

## ORDINANCE 1399

### AN ORDINANCE OF THE CITY COUNCIL OF GIG HARBOR, WASHINGTON, RELATING TO NON-RECYCLABLE PLASTIC DISPOSABLE FOOD SERVICEWARE; ADDING A NEW CHAPTER 5.15 TO THE GIG HARBOR MUNICIPAL CODE ENTITLED "SINGLE USE FOOD SERVICEWARE AND LITTER REDUCTION"; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

---

WHEREAS, many businesses in Gig Harbor use disposable food containers made from expanded polystyrene (EPS) and other non-recyclable plastics; and

WHEREAS, EPS is not biodegradable, easily breaks down into smaller pieces, and persists in the environment for hundreds and possibly thousands of years; and

WHEREAS, numerous studies have documented the prevalence of EPS and plastic debris in the environment, including in storm drains and on beaches, causing Gig Harbors' residents to pay thousands of dollars in clean-up costs; and

WHEREAS, there are several alternatives to EPS disposable food service containers available in Gig Harbor from existing food packaging suppliers; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(8)(a) established waste reduction as the first priority for the collection, handling, and management of solid waste; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(4) found that it is "necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility"; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(6)(c) found that it is the responsibility of city and county governments "to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies"; and

WHEREAS, to discourage and decrease the use of certain EPS food service products and disposable food serviceware in the city, it is necessary to regulate such use; and

WHEREAS, costs associated with the use and disposal of one-time-use food serviceware in Gig Harbor creates burdens on the Pierce County solid waste disposal system; and

WHEREAS, it is in the best interest of the health, safety and welfare of the people that regulations prohibit the use of certain EPS food service products and disposable food serviceware to reduce the cost of solid waste disposal by Gig Harbor and to protect the environment; now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,  
ORDAINS AS FOLLOWS:

Section 1. Adoption. A new City of Gig Harbor Municipal Code Chapter 5.15 is hereby created and adopted to read as follows:

## **5.15 Single Use Food Serviceware and Litter Reduction**

### **5.15.010. Definitions.**

A. "Consumed on premises" means consumption of food or beverages in the public areas of a food service business, common areas of a food court, outside seating areas and parking lots exclusively for customers of the food service business, rather than taken out for consumption elsewhere.

B. "Disposable food serviceware" means non-recyclable containers, "clamshells," serving trays, vegetable trays, and utensils that are intended only for one-time use, including so-called biodegradable products where any portion is not recyclable.

C. "Expanded polystyrene (EPS)" means blown polystyrene and expanded and extruded foams (sometimes 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).

D. "EPS food service products" means food containers, plates, "clamshells," hot and cold beverage cups, meat and vegetable trays, plates, egg cartons, and other products, made of EPS and used for selling or providing food for consumption on or off the premises.

E. "Food court" means an area of a retail mall, office building, sports facility or other premises where one or more food service businesses are located and customer seating for dining and consumption of beverages is provided in a common area.

F. "Food service businesses" means full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts, business or institutional cafeterias, food delivery services, and other businesses, selling or providing food within the City of Gig Harbor for consumption on or off the premises.

G. "Recyclable" means made solely of materials that are capable of being separated from a waste stream by a food service business and made available for collection and delivery to a processor for reuse or remanufacture into the same or other products.

#### **5.15.020 Regulations.**

A. Effective November 26, 2019, (12 months from passing) food service businesses shall be prohibited from selling or providing raw or cooked food, for consumption on or off the premises, in or with disposable plastic food serviceware, including expanded polystyrene food service products, except as otherwise provided under subsection B. Acceptable alternatives for prohibited disposable plastic food serviceware shall be recyclable, or durable and paper.

B. Prepackaged soups and other foods that food service businesses sell or otherwise provide to their customers in EPS containers that have been filled and sealed prior to receipt by the food service businesses shall be exempt from the prohibition established in subsection A.

C. Food service providers shall be prohibited from selling or providing single-use plastic straws, stirrers, cocktail pics and cutlery, for use on or off the premises. This prohibition shall not apply to disposable flexible plastic drinking straws when needed by customers due to medical or physical conditions and for whom flexible compostable paper straws are unsuitable.

D. Food service providers are encouraged to:

1. Provide plant-based, durable, wood or recyclable food-serviceware and utensils whenever possible;
2. Provide plant-based, durable, wood or paper straws and single-use utensils only on request; and
3. Utilize dispensers when providing durable or paper straws and recyclable single use utensils.

E. Food service businesses providing food for consumption on premises using recyclable food serviceware must provide conveniently located and clearly marked containers where customers may discard recyclable food serviceware and must provide for the collection and delivery of these materials to appropriate processing facilities.

F. On such commercially reasonable terms as determined by the landlord, landlords of food service businesses subject to the requirements of this section shall make adequate space and/or services available to such food service businesses for the collection and pick up of the recyclable materials generated by such food service businesses.

G. Landlords operating food courts or similar settings that include food service businesses and common areas set aside and maintained for the consumption of food and beverages shall provide in such common areas the services required in subsection E of this section.

H. The City Administrator, or designee, is authorized to promulgate rules for purposes of interpreting and clarifying the requirements of this section. Such rules may provide temporary waivers or other relief that apply to use of certain food service ware products for an initial period of up to one year from November 26, 2018, with the option for an up to one-year extension to expire no later than November 26, 2020. Such waivers or relief shall be granted only for circumstances where commonly used recycling technology cannot process the food serviceware, or where suitable alternative products that meet performance and food health and safety standards are unavailable.

#### **5.15.030 Violations.**

A. Enforcement is complaint based. During the first 365 days and upon complaint of a first violation of any part of this chapter, the code enforcement officer may issue a written notice of violation to the offending business. The written notice of violation shall contain the date of and alleged type of violation. The written notice of violation shall be regarded as a warning and no other sanctions shall be implemented. Notice shall be served to the signer of the business license.

B. During the second year and upon complaint of a violation of any part of this chapter, the code enforcement officer may issue in person notice of violation to the offending business. The in person notice of violation shall contain the date of and alleged type of violation. The notice of violation shall be regarded as a warning and no other sanctions shall be implemented. Notice shall be served upon the the signer of the business license or highest-ranking employee currently on duty at the time of delivery.

C. During the third and successive years, and after the issuance of a written notice of violation, if the code enforcement officer becomes aware of subsequent noncompliance, he or she has the authority to issue a civil infraction to the business. Any violation of this chapter shall be

designated as a Class 1 civil infraction with a fine not exceeding two hundred and fifty dollars (\$250.00) for any violation that occurs following the issuance of a warning notice. Each day of any such violation is a separate civil infraction; a notice of infraction may be issued for each day of any such violation. Civil infractions shall be heard and determined according to Chapter 7.80 RCW as amended, and any applicable court rules.

D. It shall be a violation of this chapter for any retail establishment to penalize, discipline, or discriminate against any employee for performing any duty necessary to comply with this chapter.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force on November 26, 2019 after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 26th day of November, 2018.

CITY OF GIG HARBOR

Kit Kuhn  
Mayor Kit Kuhn

ATTEST/AUTHENTICATED:

Molly Towslee  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

Angela Summerfield  
Angela G. Summerfield

FILED WITH THE CITY CLERK: 10/26/18  
PASSED BY THE CITY COUNCIL: 11/26/18  
PUBLISHED: 12/6/18  
EFFECTIVE DATE: 11/26/19  
ORDINANCE NO: 1399