

TYPE H - FOODWARE ORDINANCE TEMPLATE

CHAPTER 5.80 - SINGLE USE FOODWARE AND LITTER REDUCTION

Sections:

- 5.80.010 - Findings and Purpose.
- 5.80.020 - Definitions.
- 5.80.030 - Prohibited food packaging (polystyrene foam).
- 5.80.040 - Degradable and recyclable food packaging.
- 5.80.050 - Compostable Disposable Foodware.
- 5.80.060 - Disposable Foodware Standards.
- 5.80.070 - Accessory Disposable Foodware Items.
- 5.80.080 - Reusable Customer Cups.
- 5.80.090 - Reusable Foodware for Dining on the Premises.
- 5.80.100 - Regulations applicable to all Prepared Food Vendors.
- 5.80.110 - Duties, responsibilities and authority of the City.
- 5.80.120 - Exemptions.
- 5.80.130 - Waivers--process to obtain.
- 5.80.140 - Separate Disposable Foodware Waste Receptacles.
- 5.80.150 - City purchases prohibited.
- 5.80.160 - Liability and enforcement.
- 5.80.170 - Severability.
- 5.80.180 - Chapter supersedes existing laws and regulations.

5.80.010 - Findings and Purpose

The City Council finds and declares as follows:

- A. Solid waste that is non-degradable or non-recyclable poses an acute problem for any environmentally and financially responsible program of solid waste management. Such waste covers the City's streets, parks, public places, and open spaces. It enters the marine and natural environment and is ingested by aquatic wildlife, frequently causing death. There is resultant damage to the ecological balance.
- B. Products which are degradable or recyclable offer environmentally sound alternatives or non-degradable and non-recyclable products currently used. By decaying into their constituent substances, degradable products, compared to their non-degradable equivalents, are less of a danger to the natural environment, and less of a permanent blight on the urban landscape. Recycling of products reduces costly waste of natural resources and energy used in production of new products as well as costly disposal of waste in landfills.
- C. Polystyrene foam is a petroleum processing by-product. Oil is a non-renewable resource, which can only be obtained by increasingly hazardous methods such as off-shore drilling, which poses significant dangers to the environment. Alternative products which are degradable or recyclable pose far less overall hazards than continued and expanded reliance on oil-based products.

- D. 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.
- E. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- F. 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.
- G. Food and beverage SUDs make up approximately 25% of all waste produced in the State. In the Region, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the waste stream.
- H. 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.
- I. The City 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.

5.80.020 - Definitions.

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

"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.

"Customer" means anyone purchasing food or beverages from a Restaurant or Retail Food Vendor.

"Degradable Food Packaging" means food packaging which substantially reduces to its constituent substances through degradation processes initiated by natural organisms whose end products are substantially, but not necessarily entirely, carbon dioxide and water. Degradable Food Packaging does not include cellulose-based items which have a synthetic or plastic coating.

"Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, and alcoholic beverages.

"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.

"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.

"Food Packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws, and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on a Restaurant's or Retail Food Vendor's premises.

"Food Vendor" means any Restaurant or Retail Food Vendor.

"Person", "Anyone" means any natural person, firm, corporation, partnership, or other organization or group however organized.

"Polystyrene Foam" means any styrene or vinyl chloride polymer which is blown into a foam-like material.

"Polystyrene Foam Food Packaging" means any food packaging which contains any Polystyrene Foam.

"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.

"Prepared Food Vendor" means any establishment located within the City, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore, Theater, Mobile Food Facility, Temporary Food Facility, Bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.

"Recyclable Food Packaging" means any Food Packaging including glass, cans, cardboard, paper, mixed paper, or other items which can be recycled, salvaged, composted, processed, or marketed by any means other than landfilling or burning, whether as fuel or otherwise, so that they are returned to use by society.

"Restaurant" means any establishment located within the City, selling Prepared Food to be eaten on or about its premises by customers. Restaurant includes a sidewalk food vendor.

"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, which sells Takeout Food.

"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.

"Supplier" means anyone selling, or otherwise supplying Food Packaging to a Restaurant or Retail Food Vendor.

"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.

"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.

5.80.030 - Prohibited food packaging (polystyrene foam).

A. Restaurants:

1. Except as provided in Section 5.80.170, no Restaurant shall provide Prepared Food to its customers in any Polystyrene Foam Food Packaging, nor shall any Restaurant purchase, obtain or keep any Polystyrene Foam Food Packaging for such purpose.
2. As to any Food Packaging obtained after the effective date of this chapter, each Restaurant shall obtain from each of its suppliers a written statement signed by the supplier, or by a responsible agent of the supplier, stating that the supplier will supply no Polystyrene Foam Food Packaging to that vendor, that the supplier will note on each invoice for Food Packaging supplied to that vendor that the packaging covered by the invoice is not Polystyrene Foam and the identity of the packaging's manufacturer.
3. All contracts between a Restaurant and a supplier entered into after the effective date of this chapter shall include provisions that the supplier will supply no Polystyrene Foam Food Packaging; that the supplier will state on each invoice for Food Packaging supplied that the packaging is not Polystyrene Foam and the identity of the packaging's manufacturer; and that failure to comply with such provisions shall constitute a material breach of the contract.
4. Restaurants shall retain each supplier's written statement for one year from the date of receipt of any food packaging from that supplier.

B. Retail food vendors:

1. Except as provided in Section 5.80.170, no Retail Food Vendor shall sell Takeout Food in any Polystyrene Foam Takeout Food Packaging, nor shall any Retail Food Vendor purchase, obtain or keep any Polystyrene Foam Packaging for this purpose.
2. All Retail Food Vendors shall segregate, in their warehouses or other storage areas, Food Packaging used in their Takeout Food operations from other Food Packaging. Takeout Food Packaging containers or boxes shall be labelled as such and shall indicate that they contain Food Packaging which is not Polystyrene Foam.

3. As to any Takeout Food Packaging purchased after the effective date of this chapter, each Retail Food Vendor shall comply with the requirements of Sections 5.80.030A, paragraphs 2 and 4 of this chapter.
4. All contracts for the purchase of Takeout Food Packaging entered into after the effective date of this chapter shall comply with the provisions of Section 5.80.030A, paragraph 3.

5.80.040 - Degradable and recyclable food packaging.

A. Restaurants:

1. Each Restaurant's Food Packaging, in which Prepared Food is provided to customers, or which is kept, purchased, or obtained for this purpose, shall be Degradable or Recyclable.
2. Each Restaurant shall maintain written records evidencing its compliance with this section.

B. Retail food vendors:

1. Each RETAIL FOOD VENDOR'S packaging, in which Takeout Food is provided to customers, or which is kept, purchased, or obtained for this purpose, shall be Degradable or Recyclable.
2. Each Retail Food Vendor shall maintain written records evidencing its compliance with this section.

5.80.050 - 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 5.80.060.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards in 5.80.060.
- 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 5.80.060.
- 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.
 2. All Customers demonstrating, at the point of sale, a payment card or voucher issued by the State's Special Supplemental Food Program for Women, Infants, and Children (WIC)

pursuant to the State's Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to the State's Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.

3. Charges for Disposable Cups shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms and/or menu boards. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at Section 5.80.050, subsections A - C, a Prepared Food Vendor may request a Waiver or waivers pursuant to Section 5.80.090 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 5.80.060 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's recyclable collection program.
 3. The Prepared Food Vendor must provide documentation of good faith efforts to obtain a substantially similar compliant item at a non-prohibitive price.
 4. Records of attempts to obtain a compliant item may include:
 - a. Emails, letters or other correspondence with 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 verifiable 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.

5.80.060 - Disposable Foodware Standards.

- A. Disposable Foodware must be accepted by City's 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's 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 the next calendar year, and the City shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

5.80.070 - 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 for safety reasons Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include lids, 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 5.80.060, 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.

5.80.080 - Reusable Customer Cups.

- A. Except as provided in the State's Health and Safety Code, customers may provide their own Reusable Foodware cups for beverage service in accordance with the Code 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 that conforms to the Disposable Foodware Standards in 5.80.060 for a beverage to be consumed off the premises, with any charge required pursuant to Section 5.80.050.D.

5.80.090 - 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, sleeves and bags; 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 5.80.060.

- B. Notwithstanding the requirements at Section 5.80.090.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 State's Health Code may request a Waiver or partial waiver pursuant to Section 5.80.130. To obtain a Waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints, undue financial hardship and/or other extraordinary, insurmountable circumstances.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 5.80.130 shall conform to the Disposable Foodware Standards in Section 5.80.060.

5.80.100 - 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. Food Vendors shall state that they are in compliance with this chapter on their annual business license renewal forms.

5.80.110 - Duties, responsibilities and authority of the City.

The City Manager or his or her designee 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.

5.80.120 - Exemptions.

The City Manager or his or her authorized representative may exempt an item or type of food packaging from the requirements of this chapter, upon a showing that the item or type has no acceptable non-polystyrene foam equivalent and that imposing the requirements on that item or type would cause undue hardship. Said documentation shall include a list of suppliers contacted to determine if non-polystyrene foam substitutes are available.

5.80.130 - Waivers-process to obtain.

- 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 designees, 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 designees 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 term of up to two (2) years. During the waiver term, the Prepared Food Vendor shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close or expiration of a granted waiver term, 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.
- E. Notwithstanding the two (2) year maximum term for waivers set forth in Section 5.80.130(D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Prepared Food Vendor demonstrates diligent efforts to comply but, due to insurmountable space or economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or his or her designee may grant a waiver for a longer specified term.
- F. All waivers shall expire automatically in the event of a significant remodel, renovation or other alteration of the premises with a construction valuation that exceeds \$60,000 or if the Prepared Food Vendor ceases operations at the location for which the waiver has been granted.

5.80.140 - Separate Disposable Foodware Waste Receptacles.

All Prepared Food Vendors, except Full Service Restaurants as defined in the City's Municipal Code and other Prepared Food Vendors that provide full bussing service and do not customarily provide waste receptacles for customer use, must provide at least one set of three easily accessed receptacles for discarded items to be composted, 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.

5.80.150 - City purchases prohibited.

The City shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 5.80.060, nor shall any City-Sponsored Event utilize non-compliant Disposable Foodware.

5.80.160 - 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 City's 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 5.80.130.
- 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.

5.80.170 - 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.

5.80.180 - Ordinance voided by superseding laws and regulations.

The provisions of this chapter with respect to polystyrene foam, shall be void upon the enactment or adoption of any law or regulation restricting the use of plastic foams. The provisions of this chapter shall supersede any conflicting law or regulations.