

CHAPTER 11.40 PROHIBITING THE USE OF EXPANDED POLYSTYRENE AND SINGLE-USE, NON-COMPOSTABLE DISPOSABLE FOOD SERVICE WARE CITYWIDE, AND SINGLE-USE PLASTIC BEVERAGE BOTTLES AT CITY FACILITIES AND CITY-SPONSORED EVENTS

11.40.010 – Purpose and Intent

The purpose of this Chapter is to reduce plastic waste in landfills and local trash receptacles and pollution by prohibiting the use of expanded polystyrene and single-use, non-compostable disposable food service ware that have adverse effects on the health and general welfare of City of Del Mar residents, visitors, and surrounding wildlife, and allow for the use of compostable food service ware that is accepted as organic waste by the City's waste hauler reduces greenhouse gas emissions.

11.40.020 – Definitions

The following definitions shall be applicable when the following words or phrases are used hereafter in this Chapter, whether or not these words or phrases are capitalized:

City means the City of Del Mar.

City contractor means any person that enters into an agreement with the City to furnish products or services to or for the City.

City facility means any building, structure, property, park, open space, or vehicle, owned, leased or operated by the City, its agents, agencies, departments or franchisees.

City-sponsored event means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.

Compostable means material that can be broken down into, or otherwise become part of, usable compost in a safe and timely manner, and is accepted as organic waste by the City's waste hauler.

Customer means any person obtaining prepared food from a restaurant or retail food vendor.

Disposable food service ware or *disposables* means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups or drinkware, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, hinged or lidded containers, utensils, chopsticks, napkins, cup lids, cup sleeves, ramekins, straws, stirrers, splash sticks, cocktail sticks, toothpicks, and coolers, or any other container in or on which prepared foods are placed or packaged for consumption. This does not include single-use disposable packaging for unprepared foods.

Event means an organized recreational activity that includes 25 or more participants.

Food provider means any person or establishment that provides or sells prepared food within the City to the general public to be consumed on the premises or for take-away consumption. Food provider includes but is not limited to (1) a grocery store, supermarket, delicatessen, restaurant, café, 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 (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food provider also includes any organization, group or individual that regularly provides prepared food to its members or the general public as a part of its activities or services.

Plastic means an organic synthetic or processed material containing thermoplastic or thermosetting polymers and that can be made into objects, films, or filaments.

Person means any person, business corporation, or event organizer or promoter; public, nonprofit or private entity, agency or institution; or partnership, association or other organization group, however organized.

Polystyrene means and includes expanded polystyrene which 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-blow molding (extruded foam polystyrene). The term "polystyrene" also includes clear or solid polystyrene which is known as "oriented polystyrene."

Polystyrene cooler means any ice chest or similar device made of polystyrene foam, where such foam is not fully encased in another material.

Prepared food means any food or beverage that is (1) ready to consume without any further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a food provider using any cooking, packaging or food preparation technique. Prepared food may be eaten either on or off the food provider's premises. For purposes of this Chapter, prepared food does not include (1) any raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food preparation; and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers' markets and other food vendors.

Recyclable means material that can be sorted, cleansed, and reconstituted for reuse using the City's available recycling programs.

Regulated entities means food service providers, retail establishments, City facilities, City-sponsored events, and other entities governed by this chapter.

Single-use means items designed for one-time or limited use before final disposal.

11.40.030 – Prohibition of the Use of Expanded Polystyrene and Single-Use, Non-Compostable Disposable Food Service Ware; the Sale of Expanded Polystyrene Coolers, Ice Chests, and Other Containers; and the Use of Single-Use Plastic Beverage Bottles at City Facilities and City-Sponsored Events.

A. Except as provided in DMMC Section 11.40.040, food providers are prohibited from dispensing prepared food to customers in expanded polystyrene or disposable food service ware made from single-use, non-compostable disposable materials.

B. All City facilities, City-managed concessions, City-sponsored and co-sponsored events, and City-permitted events are prohibited from using expanded polystyrene or disposable food service ware made from single-use, non-compostable disposable materials within the City.

C. Regulated entities shall not distribute or sell ice chests or food and beverage coolers made, in whole or in part, from polystyrene.

D. All City facilities, City-managed concessions, City-sponsored and co-sponsored events, and City-permitted events are prohibited from distributing single-use plastic beverage bottles.

11.40.040 - Exemptions.

A. Automatic Exemptions. The following uses are exempt from the provisions of this Chapter:

1. Food prepared or packaged outside the City, provided such food is not altered, packaged or repackaged within the City limits. Purveyors of food prepared or packaged outside the City are encouraged to follow the provisions of this Section.
2. Products, equipment, or other items prepared or packaged outside the City of Del Mar.

B. Food providers that are obligated to purchase or have purchased expanded polystyrene or single-use, non-compostable disposable food service ware under a contract entered into with the year prior to the operative date of the ordinance codified in this Chapter are exempt from the provisions of this Chapter for six months following its operative date.

C. Undue Hardship. The City Manager, or designee, may exempt any food provider or person from the requirements of this Chapter for a one-year period, upon written request by applicant that the conditions of this Chapter would cause undue hardship following the operative date of the ordinance codified in this Chapter, as follows:

1. A request for an exemption shall be filed in writing with the City Manager or designee and shall include documentation of the reason for the claimed exemption and any other information necessary for the City to make its decision. An exemption application shall include all information necessary for the City to make its decision, including, but not limited to, documentation showing the factual support for the claimed exemption. The City may require the applicant to provide additional information as necessary to make the required determinations.
2. The City Manager or designee may approve the exemption application for one year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include, but not limited to, situations where:
 - a. Situations unique to the food provider or non-food provider where there are no reasonable alternatives to expanded polystyrene or single-use non-compostable plastic disposable food service ware and compliance with this Chapter would cause significant economic hardship to that food provider.
 - b. Situations where no reasonably feasible available alternatives exist to a specific and necessary single-use, non-compostable plastic disposable food service container.
3. A food provider granted an exemption by the City must reapply prior to the end of the one-year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.
4. Exemption decisions by the City Manager or designee are effective immediately and final and are not appealable.
5. The City Council may by resolution establish a fee for exemption applications. The application fee shall be an amount sufficient to cover the costs of processing the exemption application.

D. In cases of emergency or other situations where the City Manager or the City Manager's designee finds that relying on beverages in single-use plastic bottles is necessary for the protection of public

health, safety, and welfare, and no reasonable alternative will serve the same purpose; and where specific hydration requirements exist for employees working outside and with no reasonable alternative.

E. This Chapter does not apply to activities on the property of the 22nd District Agricultural Association (Del Mar Fairgrounds) within the City of Del Mar, although the City encourages the Fairgrounds to impose similar requirements on all its facilities.

11.40.050 - Enforcement and Administrative Remedies.

A. The City Manager, or designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any food provider and commercial business premises to verify compliance.

B. Any violation of this Chapter shall be enforced through the administrative citation process set forth in [Chapter 1.10](#) of the Del Mar Municipal Code.

C. Each violation of this Chapter shall be considered a separate offense.

D. The remedies and penalties provided in this Section are cumulative and not exclusive, and nothing in this Chapter shall preclude any person from pursuing any other remedies provided by law. The City Attorney may seek legal, injunctive, or other equitable relief to enforce the provisions of this Chapter and any regulations or administrative procedure developed pursuant hereto.

E. Administrative enforcement of this Chapter shall proceed pursuant to [Chapter 1.10](#) of the DMMC.

F. Notwithstanding any other provision of this Chapter, this Chapter may be enforced through any remedy as provided for in this Section upon its effective date.

11.40.060 - Operative Dates.

A. This chapter shall become operative as to all food providers, businesses, vendors, and regulated entities six months after adoption by the City Council.

B. Within 30 days after its adoption, this chapter shall become effective for the City such that no city facilities, city-managed concessions, city-sponsored events or city-permitted events shall distribute or utilize disposable food service containers containing single-use non-compostable plastic.

11.040.070 - Severability

If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this chapter is, for any reason, held to be invalid or unconstitutional by any court or competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter. The City Council hereby declares that it would have adopted the ordinance codified in this chapter and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this chapter irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional. To this end, the provisions of this chapter are declared severable.