



Sophie Hahn
Councilmember District 5

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: December 11, 2018

Item Number: 27

Item Description: Single Use Disposable Foodware and Litter Reduction Ordinance

Submitted by: Councilmember Sophie Hahn

Formatting and continuity changes based on input from the City Attorney and City Clerk

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION

Sections:

- 11.64.010 Purposes
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Chapter supersedes existing laws and regulations

11.64.010 Purposes.

The council finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, and plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the City's waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan as amended in 2017, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

11.64.020 Definitions.

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

11.64.030 Accessory Disposable Foodware Items

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in Section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

11.64.040 Reusable Customer Cups

- A. Customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) and as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to Section 11.64.050.D.

11.64.050 Compostable Disposable Foodware

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards in Section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards in 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards in 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.
 - 1. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor for use in its discretion.

2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
 3. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at Section 11.64.050, subsections A-C, a Prepared Food Vendor may request a waiver or waivers pursuant to Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:
1. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards in Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;
 2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.
 3. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
 4. Records of attempts to obtain a compliant item shall include:
 - a. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.
 - b. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.
 - c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and
 - d. Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

5. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

11.64.060 Reusable Foodware for Dining on the Premises Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in Section 11.64.070.
- B. Notwithstanding the requirements at Section 11.64.060.A, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.
- D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after the effective date of this ordinance shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060.A. Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060.A shall be included as a specific condition of approval for such permits and licenses.

11.64.070 Disposable Foodware Standards

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.

- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of each calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

11.64.080 Separate Disposable Foodware Waste Receptacles

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one easily accessed receptacle each for discarded items to be composted or recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
 - 1. Blue for recyclables
 - 2. Green for compostables
 - 3. Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

11.64.090 Waivers

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.

- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

11.64.100 Regulations applicable to all Prepared Food Vendors

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to Section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
 - 1. Costs associated with complying with the requirements of this Chapter.
 - 2. Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
 - 3. Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
 - 4. Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.

11.64.110 Duties responsibilities and authority of the City of BerkeleyThe City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

- A. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.

11.64.120 City of Berkeley: purchases prohibited

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 11.64.070, nor shall any City-

sponsored event utilize non-compliant Disposable Foodware.

11.64.130 Liability and Enforcement

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

11.64.140 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

11.64.150 Chapter supersedes existing laws and regulations

The provisions of this chapter shall supersede any conflicting law or regulations..

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

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SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

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Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

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Sections:

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11.64.010 Purposes.

The council finds and declares as follows:

- A. Single use disposable foodware and packaging (SUDs) - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, and plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the City's waste stream.
- E. It is in the interest of the health, safety and welfare of all who live, work and do business in the City, that the amount of litter on public streets, parks and in other public places be reduced.
- F. The City of Berkeley must eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single-use food and beverage packaging furthers this goal.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan as amended in 2017, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

11.64.020 Definitions.

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Prepared Food Vendor or by a Takeout Food Delivery Service.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 [and as amended](#)), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, alcoholic beverages and other drinks.
- F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
- H. "Takeout Food Delivery Service" is a third party delivery service which picks up Takeout Food from a Prepared Food Vendor and delivers it to the customer for consumption off the premises.

11.64.030 Accessory Disposable Foodware Items

- A. Accessory Disposable Foodware items shall be provided only upon request by the customer or at self-serve stations, except that Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, spill plugs and sleeves without request.

- B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in ~~section~~Section 11.64.070, which may be provided to customers upon specific request for a “plastic” straw.
- D. Prepared Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

11.64.040 Reusable Customer Cups

- A. Customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) ~~and~~ as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup for a beverage to be consumed off the premises, with any charge required pursuant to ~~section~~Section 11.64.050.D.

11.64.050 Compostable Disposable Foodware

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards ~~at in~~ Section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards ~~at in~~ Section 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards ~~at in~~ Section 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.
 - ~~a.1.~~ a.1. Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor for use in its discretion.

~~b.2.~~ 2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.

~~e.3.~~ 3. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.

E. Notwithstanding the requirements at ~~section~~Sections 11.64.050, ~~subsections (A)-(C)~~, a Prepared Food Vendor may request a waiver or waivers pursuant to ~~section~~Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:

~~a.1.~~ 1. No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards ~~at in s~~Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;

~~b.2.~~ 2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.

~~e.3.~~ 3. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.

~~d.4.~~ 4. Records of attempts to obtain a compliant item shall include:

~~i.a.~~ a. Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.

~~ii.b.~~ b. Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.

~~iii.c.~~ c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and

~~iv.d.~~ Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

~~e.5.~~ Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

11.64.060 Reusable Foodware for Dining on the Premises (i.e. "Eating-in")

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in ~~section~~Section 11.64.070.
- B. Notwithstanding the requirements at ~~section~~Section 11.64.060 ~~(A)~~, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.
- D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after the effective date of this ordinance ~~January 1, 2019~~ shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060 ~~(A)~~. Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060 ~~(A)~~ shall be included as a specific condition of approval for such permits and licenses.

11.64.070 Disposable Foodware Standards

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-

compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.

- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of each calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

11.64.080 Separate Disposable Foodware Waste Receptacles

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one easily accessed receptacle each for discarded items to be composted or recycled, and, if needed, to be landfilled or otherwise wasted.

- A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
 - a.1. _____ Blue for recyclables
 - b.2. _____ Green for compostables
 - c.3. _____ Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

11.64.090 Waivers

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.
- B. Waivers shall be granted by the City Manager or his or her agents, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or his or her agents shall act on a waiver application no later than 180 days after receipt of such application, including mailing written

notification of the City Manager's decision to the address supplied by the applicant.

- D. Waivers may be granted for a specified period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

11.64.100 Regulations applicable to all Prepared Food Vendors

- A. Each Prepared Food Vendor shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or his or her designated representative.
- C. All charges collected by the Prepared Food Vendor pursuant to ~~section~~Section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
 - ~~a.~~a.1. Costs associated with complying with the requirements of this Chapter.
 - ~~b.~~b.2. Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
 - ~~c.~~c.3. Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
 - ~~d.~~d.4. Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.

11.64.110 Duties responsibilities and authority of the City of BerkeleyCity Manager's Powers

The City Manager shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any

and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

- A. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.

11.64.120 City of Berkeley: purchases prohibited

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards ~~at in~~ Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

11.64.130 Liability and Enforcement

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1.28 or charged with an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 11.64.090.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

11.64.140 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.~~If any part or provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable.~~

11.64.150 ~~Ordinance Chapter~~ supersedes existing laws and regulations

The provisions of this chapter shall supersede any conflicting law or regulation~~s~~.
~~restricting the use of polystyrene foam.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.