

Item 7 Attachment  
**ORDINANCE NO. 2018-368**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALABASAS ADDING CHAPTER 8.19 TO THE MUNICIPAL CODE TO REGULATE THE USE OF PLASTIC STRAWS, STIRRERS, AND CUTLERY.**

**WHEREAS**, the City of Calabasas desires to protect the natural environment, the health of its citizens, the economy; and

**WHEREAS**, discarded plastic cutlery, stirrers, and straws continue to cause environmental harm and are a growing portion of Calabasas' waste stream. The use of these products has increased over the years and they have been found to pollute our creeks and natural environment. Regulation of these products, therefore, is a necessary contribution to encourage an environmentally friendly waste stream and to protect the environment; and

**WHEREAS**, it is in the interest of the health and welfare of all who live, work, and do business in the City that the amount of non-biodegradable products such as plastic straws, stirrers, and cutlery be reduced. These products end up in existing landfill sites that are quickly reaching capacity or in our creeks and storm drains. Reduction of non-biodegradable wastes entering Calabasas' waste stream and encouraging the use of recyclable products further these goals; and

**WHEREAS**, replacing plastic straws, stirrers and cutlery with those that are biodegradable will further protect the public's health, Calabasas' natural environment, wildlife and creeks; and

**WHEREAS**, the reduction of plastic straws, stirrers, and cutlery originating at retail food establishments within the City is desirable and necessary to reduce the volume of non-biodegradable waste; and

**WHEREAS**, non-biodegradable plastic materials pose a challenge to any financially and environmentally responsible solid waste management program. Regulation of plastic straws, stirrers, and cutlery is necessary to reduce the economic and environmental impacts of solid wastes and protect the City's natural environment.

**WHEREAS**, biodegradable materials offer environmentally friendly alternatives to materials currently being used. Biodegradable products decay and cause less harm to the landscape of the City of Calabasas and the environment. Use and recycling of these alternative materials assist in reducing the cost of disposing of waste in landfills; and

**WHEREAS**, plastic products such as straws, stirrers, and cutlery never biodegrade and break down into smaller pieces that become difficult to manage in the environment. It has been estimated that there are over five trillion pieces of plastic pollution in the ocean. Almost 92 percent of these pieces are smaller than a grain of rice and are often misidentified by aquatic biota and enter the food chain, which in turn ultimately enter the human food chain.

**WHEREAS**, bioplastics are commercially available and scientific studies show that these materials biodegrade in both the natural environment and compost. Studies show that these materials return their base constituents to the food chain and can be composted even if contaminated with food waste. Bagasse (sugar cane stock) is suitable for beverages and hot foods.

**NOW, THEREFORE**, the City Council of the City of Calabasas does ordain as follows:

### **SECTION 1: RECITALS**

A. The state Legislature acknowledged that littered plastic products have caused and continue to cause environmental harm and have burdened local governments with environmental cleanup costs. (California Public Resource Code §42355.) The state Legislature further declared its resolve to ensure that environmental marketing claims, such as claims of biodegradation of plastics, do not result in providing consumers with a misconception that certain plastic products are less harmful to the environment, which in turn leads to an increase in environmental harm associated with plastic litter.

B. To accomplish the City's goals of reducing littered plastic products, the Calabasas City Council implemented an ordinance prohibiting the use of plastic carryout bags (Calabasas Municipal Code Chapter 8.17) and prohibiting the polystyrene foam food packaging and other food packaging other than environmentally acceptable packaging (Calabasas Municipal Code Chapter 8.18).

C. City continues to confront littered plastic, specifically plastic straws, stirrers, and cutlery. These plastic products are usually made from polypropylene or polystyrene. Even though the City has already prohibited the use of polystyrene, it aims to make clear that commercial use of plastic straws, stirrers, and cutlery is prohibited within the jurisdiction of the City of Calabasas through the adoption of this ordinance.

**SECTION 2:** The Calabasas Municipal Code is hereby amended by adding a new Chapter 8.19 to read as set forth in the Exhibit A attached to this Ordinance.

**SECTION 3: SEVERABILITY.** If any provision, section, paragraph, sentence or word of this Ordinance or of Exhibit A hereto, or the application thereof to any person or circumstance, is rendered or declared invalid by any court of competent jurisdiction, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance, and their application to other persons or circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this Ordinance are severable.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall take effect thirty days after its passage and adoption pursuant to California Government Code section 36937.

**SECTION 5. CERTIFICATION.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

**PASSED, APPROVED AND ADOPTED,** this ..... day of ....., 2018.

\_\_\_\_\_  
Fred Gaines, Mayor

ATTEST:

\_\_\_\_\_  
Maricela Hernandez, MMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott H. Howard  
Colantuono, Highsmith & Whatley, PC  
City Attorney

## Exhibit A

### **Chapter 8.19 Plastic Straws, Stirrers, and Cutlery Ban**

#### **SECTION 8.19.010. PURPOSE.**

The purposes of this chapter are to:

- A. Decrease the use of products which do not biodegrade and cannot be recycled in order to promote public health, reduce litter and solid waste, and protect the environment and wildlife.
- B. Eliminate, to the maximum amount attainable, the use of straws, stirrers, and cutlery at retail food establishments and beverage providers within the City of Calabasas that is non-biodegradable, non-recyclable, and cannot be reused in order to protect the air, waters, and land of the City and its environments.
- C. Reduce the litter and solid waste by promoting the use of materials that can be reused, recycled, or can biodegrade into harmless component materials if littered. Many of the plastic straws, cutlery, and stirrers are buoyant, lightweight, and non-biodegradable and therefore, eventually become litter even when placed in trash cans. Once in the environment, the plastic waste continually diminish the environment's appearance and continue to inflict environmental harm by polluting the waterways and oceans due to their indefinite presence in the environment.

#### **SECTION 8.19.020. DEFINITIONS.**

As used in this chapter, the following terms shall have the meaning set forth below in alphabetical order, unless otherwise expressly stated herein or the context clearly requires otherwise:

"Beverage Providers" mean any business, entity, group, individual, or organization situated in the City of Calabasas that offers frozen, semi-frozen, liquid, slurry or other forms of beverages to the public for consumption.

"Biodegradable" means capable of decaying through the action of micro-organisms commonly found in the environment into non-harmful substances or elements within a reasonably short time after disposal.

"Bioplastic" means any substance that is formed from organic biomass sources, such as corn starch or vegetable oils and fats.

“City Facilities” means any structure, vehicle, or building owned or operated by the City of Calabasas.

“Plastic Cutlery” means any utensil, such as a knife, spoon, fork, or spork, composed primarily of plastic derived from either a biologically based polymer, such as corn or other plant sources, or petroleum intended for only one-time use. “Plastic cutlery” includes biodegradable and compostable petroleum or biologically based polymer forms of cutlery, but does not include forms of cutlery that are made from non-plastic materials, such as bamboo, paper, sugar cane, etc.

“Plastic Stirrer” means a device that is used to mix beverages, intended for only one-time use, and composed mainly of plastic derived from either biologically based polymer such as corn or other plant sources, or petroleum. “Plastic Stirrer” includes biodegradable or compostable polymer stirrers. It does not include stirrers composed mainly of non-plastic materials, such as bamboo, sugar cane, paper, etc.

“Plastic Straw” means a tube composed mainly of plastic derived from either a biologically based polymer such as corn or other plant sources or petroleum used for conveniently transferring a beverage from its container to the user’s mouth. “Plastic Straw” includes biodegradable and compostable petroleum or biologically based polymer straws. It does not include straws composed of non-plastic materials, such as bamboo, sugar cane, paper, etc.

“Polypropylene” means a thermoplastic polymer material derived from the combination of propylene monomers.

“Polystyrene Foam” means a thermoplastic petrochemical material utilizing a styrene monomer and processed by techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

“Recycled” means any material including cans, cardboard, glass, paper, or other items that have been treated, salvaged, composted, processed, or altered to make suitable for reuse. Recycled materials include any plastic which can be feasibly recycled by a civic recycling program in the State of California. Recycled plastics are comprised of plastics with the recycling symbols #1 through #5. For the purposes of this chapter, recyclable materials do not include polystyrene and expanded polystyrene or nylon (which bear recycling symbol #6 and #7 respectively).

“Retail Food Establishment” means any store, shop, vehicle, sale outlet, or other places of business which sells foods or beverages to consumers, which acquire the use of plastic straws, stirrers, or cutlery. “Retail Food Establishment” shall include, but not limited to, any place where food is prepared, mixed, cooked, grilled, baked, handled, stored, and sold or offered for sale, including, but not limited to:

cafes; coffee shops; restaurants; supermarkets; delicatessens; catering kitchen; juice bar; hotel; bar; public food market; and any other place where food or drink is prepared for sale or for service on the premises or elsewhere. It also includes, but is not limited to, any operation or establishment where food is prepared, processed, provided, or served to or for consumers for a charge.

#### **SECTION 8.19.030. PROHIBITION**

- A. Commencing January 1, 2019, no person managing, owning, or operating a retail food establishment or a nonprofit food provider located in the City of Calabasas shall do or allow another to provide, distribute, or sell to consumers, or possess with intent to provide, distribute, or sell plastic straws, stirrers, and cutlery, except as provided in Section 8.18.060.
- B. The presence on the premises of a retail food establishment of packaging other than environmentally acceptable packaging shall establish a rebuttal presumption of intent to sell, convey at retail, or provide plastic straws, stirrers, and cutlery to consumers.
- C. Nothing in this section prevents beverage providers, restaurants including fast food restaurants, and vendors from using or choosing non-plastic alternatives such as those made from bamboo, sugar cane, or paper, available to consumers. Non-plastic alternative straws shall only be provided upon request by the consumer.
- D. Commencing January 1, 2019:
  - (1) Plastic straws, stirrers, and cutlery shall not be used by agents, officers, or employees of the City of Calabasas at city facilities for city events or otherwise in the conduct of the city's business. The City of Calabasas shall not acquire any plastic straws, stirrers, and cutlery.
  - (2) The City of Calabasas shall not sponsor or co-sponsor events within the city boundaries at which plastic straws, stirrers, and cutlery are used or distributed by event organizers, agents of event organizers, food vendors, and any other party, including a non-profit organization, which enters into an agreement with at least one of the co-sponsors of an event to sell prepared food and drinks at the event or otherwise to provide an event-related service. The city's monetary contribution to such events shall be refunded to the City of Calabasas if the Public Works Director determines that plastic straws, stirrers, and/or cutlery were used.
  - (3) All rental agreements for any city facility shall require contracting parties to prevent the distribution or use of plastic straws, stirrers, and cutlery in

the city facility. The agreement shall provide that the contractor's security deposit will be forfeited if the Public Works Director determines that plastic straws, stirrers, and/or cutlery were used in violation of the Rental Agreement.

**SECTION 8.19.040. DEGRADABLE AND RECYCLABLE STRAWS, STIRRERS, AND CUTLERY**

Commencing on January 1, 2019, each retail food establishment in the City shall:

- A. Report on or before January 1, 2019 and the first business day of each calendar year thereafter, a written certification, signed under penalty of perjury by one authorized to bind the retail food establishment, stating that the owners and operators of the establishment are aware of the requirements of this chapter and comply with it. Such reports may be on a form provided for that purpose by the Public Works Director.
- B. Maintain written records evidencing its compliance with this chapter.

**SECTION 8. 19.050. EXEMPTIONS**

- A. During an emergency declared by City of Calabasas or any other public official authorized by law to do so, franchises, contractors, food establishments, and retail food establishments doing business with the City of Calabasas, and those using city facilities, shall be exempt from this chapter.
- B. If the Public Works Director concludes that there is no commercially available environmentally acceptable alternatives for straws, stirrers, and cutlery that may be substituted for plastic straws, stirrers, and cutlery, then the Public Works Director may authorize the use of that item in the city through a written notice published or posted in the manner required by law for ordinances of the City of Calabasas until such time as he or she decides that an alternative has become commercially available. Then he or she shall issue a written notice dismissing the exemption, which notice shall be posted or published in the manner required by law for ordinances of the city. In determining whether alternatives to an item are commercially available, the Public Works Director take into consideration:
  - (1) The availability of environmentally acceptable straws, stirrers, and cutlery;
  - (2) Whether environmentally acceptable alternatives are available at commercially reasonable prices;

- (3) The existence of franchise or other contractual obligations which commit a retail food establishment to use corporate logo or other products which are not available as environmentally acceptable products.

The Public Works Director shall review exemptions granted pursuant to this paragraph annually to determine whether current conditions continue to warrant the exemption.

- C. Items required to be purchased under contract entered into prior to the implementation of this chapter are exempt from the provisions of this chapter.
- D. Plastic straws, stirrers, and cutlery distributed outside the city, whether or not sold at retail within the city or elsewhere, are exempt from the provisions of this ordinance.

#### **SECTION 8.19.060. INSPECTION OF RECORDS.**

All records required by this chapter shall be made available for inspection by the Public Works Director during normal business hours. It shall be illegal for anyone having custody of such records to fail or refuse to produce them upon request by the Public Works Director.

#### **SECTION 8.19.070. ENFORCEMENT**

- A. City's Code Enforcement Officers shall enforce this chapter and may publish written regulations upon notice in the manner required by law for the publication or ordinances of the City of Calabasas and may take any and all other actions rational and necessary to enforce this chapter, including, but not limited to, inspecting any retail food establishment's premises to verify compliance.
- B. Any person violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction punishable pursuant to section 1.16.020(B) of this code provided, however, that any person who falsely states that he or she is in compliance with the requirements of this chapter pursuant to section 8.19.040(B) or fails to timely file reports required by that section shall be guilty of misdemeanor punishable pursuant to section 1.16.010 of this code.
- C. Each and every sale or other transfer of plastic straws, stirrers, and cutlery shall constitute a separate violation of this ordinance.

- D. The City Attorney may seek injunctive, legal, or other equitable relief to enforce this chapter.
- E. The penalties and remedies provided in this section are cumulative and not exclusive to one another.

**SECTION 8.19.080. CONSTRUCTION; PREEMPTION.**

This chapter and any provision thereof shall be null and void upon the adoption of any state or federal law or regulation imposing the same or similar limits on the use of prohibited products as set forth in this chapter. This chapter is intended to be a proper exercise of the City of Calabasas's police power, to operate only upon its own agents, officers, employees and facilities, and others acting within the city's boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.