

ORDINANCE NO. 2380

ORDINANCE NO. 2380 AMENDING THE ARCADIA MUNICIPAL CODE BY ADDING PART 5 TO ARTICLE V, CHAPTER 1 RELATING TO A PROHIBITION OF THE DISTRIBUTION OR SALE OF PREPARED FOOD OR BEVERAGES IN ANY POLYSTYRENE CONTAINER, AND ESTABLISHING AN OPT-IN REQUIREMENT FOR DISPOSABLE FOOD SERVICE WARE ITEMS FOR FOOD PROVIDERS AND THIRD-PARTY APP-BASED DELIVERY PLATFORMS

WHEREAS, the City is committed to finding ways to reduce solid waste, protect the natural environment, and promote public health; and

WHEREAS, discarded to-go food items are a common component of visible waste in public places, and many of these containers and cups are made of polystyrene, a type of plastic that is not commonly recycled at most facilities breaks down into small pieces, never fully biodegrades, and often enters our oceans and waterways; and

WHEREAS, policies that limit the use of disposable food service ware encourage the reuse of materials and the reduction of waste and pollutants in the environment; and

WHEREAS, on July 6, 2021, the City Council of the City of Arcadia discussed prohibiting the use of polystyrene ("Styrofoam") food and beverage containers, and restricting distribution of disposable food service ware items to requesting parties only, and directed City Staff to prepare an Ordinance with a one-year phase-in enforcement period.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ARCADIA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The Arcadia Municipal Code is hereby amended by adding Part 5 to Article V, Chapter 1 to read in its entirety as follows:

“PART 5”

PROHIBITION OF THE DISTRIBUTION OR SALE OF PREPARED FOOD OR BEVERAGES IN ANY POLYSTYRENE CONTAINER, AND ESTABLISHING AN OPT-IN REQUIREMENT FOR DISPOSABLE FOOD SERVICE WARE FOR FOOD PROVIDERS AND THIRD-PARTY APP-BASED DELIVERY PLATFORMS

5150.0 DEFINITIONS.

For purposes of this chapter, the following definitions apply:

- a. “City” means the City of Arcadia.
- b. “City facilities” means any building, structure, or vehicle owned or operated by the City of Arcadia, its agents, agencies, departments, and franchises.
- c. “Customer” means any person, firm, or association purchasing food or beverages from a food provider. For the purposes of this chapter, a “customer” includes making the purchase either directly from the Food Provider or through a third-party food delivery platform.
- d. “Disposable food service ware” means one time use disposable products used for serving, or consuming prepared food, including but not limited to, utensils, straws, napkins, condiment packets, drink stirrers and other food and drink implements.
- e. “Food” means all articles and substances used for food and drink, confectionary or condiment whether simple or compound, and all ingredients and components used in the preparation thereof.
- f. “Food provider” means any person or place that provides or sells prepared food to the public within the City limits to be consumed on or off the premises. Food provider includes but is not limited to: a grocery store,

supermarket, delicatessen, restaurant, drive-thru, cafe, 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 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.

- g. "Polystyrene" means thermoplastic petrochemical material utilizing a styrene monomer and is sometimes referred to by the trademarked name "Styrofoam". Polystyrene includes expanded polystyrene or polystyrene foam processed by any number of techniques including but not limited to injection molding, foam molding, or extrusion- blow molding (extruded foam polystyrene), clear or solid polystyrene (oriented polystyrene), and fusion of polymer spheres (expandable bead 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 containers, regardless of whether it exhibits a recycle code.
- h. "Prepared food" means any food ready to consume without any further preparation, alteration, or repackaging; and prepared, provided, sold or served by a food provider using any cooking, packaging or food preparation technique. Prepared food may be eaten on or off the vendor's premises. Prepared food does not include raw uncooked meat, poultry, or fish.

- i. "Recycle code" means a resin identification code placed on plastics to identify the material composition for separation of different types of plastics for recycling.
- j. "Third-party app-based delivery platform" means any service that delivers food from a food provider to a customer based upon orders submitted via telephone, website or app.

5150.1 LIMITATION ON THE USE OF DISPOSABLE FOOD SERVICE WARE.

With respect to disposable food service ware other than that which is used to contain prepared food or beverages:

- a. Food providers shall not automatically distribute disposable food service ware to customers. This provision does not prohibit food providers from asking customers if they would like disposable food service ware or offering them at self-serve areas within the establishment.
- b. Food providers shall use discretion when including necessary items in circumstances such as drive-thru orders.
- c. Third-party app-based food delivery platforms shall include an option during the ordering process for customers to affirmatively request disposable food service ware items with their order.

5150.2 PROHIBITION OF THE DISTRIBUTION OR SALE OF PREPARED FOOD OR BEVERAGES IN ANY POLYSTYRENE CONTAINER.

It shall be unlawful for any food provider to:

- a. Provide prepared food to its customers in containers made of polystyrene; or in any other way provide any container made of polystyrene to its customers.

- b. Distribute or sell prepared food in any container made from polystyrene at any location within the City. This specifically includes, but is not limited to, plates, bowls, cups, clamshells and other products intended primarily for food service use.
- c. Distribute or sell prepared food in any container made of polystyrene at City facilities.
- d. Use or distribute containers made of polystyrene at city-sponsored events, city-managed concessions or city meetings. This subsection shall apply to the function organizers, their agents, city contractors, food providers, and any other person that enters into an agreement with one of more of the function sponsors to sell or distribute prepared food.
- e. Distribute prepared food in any container other than those that show a recycle code other than No. 6 or PS; and such distributor shall retain documentation about the composition of any disposable food service ware that does not display a recycle code.
- f. The Development Services Director or designee may exempt a person, business, or organization from this Section 5150.2 as follows:
 - i. A request for an exemption must be filed in writing with the Development Services Director or designee and shall include documentation of the reason for requesting exemption. The City may ask the applicant to provide additional information as needed. Exemptions may be granted for a maximum of one year. After the one-year period, a formal written

request for an extension may be submitted, subject to the same determinations as the initial request.

- ii. The Development Services Director or designee's written decision will be effective within 30 days of the decision and may not be appealed.

5150.3 EXEMPTIONS.

The following are exempt from the provisions of this chapter:

- a. Food items in polystyrene containers which are packaged outside the city boundaries, provided food is not repackaged or altered within the city limits.
- b. Polystyrene containers used for raw meat, chicken, and/or fish.
- c. Polystyrene containers required to be purchased under a contract entered into one year prior to the final effective date of this chapter; provided that this exemption will apply for up to one year from the effective date of this chapter.
- d. Instances when the City may determine to exempt the requirements of this chapter in the event of an emergency or when deemed necessary for the interest of public health, safety or general welfare.

5150.4 ENFORCEMENT.

- a. City Staff will provide outreach to food providers to focus on education and awareness of this chapter during the time preceding the effective date of each section. This outreach shall specifically include the Arcadia Chamber of Commerce and the California Restaurant Association, as well as direct outreach to businesses and organizations.

b. The Development Services Director or designee is authorized to establish regulations and administrative procedures, and take other actions necessary to obtain compliance with this chapter, including but not limited to, inspection of any food provider's premises to verify compliance with regulations outlined in this chapter.

5150.5 VIOLATION.

- a. For the first and second violations of this chapter, the Development Services Director or designee shall issue a written warning Notice of Violation to the person or food provider.
- b. Thereafter, subsequent violations will be subject to penalty pursuant to Section 1200 et seq. of the Arcadia Municipal Code.

5150.6 PHASES OF IMPLEMENTATION.

5150.6.1 PHASE ONE

Phase One will be known as the "LIMITATION ON THE USE OF DISPOSABLE FOOD SERVICE WARE" and will include all elements outlined in section 5150.1.

5150.6.2 PHASE TWO

Phase two will be known as the "PROHIBITION ON THE DISTRIBUTION OR SALE OF PREPARED FOOD OR BEVERAGES IN ANY POLYSTYRENE CONTAINER" and will include all elements outlined in section 5150.2.

5150.7 EFFECTIVE DATE.

- a. Phase One shall be effective sixty days following the date of adoption of this Ordinance by the City Council.

b. Phase Two shall be effective one year following the date of adoption of this Ordinance by the City Council.

SECTION 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional or otherwise legally ineffective, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional or otherwise legally ineffective.

If for any reason any portion of this Ordinance is found to be invalid by a court of competent jurisdiction, the balance of this Ordinance shall not be affected.

SECTION 3. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 4. The City Clerk shall certify to the adoption of this Ordinance and shall cause a copy of same to be published in the official newspaper of said City within fifteen (15) days after its adoption. This Ordinance shall take effect on the thirty-first (31st) day after its adoption.

[SIGNATURES ON NEXT PAGE]

Passed, approved and adopted this 2nd day of November, 2021.

/s/ Sho Tay
Mayor of the City of Arcadia

ATTEST:

/s/ Gene Glasco
City Clerk

APPROVED AS TO FORM:

Stephen P. Deitsch
Stephen P. Deitsch
City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF ARCADIA)

I, GENE GLASCO, City Clerk of the City of Arcadia, hereby certifies that the foregoing Ordinance No. 2380 was passed and adopted by the City Council of the City of Arcadia, signed by the Mayor and attested to by the City Clerk at a regular meeting of said Council held on the 2nd day of November, 2021 and that said Ordinance was adopted by the following vote, to wit:

AYES: Beck, Chandler, Verlato, Cheng, and Tay

NOES: None

ABSENT: None

/s/ Gene Glasco

City Clerk of the City of Arcadia