

Single Use 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:

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Section 1. 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 requiring no further preparation which is purchased to be consumed off a Prepared Food Vendor's premises. Takeout Food includes Prepared Food delivered by a Prepared Food Vendor or by a third party delivery service.

C. "Takeout Meal" means Takeout Food consisting of an entree, or a full size salad, or a breakfast, lunch or dinner item (such as a sandwich, burrito, pizza, soup) served in up to three Disposable Food Containers.

D. "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 113920), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.

E. "Disposable Foodware" means all bags, sacks, wrappers, paper or foil liners, containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids and any other food contact 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.

F. "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).

G. "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.

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H. "Reusable Foodware" shall mean all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, 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.

I. "Plastic" means a synthetic material made from fossil fuel based polymers such as polyethylene, polystyrene, polypropylene, and polycarbonate that can be molded or blown into shape while soft and then set into a rigid or slightly elastic form.

J. "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.

Section 2. Reusable Foodware for Dining on the Premises (i.e. "Eating-in")

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

A. As of [Effective Date], Prepared Food Vendors shall only sell or provide food and beverages for consumption on the premises using Reusable Foodware, except as provided in Section 2(C).

B. Prepared Food Vendors offering Takeout Food shall ask customers whether they will consume their purchased food or beverage 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 Prepared Food Vendor shall serve such food or beverage in Reusable Foodware.

C. Prepared Food Vendors 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 Section 2(A) if they can demonstrate inability to comply due to space constraints and financial hardship, such as investments and costs that take more than a year to be paid for through savings. Waivers may be granted for up to three years, during which time the Prepared Food Vendor shall make every effort to become complaint. If a waiver is granted, all Disposable Foodware used for eating on the premises must conform to the Disposable Food Packaging Standards in Section 3.

D. As of [Date - 1 year after Effective Date?], new zoning permits and business licenses for Prepared Food Vendors shall only be granted to Prepared Food Vendors that have adequate onsite or offsite dishwashing capacity to comply with section 2(A).

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E. Disposable food wrappers, foil sheets, napkins and paper or foil basket and tray liners shall be allowed for dining on the premises so long as they meet the Disposable Food Packaging Standards in Section 3.

Section 3. Disposable Foodware Standards

This section provides standards for the types of Disposable Foodware that may be used for Takeout Food, or for Prepared Food eaten on the premises of a Prepared Food Vendor with a valid waiver, as provided for in Section 2(C).

A. The City shall maintain a list of approved Disposable Foodware sources and types that shall be available at [physical location] and on the City's website. The City shall update annually the list of approved Disposable Foodware types and sources. No other Disposable Foodware may be used by any Prepared Food Vendor.

B. Disposable Foodware approved by the City shall meet the following standards:

a. Beginning [Date], all Disposable Foodware used to serve or package Prepared Foods that are prepared in the City of Berkeley:

i. Must be accepted by City of Berkeley composting or recycling municipal collection programs, and

ii. If compostable, must be certified compostable by the Biodegradable Product Institute or another independent third party certifying organization or agency recognized by the City.

b. Beginning [Date - one year from Effective Date], compostable Disposable Foodware containing paper or other natural fiber material shall be free of all intentionally added Fluorinated Chemicals as certified by the Biodegradable Product Institute or other third party certifying organization or agency recognized by the City.

c. The City may adopt regulations that require Disposable Foodware to have minimum post-consumer recycled content, and any other Disposable Foodware specifications that support the goals of this Ordinance.

Section 4. Disposable Foodware Charges

Customers shall be charged for Disposable Foodware used for dining off the premises.

A. Beginning [Effective Date], Prepared Food Vendors selling Takeout Food shall charge a customer twenty five cents (\$0.25) for every Disposable Cup provided.

B. Beginning [Effective Date], Prepared Food Vendors selling Takeout Food shall charge a customer twenty five cents (\$0.25) per Disposable Food Container and no more than twenty-five-cents (\$0.25) per Takeout Meal.

C. Income from charges for Disposable Cups and Disposable Food Containers shall be retained by the Prepared Food Vendor.

D. The charges set forth in A and B apply to all Takeout Food and Takeout Meals prepared and sold in the City of Berkeley and served in Disposable Food Containers and Disposable Cups, except for Prepared Food Vendors providing Disposable Food

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Containers and Disposable Cups for carry-out of leftovers from Prepared Food eaten on the premises (i.e. "doggie bags").

E. 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 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 this Section.

F. Charges for Disposable Cups, Disposable Food Containers and Takeout Meals shall be identified separately on any receipt provided to the customer.

G. Disposable straws, stirrers, cup spill plugs, napkins, condiment packets, utensils and other similar Disposable Foodware accompanying Disposable Cups, Disposable Food Containers and Takeout Meals shall be provided free of charge, and only upon request by the customer or at self-serve stations.

Section 5. Signage Requirements for Takeout Food Vendors

- A. The City shall provide text explaining Disposable Foodware Charges and specifications for signage that Takeout Food Vendors must post in plain view of customers at the point of sale.
- B. Takeout Food Vendors shall also include Disposable Foodware Charges on their printed and electronically available menus.
- C. Takeout Food Vendors shall inform customers of Disposable Foodware Charges for orders taken by telephone.
- D. Third-party delivery services shall include on their electronic platforms text pursuant to subsection A explaining Disposable Foodware Charges and include Disposable Foodware Charges on their menus and billing interfaces.

Section 6. Duties, Responsibilities and Authority of the City of Berkeley

- A. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter.
- B. The Master Fee Schedule shall be amended to include a fee to cover City expenses of inspection and enforcement of this ordinance.
- C. It shall be the duty of the City Manager to collect and receive all fees imposed by this Section, and to keep an accurate record thereof.
- D. Within three years of the effective date of this Ordinance, the City shall evaluate and report to City Council on the effectiveness of this ordinance.