

TYPE G - FOODWARE ORDINANCE TEMPLATE

CHAPTER 5.80 - FOOD SERVICE AND PACKAGING WASTE REDUCTION ORDINANCE

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5.80.010 - Definitions.

For purposes of this Chapter 5.80, the following definitions shall apply:

“ASTM Standard Specification” means Standard Specification for Compostable Plastics D6400 or Standard Specification for Biodegradable Plastics D6868, as adopted or subsequently amended by the American Society for Testing and Materials (ASTM).

“City Contractors and Lessees” means any person or entity that has a contract with the City for public works or improvements to be performed, for a franchise, concession, or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the City, or to be paid out of monies deposited in the Treasury or out of trust monies under the control of or collected by the City.

“City Facility” means any building, structure, or vehicle owned or operated by the City.

“City Facility Food Provider” means an entity that provides, but does not sell, Prepared Food in City Facilities, including without limitation, City hospitals, and the City Jail.

“Compostable” means that an item or material is (1) accepted in the City's available composting collection program as fully compostable, as determined by the City; (2) is listed, described, or referenced on the City's website as compostable; and (3) is either certified compostable by the Biodegradable Product Institute or other third party recognized by the City, or is a napkin, stirrer, splash stick, cocktail stick, toothpick, or utensil made entirely of Natural Fiber.

“Distribute” means the sale, offer for sale, or other transfer of possession of an item for compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of possession of another item for compensation.

“Egg Carton” means a carton for raw eggs sold to consumers from a refrigerator case or similar retail appliance.

"Event" means any indoor event at a City Facility, or any outdoor event subject to a City permit, where more than 100 people attend or participate.

"Event Food Vendor" means any business selling, or providing based on ticket purchase or entrance fee, Prepared Food at an Event.

"Event Producer" means a person or entity who contracts with or obtains a permit from the City, or an agent acting on the City's behalf, to hold its own Event, or a City entity or department holding its own Event.

"Fluorinated Chemical" means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as perfluoroalkyl and polyfluoroalkyl substances, or PFAS chemicals.

"Fluorinated Chemical Free" means an item (1) contains no intentionally added Fluorinated Chemicals beyond a determined acceptable threshold, as determined by the City, (2) is listed, described, or referenced as fluorinated chemical free on the City's website; and (3) is either certified by the Biodegradable Product Institute or other third party as recognized by the City, or is a napkin, stirrer, splash stick, cocktail stick, toothpick, or utensil made entirely of Natural Fiber.

"Food Service Ware" means all containers, bowls, plates, trays, cups, lids, straws, forks, spoons, knives, napkins, and other like items that are designed for a single use for Prepared Foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Vendors. The term "Food Service Ware" includes Food Service Ware Accessories and does not include items composed entirely of aluminum, or polystyrene foam coolers and ice chests.

"Food Service Ware Accessory" means all types of single-use items usually provided alongside Prepared Food in single-use plates or cups, including but not limited to utensils, chopsticks, napkins, cup lids, cup sleeves, food or beverage trays, condiment packets and saucers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks designed for a single use for Prepared Foods.

"Food Vendor" means any Restaurant, Retail Food Vendor, Event Food Vendor, or any business that accepts orders on behalf of and delivers meals from a Food Vendor, located or operating within the City.

"Meat and Fish Tray" means a tray for raw meat, fish, or poultry sold to consumers from a refrigerator case or similar retail appliance.

"Natural Fiber" means a plant- or animal-based, non-synthetic fiber, including but not limited to paper, wood, or bamboo. Natural Fiber does not include plastic of any kind.

"Packing Material" means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage.

"Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.

“Polystyrene Foam” means blown polystyrene and expanded and extruded foams 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-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.

“Prepared Food” means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared (collectively “prepared”) for individual customers or consumers. Prepared Food does not include raw eggs or raw, butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance.

“Recyclable” means material that can be sorted, cleansed, and reconstituted using the City’s available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

“Restaurant” means any establishment located within the City that sells Prepared Food for consumption on, near, or off its premises. The term includes a Restaurant operating from a temporary facility, cart, vehicle, or mobile unit.

“Reusable Beverage Cup” means any vessel or container for a Prepared Food Beverage that is specifically designed and manufactured for repeated cleaning, disinfecting, and reuse at least 100 times, and is dishwasher safe.

“Retail Food Vendor” means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a Restaurant, located within the City that sells Prepared Food.

“Single-use” means designed to be used once and discarded, and not designed for repeated use and sanitizing.

5.80.020 - Sale or Distribution of Non-Compliant Food Service Ware Prohibited.

- A. No Person may sell, offer for sale, or otherwise Distribute within the City (1) any Food Service Ware that is not either Compostable or Recyclable, (2) any Food Service Ware made, in whole or in part, from Polystyrene Foam, (3) any single-use stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic, including compostable, bio- or plant-based plastic, or (4) beginning January 1, 2020, any Food Service Ware that is Compostable and not Fluorinated Chemical Free.
- B. The Director may adopt a list of suitable alternative Compostable or Recyclable Food Service Ware products. “Suitable alternative Compostable or Recyclable Food Service Ware products” means Food Service Ware products that the Director determines serve the same intended purpose as non-compliant products, meet the standards for what is Compostable and/or Recyclable set under this Chapter 5.80, and are reasonably affordable. The Director shall regularly update the list.

- C. Beginning January 1, 2020, no person may sell, offer for sale, or otherwise Distribute within the City Food Service Ware that does not contain a minimum post-consumer recycled content that may be specified by the Director in regulations according to the Director's assessment of market availability and costs.

If a product is included on the Director's list, it will be deemed to comply with this Section 5.80.020. If a product is not included on the Director's list, the person using the product as Food Service Ware will have the burden of establishing to the Director's satisfaction that the product complies with this Section.

5.80.030 - Use of Non-Compliant Food Service Ware Prohibited.

- A. Food Vendors may not sell, offer for sale, or otherwise Distribute Prepared Food (1) in Food Service Ware made, in whole or in part, from Polystyrene Foam, (2) in Food Service Ware that is not Compostable or Recyclable, or (3) beginning January 1, 2020, in Food Service Ware that is Compostable and not Fluorinated Chemical Free.
- B. City Facility Food Providers may not provide Prepared Food to City Facilities (1) in Food Service Ware made, in whole or in part, from Polystyrene Foam, (2) in Food Service Ware that is not Compostable or Recyclable, or (3) beginning January 1, 2020, in Food Service Ware that is Compostable and not Fluorinated Chemical Free.
- C. City Departments may not purchase, acquire, or use Food Service Ware for Prepared Food (1) where the Food Service Ware is made, in whole or in part, from Polystyrene Foam, (2) where the Food Service Ware is not Compostable or Recyclable, or (3) beginning January 1, 2020, in Food Service Ware that is Compostable and not Fluorinated Chemical Free.
- D. City Contractors and Lessees may not use Food Service Ware for Prepared Food in City Facilities and while performing under a City contract or lease (1) where the Food Service Ware is made, in whole or in part, from Polystyrene Foam, (2) where the Food Service Ware is not Compostable or Recyclable, or (3) beginning January 1, 2020, where the Food Service Ware is Compostable and not Fluorinated Chemical Free. All new leases and permits authorizing the sale of food and beverages at the City Airport must incorporate terms requiring the lessee or permittee to comply with the terms of this Chapter 5.80.
- E. The Director may adopt a list of suitable alternative Compostable or Recyclable Food Service Ware products. "Suitable alternative Compostable or Recyclable Food Service Ware products" means Food Service Ware products that the Director determines serve the same intended purpose as non-compliant products, meet the standards for what is Compostable and/or Recyclable set under this Chapter, and are reasonably affordable. The Director shall regularly update the list.

If a product is included on the Director's list, it will be deemed to comply with this Section 5.80.020. If a product is not included on the Director's list, the person using the product as Food Service Ware will have the burden of establishing to the Director's satisfaction that the product complies with this Section.

- F. It shall not be a violation of this Section 5.80.020 to sell, provide, or purchase Prepared Food packaged in Food Service Ware otherwise prohibited by subsections (a) through (c), or to use Food Service Ware otherwise prohibited by subsection (d), if the Prepared Food is packaged outside the City and is sold or otherwise provided to the consumer in the same Food Service Ware in which it originally was packaged. Businesses packaging Prepared Food outside the City are encouraged to use Food Service Ware that is Compostable or Recyclable, is Compostable and Fluorinated Chemical Free, and is not made, in whole or in part, from Polystyrene Foam.
- G. Food Vendors, City Facility Food Providers, and City Contractors and Lessees acting pursuant to a City contract or lease at a City Facility shall not provide, sell, use, or otherwise Distribute, and City Departments shall not purchase or acquire, any single-use straws, stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic, including compostable, bio- or plant-based plastic, except as expressly provided in this Chapter 16 and/or as required by applicable State or Federal laws, regulations, or guidelines.
- H. Food Vendors, City Facility Food Providers, City Departments, and City Contractors and Lessees acting pursuant to a City contract or lease at a City Facility shall only provide, sell, use, or otherwise Distribute only those Food Service Ware Accessories that comply with this Chapter 16, and only either (1) upon a consumer's specific request for such items, or (2) in a self-service area or dispenser, except for single-use straws, which shall be made available by request only.
- I. Beginning January 1, 2020, Food Vendors, City Facility Food Providers, and City Contractors and Lessees acting pursuant to a City contract or lease at a City Facility shall not provide, sell, use, or otherwise Distribute, and City Departments shall not purchase or acquire, Food Service Ware that does not contain a minimum post-consumer recycled content, that may be specified by the Director in regulations according to the Director's assessment of market availability and costs.

5.80.040 - Other Polystyrene Foam Products.

A. No Person may sell, offer for sale, or otherwise Distribute for compensation within the City:

1. Packing Materials, including shipping boxes and packing peanuts;
2. coolers, ice chests, or similar containers;
3. pool or beach toys; or
4. dock floats, mooring buoys, or anchor or navigation markers;

made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a more durable material.

B. No Person may sell, offer for sale, or otherwise Distribute for compensation within the City Meat and Fish Trays and Egg Cartons made, in whole or in part, from Polystyrene Foam, or that are not Compostable and/or Recyclable, either as separate items or as part of the sale of raw meat, fish, poultry, or eggs sold to consumers from a refrigerator case or similar retail appliance.

- C. No Person may sell, offer for sale, or otherwise Distribute within the City any Packing Materials made, in whole or in part, from Polystyrene Foam, as prohibited in subsection (a), or that are not Compostable or Recyclable. For purposes of this Section 5.80.040, Distribution of Packing Materials shall include using such materials to hold, cushion, or protect items to be packed in a container for shipping, transport, or storage, for compensation, where the packing takes place within the City.
- D. For purposes of this Section 5.80.040, Distribution of Packing Material shall not include:
 - 1. Receiving shipments within the City that include Polystyrene Foam, or some other non-Compostable and non-Recyclable product, used as Packing Material;
 - 2. Re-using Packing Materials for shipping, transport, or storage within the same distribution system, where the Packing Materials are not sent to a consumer or end user;
 - 3. Donating used Packing Materials to another person, where the donor receives nothing of value for the donated Packing Materials; or.
 - 4. Using Packing Materials donated under subsection (d)(3) for shipping, transport, or storage, where the person using the Packing Materials receives nothing of value for the donated Packing Materials.

5.80.050 - Implementation.

- A. The Director may create, maintain, and regularly update the product lists referenced in Sections 5.80.020(b) and 5.80.030(e).
- B. The Director is authorized to promulgate regulations, guidelines and forms and to take any and all other actions reasonable and necessary to implement and enforce this Chapter.
- C. Nothing in this Chapter shall conflict, or be construed to conflict, with the Americans with Disabilities Act, the Unruh Act, the Disabled Persons Act, or other applicable laws concerning the rights of individuals with disabilities. In particular, nothing in this Chapter shall restrict, or be construed to restrict, the availability of single-use plastic straws to individuals who may require and request the use of single-use plastic straws.
 - 1. It shall not be a violation of this Chapter or any place of public accommodation to provide single-use plastic straws to individuals who request such plastic straws.
 - 2. Nothing in this Chapter shall restrict, or be construed to restrict, the ability of places of public accommodation to purchase or otherwise acquire single-use plastic straws in sufficient numbers to meet the needs of individuals who request such plastic straws.
- D. In addition, nothing in this Chapter shall restrict, or be construed to restrict, the availability of single-use plastic straws to individuals who may require use of plastic straws in relation to medical circumstances.

- E. The Department shall conduct multi-lingual public outreach and education, including providing information to educate affected Food Vendors, businesses, and customers, about the provisions of this Chapter.

5.80.060 - Enforcement and Penalties.

- A. The Director shall issue a written warning to any person he or she determines is violating Sections 5.80.020(a) or (c), 5.80.030(a), (b), (d), (g), (h), or (i), or 5.80.040(a), (b), or (c), or 5.80.100(a) of this Chapter. If after issuing a written warning of violation from the Director, the Director finds that person continues to violate the provisions of 5.80.020(a) or (c), 5.80.030(a), (b), (d), (g), (h), or (i), or 5.80.040(a), (b), or (c), or 5.80.100(a), the Director may apply for or impose the various sanctions provided in this Section.
- B. Any person who violates the provisions 5.80.020(a) or (c), 5.80.030(a), (b), (d), (g), (h), or (i), or 5.80.040(a), (b), or (c), or 5.80.100(a) of this Chapter shall be guilty of an infraction. If charged as an infraction, upon conviction thereof, said person shall be punished for the first offense by a fine of not more than \$100.00 for a first violation; not more than \$200.00 for a second violation in the same year and not more than \$500.00 for each subsequent violation in the same 12-month period.
- C. The Director may issue an administrative fine to any person violating 5.80.020(a) or (c), 5.80.030(a), (b), (d), (g), (h), or (i), or 5.80.040(a), (b), or (c), or 5.80.100(a) in accordance with Administrative Code Chapter 1.10, which is hereby incorporated by reference.
- D. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter, including without limitation, civil penalties in an amount not exceeding \$100.00 for the first violation, \$200.00 for the second violation, and \$500.00 for each subsequent violation in any given 12-month period.
- E. The City may not recover both administrative and civil penalties pursuant to subsections (c) and (d) for the same violation. Penalties collected under subsections (c) and (d), which may include recovery of enforcement costs, shall be used to fund implementation and enforcement of this Chapter.

5.80.070 - Severability.

If any section, subsection, sentence, clause, or phrase of this Chapter 5.80 is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

5.80.080 - No Conflict with Federal or State Law.

This Chapter 5.80 is intended to be a proper exercise of the City's police power and role as a market participant, to operate only upon its own officers, agents, employees, and facilities, and other persons acting within the City's boundaries, and not to regulate inter-city or interstate

commerce. Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law.

5.80.090 - Undertaking for the General Welfare.

In undertaking the implementation of this Chapter 5.80, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

5.80.100 - Providing Reusable Beverage Cups at Events.

- A. Beginning on January 1, 2020, Event Producers providing Prepared Food beverages at Events must either make Reusable Beverage Cups available to no less than 10% of their attendees, or be able to demonstrate to the Director that reasonable effort has been made to ensure that at least this percentage of attendees or visitors brought or will have access to a Reusable Beverage Cup at the Event. The Director may pass regulations to increase this percentage in furtherance of the objectives of this Chapter.
- B. To meet the requirement in subsection (a), Event Producers may provide, lend, or sell Reusable Beverage Cups to Event attendees, and promote or incentivize attendees to bring their own Reusable Beverage Cups. A permit application for any Event must indicate how the requirement in subsection (a) shall be met. The Event Producer's selected method for meeting the requirement in subsection (a) must be included in any contract, agreement, or permit for the Event.
- C. Use, handling, and sanitation of Reusable Beverage Cups at Events must comply with all applicable state and local laws, regulations, and guidelines.
- D. Waivers. Any Event Producer may petition the Director for a full or partial waiver of the requirements of this Section 5.80.100 as they apply to a particular Event, if the Event Producer can (1) demonstrate that the Event Producer is not able to access Reusable Beverage Cups for the Event, or (2) that the application of this Section would create undue hardship or practical difficulty for the Event Producer that is not generally applicable to other Event Producers in similar circumstances.