food Vendor's premises to verify compliance with this chapter.

- (c) The first and second violations of this chapter shall result in a notice of violation, and any third or subsequent violation shall constitute an infraction punishable by a fine of twenty-five dollars (\$25) for each day in violation, but not to exceed an amount of three hundred dollars (\$300) annually.
- (d) The City may issue an administrative citation for a violation that would otherwise be an infraction under (a) of this Section. The City's procedures on the imposition of administrative fines under Article I, Chapter 5 of this Code shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this chapter and any rule or regulation adopted pursuant to this chapter.
- (e) 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 remedies. The City may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure developed pursuant hereto.

5371. Reserved.

5372. Reserved.

5473. Reserved.”:

SECTION 2. CEQA. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City of Agoura Hills. The City Council hereby finds that under section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 3. SEVERABILITY. Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases, and the remaining portions of this Ordinance shall continue in full force and effect unless amended or modified by the City.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect thirty days after its passage.

SECTION 5. PUBLICATION. The City Clerk shall certify to the adoption of this Ordinance and shall post or publish this Ordinance as required by law.

PASSED, APPROVED, AND ADOPTED, this ____th day of ____ 2024, by the following vote to wit:

AYES: ()
NOES: ()
ABSENT: ()
ABSTAIN: ()

Illece Buckley Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney