

Disposable Foodware and Litter Reduction Ordinance

ORDINANCE AMENDING THE XXXX CITY CODE BY ADOPTING CHAPTER XXXX SECTIONS XXXX TO REDUCE SINGLE USE DISPOSABLE FOODWARE

Findings and Purpose

The council finds and declares as follows:

A. The production, consumption, and disposal of single-use disposable food and beverage packaging causes significant environmental impacts, including the depletion of natural resources; consumption of energy, water, and non-renewable polluting fossil fuels; emissions of greenhouse gases, air, and water pollution; littering on streets and in waterways; and contributions to the plastic pollution in air, food, drinking water and the world's oceans. Most of these products are used for a few minutes before becoming waste, while plastics, by design, last for hundreds or thousands of years.

B. The City of Berkeley has a goal of reaching Zero Waste by 2020. It is currently diverting approximately 75% of its discards. The City's zero waste initiatives, including the first expanded polystyrene foodware ban in 1989, the first curbside recycling program, and one of the first commercial organics collection programs, have not yet adequately addressed the significant increase in takeout food packaging littering city streets, filling storm drains, and requiring management in the waste stream. In 2016, Californians generated 6.3 pounds of trash per person per day. The state of California, per AB 341, established a waste generation goal of 2.7 pounds per person per day by 2020. Single use food and beverage packaging is approximately one quarter of what is currently disposed of each year in California. Disposable food packaging is a challenging component of the waste stream to recycle or compost since it is often mixed with food and often made from a mixture of low value materials that are expensive to separate and difficult to identify as either recyclable or compostable. Non-recyclable food and beverage packaging is costly to remove from the recyclable waste stream and effects the quality and value of recyclables. Non-compostable food packaging can contaminate compost adding cost and reducing the quality of compost. To reach its zero waste goals, the City must reduce the quantity of unnecessary single-use food and beverage packaging waste entering the waste management system.

C. Single use packaging, including plastic bottles, caps, lids, straws, cups, containers, and wrappers, is prevalent in litter and trash entering the municipal stormwater system and the City of Berkeley is responsible for eliminating discharges of trash to the system completely by 2022 to meet the state requirements for trash load reduction which represents a significant and underfunded compliance challenge. Reducing the quantity of trash on city streets can reduce the significant ongoing expense associated with litter management and operation and maintenance of trash collection from the storm drain system.

D. Eighty percent of marine plastic pollution in the ocean originates from land-based sources, primarily trash in urban runoff. Most of the trash is plastic litter. According to California Coastal Cleanup Results from 1989-2014, food and beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash collected. Bay area litter studies have found that food and beverage packaging comprises the majority of street litter, at least half originating from fast food establishments.

E. In the marine environment, plastic degrades into all size classes and is present in most places in the world's oceans at all levels (surface, water column, and bottom) and impacts nearly 700 marine species through ingestion and entanglement, and causing starvation, disease, and mortality. Plastic debris attracts ambient persistent organic pollutants in seawater and freshwater, which accumulate in and on plastic particles. Some pollutants transfer to fish tissue and blood, and plastics bioaccumulate from smaller to larger species.

F. Plastic debris is increasingly found in seafood sold for human consumption, in tap water and bottled water, and in other foods, including honey, sea salt, and it is increasingly present in indoor and outdoor air. It is dispersed through air deposition as well as through the watershed. The scientific community has raised concerns regarding direct human health impacts of ingested and inhaled microplastics. Single use food and beverage packaging threatens public health as it contains hundreds of indirect food additives that are known carcinogens or endocrine disruptors, including chemicals used as plasticizers, antimicrobials, grease and water resistant coatings, that are known to migrate out of the package and into food and beverages, some of which can contaminate municipal compost.

G. Fluorinated chemicals, also known as per and poly-fluorinated alkyl substances (PFAS), are a class of synthetic chemicals commonly used in and/or on products, including disposable food service ware, to repel water and/or grease. Fluorinated chemicals have come under increasing scrutiny from toxicologists, ecologists, and regulators due to their connection to serious potential health effects, including kidney and testicular cancer, thyroid disruption, attention-deficit hyperactivity disorder (ADHD), delayed puberty and obesity. Studies have shown that these substances are present in food contact papers and compostable paperboard containers. Fluorinated chemicals can leach into food, are not eliminated in the composting process. They are extremely persistent in the environment, can leach into groundwater, and be taken up from soils into food. In 2015, the FDA barred from use three such fluorinated chemicals from food

contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

H. Berkeley has a Climate Action goal of reducing greenhouse gases by 80% compared to 2000 levels by 2050, and 33% by 2020. By 2017, a 12% reduction had been achieved. The production, consumption, and disposal of single use food and beverage packaging contributes significant quantities of greenhouse gases to the atmosphere. Reducing consumption of single use beverage containers can help Berkeley meet its Climate Action goals. For example, based on the average American's consumption of 375 disposable cups per year and Berkeley's population of 100,000 people, approximately 37.5 million cups per year are used in the City of Berkeley. Since the average CO₂ footprint of a paper cup is 0.033 pounds of carbon dioxide emissions, single use coffee cup consumption in Berkeley is estimated to result in 1.2 million pounds of carbon dioxide emissions.

I. The historic practice of giving customers food and beverage packaging free of charge results in failure to incorporate the environmental impact costs of these products into food and beverage service and ensures that customers and food business operators pay little attention to the quantity of disposable packaging products they consume and the associated environmental impact. Consumer charges for plastic grocery bags, have been effective in reducing consumption of those products, achieving an 80% reduction in the United Kingdom and a 75% reduction in Washington D.C., and has helped to reduce the quantity of such products in street litter, on beaches, and in storm drains.

J. Reducing trash and waste saves money. When businesses in Berkeley and surrounding areas have voluntarily minimized single use packaging and switched to reusables, they have saved money, reduced the quantity of waste landfilled, composted, and recycled, and found that their customers enjoyed a better dining experience. Reducing litter can also save the City and Business Improvement Districts money on litter management, street sweeping, storm drain trash capture device maintenance, waste hauling, and disposal costs.

K. The purpose of this Ordinance is to reduce to reduce litter and waste associated with single use food and beverage packaging in the City of Berkeley. Customer charges for disposables are intended to encourage customers to bring their own reusable cups and containers. "By Request" policies for straws, utensils and stirrers are intended to reduce unnecessary disposable packaging. Requiring that customers be served on reusable, durable food ware for on-premises dining is intended to reduce unnecessary waste in food service. Prohibiting the use of disposable foodware containing fluorinated substances is intended to protect public health and the environment from some of the most toxic and persistent chemicals used in food and beverage packaging.

Section 2. Definitions

- A. **“Delivered Meals”** means food and/or beverages delivered to the customer by a Restaurant, a Takeout Food Vendor, or a third party delivery service.
- B. **“Disposable Cup”** is a beverage cup designed for single use and provided by a Takeout Food Vendor to a customer to serve beverages, such as, water, cold drinks, hot drinks, alcoholic beverages and other drinks.
- C. **“Disposable Food Container”** is a container designed for single use that holds 16 oz. or more (for containers with lids) or is 62 cubic inches or larger (for boxes and clamshells).
- D. **“Disposable Foodware”** means all bags, sacks, wrappers, paper or foil liners, containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws and lids which are not intended for reuse, or in which any foods or beverages are placed or packaged on a Takeout Food Vendor’s premises.
- E. **“Fluorinated Chemicals”** means perfluoroalkyl and polyfluoroalkyl substances or fluorinated chemicals, which for the purposes of food packaging, are a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- F. **“Meal”** an entree, or a full size salad, or a breakfast, lunch or dinner item (such as a sandwich, burrito, pizza, soup) served in a Disposable Food Container. One meal can include up to three Disposable Food Containers.
- G. **“Plastic”** means a synthetic material made from a wide range of fossil fuel based polymers such as polyethylene, polypropylene, polycarbonate, etc., that can be molded into shape while soft and then set into a rigid or slightly elastic form.
- H. **“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 meat product or whole fruits or vegetables which are not chopped, squeezed, or mixed.
- I. **“Reusable Cup”** means any cup that is specifically designed and manufactured for reusing, cleaning and disinfecting at least one hundred times.
- J. **“Reusable Foodware”** shall mean plates, bowls, cups, trays, glasses, straws, stirrers, and utensils that are manufactured of durable materials (such as glass, porcelain, metal, wood or some plastic that is not Disposable Foodware) and designed for multiple uses (without impairment of its protective function) and extended life, and are dishwasher safe.

- K. **"Restaurant"** means any establishment located within the City of Berkeley, selling Prepared Food to be eaten on or about its premises by customers.
- L. **"Takeout Food Vendor"** means any store, shop, sales outlet, grocery store, delicatessen, mobile food vendor, or sidewalk food vendor, located within the City of Berkeley that sells Prepared Food in Disposable Beverage Cups and Disposable Foodware. Schools and jails operating food services are not included.
- M. **"Takeout Food"** means prepared foods or beverages requiring no further preparation to be consumed which are purchased to be consumed off the Retail Food Vendor's premises.

Section 3. Durable Food Ware for Dining on the Premises

This section applies to Prepared Food served for consumption on the premises of a Restaurant.

- A. As of July 1, 2019, Restaurants shall only sell or provide food and beverages for consumption on the premises using Reusable Foodware products, except as provided by Section C.
- B. Restaurants that are also Takeout Food Vendors shall ask customers whether they want to eat their order on the premises (i.e. "for here") or off the premises (i.e. "to go"). If the purchased food or beverage is intended for consumption on the premises, the Restaurant shall serve the food and or beverage using Reusable Foodware.
- C. Restaurants that do not have on-site or off-site dishwashing capacity to wash, rinse and sanitize Reusable Foodware in compliance with the California Health Code may request a full or partial waiver from the requirements of subsection (A) from the City, if they can demonstrate the inability to comply due to space constraints and financial hardship to pay for third party service. Restaurants may be granted a waiver of up to three years during which time the Restaurant shall become complaint.
- D. As of July 1, 2020, new building and business permits shall only be granted to Restaurants that have adequate onsite or offsite dishwashing capacity to comply with section 3A.
- E. Disposable food wrappers, foil, basket and tray liners, and napkins shall be allowed for dining on the premises so long as they meet the Disposable Food Packaging Standards in Section 4.

Section 4. Disposable Food Packaging Standards

This section provides standards for the types of Disposable Foodware that a Takeout Food Vendor may use to serve customers that dine off the premises (i.e. "to go").

- A. The City shall provide a list of approved Disposable Foodware and distributors that offer these products on their website. The City shall update annually the approved list of Disposable Foodware. No other foodware may be distributed by a Take Out Food Vendor. Approved Disposable Foodware shall meet the following standards:

- a. Beginning July 1, 2019, all Disposable Foodware provided by Takeout Food Vendors for food and beverages prepared and sold in the City of Berkeley must be accepted by the City of Berkeley composting or recycling municipal collection programs. Compostable Foodware must be certified “compostable” by the Biodegradable Product Institute or other third party certification as approved by the City.
- b. Beginning January 1, 2020, Disposable Foodware shall be free of all intentionally added Fluorinated Chemicals as certified by the Biodegradable Product Institute or other third party certification as approved by the City.
- c. The City may, after a noticed public hearing, adopt regulations that require Disposable Foodware to have minimum post-consumer recycled content.

Section 5. Disposable Foodware Charges

This section applies to customer charges for Disposable Foodware used for dining off the premises and is intended to encourage the use of Reusable Foodware and Reusable Cups. These charges do not apply to Restaurants providing Disposable Foodware for carry-out of leftovers from meals eaten on the premises.

- A. Beginning July 1, 2019, Takeout Food Vendors shall charge a customer twenty five cents (\$0.25) for every Disposable Beverage Cup provided.
- B. Beginning July 1, 2020, Takeout Food Vendors shall charge a customer twenty five cents (\$0.25) per Disposable Food Container and no more than twenty-five-cents (\$0.25) per Meal provided in Disposable Foodware.
- C. The charges set forth in A and B apply to all Delivered Meals and beverages prepared and sold in the City of Berkeley and delivered in Disposable Foodware and Disposable Beverage Cups.
- D. All customers using, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code or an electronic benefit transfer card issued pursuant to Section 10072 of the California Welfare and Institutions Code shall be exempt from the charges specified in A and B of this section.
- E. All Takeout Food Vendors shall post any City-provided signage or notification regarding Disposable Foodware and Disposable Beverage Cup charges in plain view of customers at the point of sale.
- F. Each Disposable Beverage Cup and Disposable Food Container charge shall be listed separately on any receipt provided to the customer.
- G. Disposable straws, stirrers, cup spill plugs, napkins, condiment packets, and utensils accompanying Disposable Cups and Containers for take out food service shall be provided only upon request by the customer or at self serve stations.

Section 6. City-Approved Mandatory Reusable Take Out Food Ware Program

The City of Berkeley shall conduct a feasibility study of a citywide reusable cup and food container service to be offered by all Berkeley Takeout Food Vendors and Meal Delivery Services and present findings and recommendations to City Council no later than December 31st, 2019.

Section 7. Duties, Responsibilities and Authority of the City

- A. The City shall evaluate and report to City Council the effectiveness of this ordinance in reducing the use of Disposable Foodware and Disposable Beverage Cups by January 1, 2023.
- B. It shall be the duty of the City Manager to collect and receive all fees imposed by this Chapter, and to keep an accurate record thereof.
- C. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter, including provisions for the reexamination and correction of returns and payments, and for reporting.
- D. The City Manager shall annually verify that the monies owed under this Chapter have been properly applied, exempted, collected, and remitted.
- E. Master Fee Schedule shall be amended to include a fee to cover City expenses of inspection and enforcement of this ordinance.

Section 8. Enforcement

- A. Health Inspectors shall review compliance during regular site visits.
- B. Violators of this code shall be fined according to the Schedule of Fines per Chapter 1.28.040.

Section 11. Operative Date

The provisions of this Chapter become operational on July 1, 2019, unless specifically provided otherwise.