

STOPWASTE MODEL FOOD SERVICE WARE ORDINANCE FOR ALAMEDA COUNTY

CUSTOMIZATION CONSIDERATIONS

The Model Ordinance is designed to be customizable for a diverse range of jurisdictions, providing flexibility for each jurisdiction to reflect its needs. Each jurisdiction will want to develop an approach to managing food service ware and related items that addresses its priorities.

Guidance notes are integrated into the Model Ordinance to explain how specific sections and provisions of the Model can be customized for a jurisdiction's needs:

General guidance notes are highlighted green.

Notes highlighted in blue identify options or areas where specific information is to be inserted or selected.

The Model Ordinance addresses common variations and options; however, addressing all scenarios is not practical. As such, jurisdictions may choose to customize some sections of the Model to reflect their policy goals and local conditions. Additional tips for using the Model include:

- a) **Modify Language.** Adjust the Model language to fit the jurisdiction's specific needs. For example, a jurisdiction that already has a Polystyrene foam ordinance in place can remove sections related to Polystyrene foam or modify them to refer to the existing ordinance.
- b) **Change Jurisdiction Title.** The terms "City" and "City Council" are used throughout this Model Ordinance; however, the entity responsible for adopting this Ordinance will need to change "City" throughout the document to the appropriate term, which may be a City, County, or Special District that provides solid waste handling services, etc.
- c) **Blend Existing Code Provisions with Model Provisions.** When using the Model Ordinance, an entity may want to select provisions from both the Model Ordinance and its existing ordinance(s) to create an ordinance that best suits its needs.
- d) **Delete Guidance Notes and Unused Options.** Be sure to delete highlighted text that is not a part of the ordinance your entity will be adopting. As noted above, green highlighting identifies guidance notes presented in the Model for reference only, which the user should remove when preparing a final Ordinance. In cases where the Model offers multiple options, blue highlighting identifies these options and areas where customization is advised. Users should delete options and customization items that are not selected and modify section numbers accordingly.
- e) **Style and Design.** The final document style is at each jurisdiction's discretion. The use of colors and highlighting to differentiate content is not required in any final document produced, and the final document should be made consistent with the entity's standard document styles.

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AN ORDINANCE OF THE CITY OF _____ ADDING CHAPTER _____ OF THE _____ CITY
CODE RELATED TO FOODWARE

The City Council of The City of _____ does hereby ordain as follows:

CHAPTER _____

DISPOSABLE FOOD SERVICE WARE REDUCTION AND REUSE

Guidance: It is not essential for the Ordinance to have a table of contents. One is included here to make it easier to use the model.

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GENERAL PROVISIONS

Section 1. Findings and Purpose.

- a) The production, consumption and end of life management of Disposable Food Service Ware, typically used for only a few minutes before being discarded, have significant environmental impacts including substantial greenhouse gas emissions, litter, marine pollution, environmental contamination, harm to wildlife, the depletion of precious natural resources, decrease of biodiversity, and the generation of hard-to-manage waste.
- b) Prior to the COVID-19 pandemic, nearly 1 trillion individual pieces of Disposable Food Service Ware and packaging were used annually by U.S. food service operators: 21% for on-site dining and 79% for takeout and delivery. The use of Disposable Food Service Ware increased dramatically during the pandemic as takeout and delivery became the most common forms of prepared food service.
- c) Pre-pandemic, restaurants and foodservice businesses in the U.S. spent \$24 billion on disposables each year. Local businesses and city governments spend nearly \$6 billion per year on solid waste management costs attributable to disposable food packaging. Roughly 20 billion pieces of litter per year are from disposable food-service packaging.
- d) Disposable Food Service Ware substantially contributes to hard-to-recycle wastes. Packaging comprises 27% of California's disposed waste stream annually. The generation of municipal solid waste in 1960 was just 2.68 pounds per person per day in California and reached 4.9 pounds per person per day in 2018, the last time EPA reported generation rates. In 2018, 28% of municipal solid waste disposed of in the U.S. was packaging.
- e) Each year in California and globally, during International Coastal Cleanup Day, seven of the top ten littered items collected on beaches and shorelines are Disposable food and beverage packaging. Almost all of them are plastic.
- f) Plastic beverage bottles are number one of the top ten most commonly found plastic items on beaches when measured by weight. Every hour, Americans use 3 million plastic water bottles. Californians used more than 12 billion plastic beverage bottles in 2017, of which about 70% were not recycled. *Guidance: This finding applies to sections 10 (City Purchase, Sale, or Distribution of Packaged Water Prohibited) and 11 (Accessible Water Bottle Refill Stations). Remove this finding if the Sections are not included.*
- g) Every year, about 8 million tons of plastic waste escape into the oceans from coastal nations. That's the equivalent of dumping the contents of one garbage truck into the ocean every minute. Research indicates that as of 2015, there were over 150 million tons of plastics in the ocean. If plastic inputs are not significantly curtailed, the ocean will contain 3 times more plastic by weight than fish by 2025. Over 900 species of marine wildlife have been impacted by plastic ingestion and entanglement.

- h) Plastic may last for hundreds and even thousands of years, and has broad, long-lasting negative impacts. Plastics are persistent and accumulating dramatically in oceans worldwide. Scientists document a complex toxicology of plastic micro- and nano-particles in marine life that transfers up the food chain, including to people.
- i) Polystyrene is a petroleum-based, lightweight plastic material commonly used as Disposable Food service ware by retail food vendors. It is made from Styrene, a human carcinogen known to migrate from food service ware into food and beverages. Products made from expanded polystyrene foam are not biodegradable, returnable or readily recyclable. Polystyrene foam easily breaks up into smaller pieces and, because it is lightweight, is easily dispersed in the environment. It has been found to comprise 70% of the plastic debris in California rivers and on beaches. *Guidance: This finding applies to Sections 12 (Compliant Disposable Food Service Ware for Food Service) and 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this finding if the Sections are not included.*
- j) Packaging, including Food Service Ware, is a primary user of virgin materials and resources. 55% of paper produced each year is used for packaging. Paper production is responsible for 3 billion trees logged in the U.S. each year, which causes loss of habitat and biodiversity, results in sedimentation of streams, and reduces the availability of trees to capture CO₂ from the atmosphere.
- k) The growth of plastics production in the past 65 years has substantially outpaced any other manufactured material. 42% of non-fiber plastics produced are used for packaging and 60% of all plastics produced between 1950 and 2015 were landfilled or entered the environment. Half of all global plastic production is for single-use applications.
- l) Cheap fracked natural gas is driving a ramp-up in plastics production world-wide. The production capacity for plastic is poised to grow by 33% or more in less than a decade and is causing the plastics industry to identify or create new markets – primarily packaging – for an ever-growing flow of cheap plastic.
- m) Reducing the production and disposal of plastic is essential to reducing greenhouse gas emissions. It is estimated that in 2019 alone the global production and incineration of plastic produced more than 850 million metric tons of greenhouse gasses—equal to the emissions from 189 five-hundred-megawatt coal power plants.
- n) Disposable Food Service Ware poses numerous threats to human health. Over 12,000 chemicals are used in food packaging and other materials that contact food. Many are known to cause cancer, endocrine disruption, chronic diseases and other illnesses in people, and to harm aquatic and terrestrial ecosystems. Many of the most toxic chemicals used in Disposable Food Service Ware migrate into food and beverages.
- o) Disadvantaged and low-income communities are disproportionately impacted by the human health and environmental impacts of toxic chemicals in Disposable Food Service Ware, plastic pollution, and fossil fuel extraction.

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- p) Micro- and nano- plastics are released from Disposable Food Service Ware, including polypropylene food containers and PET beverage bottles (Polyethylene terephthalate, commonly recognized in single-use water bottles and labeled with the #1 recycling code). People inhale microplastics through the air, consume them through food and water, and even absorb them through the skin. Microplastics have been found within human lungs, livers, spleens, and kidneys, in the placentas of newborn babies, and in breast milk.
- q) Prioritizing reduction and reuse of packaging can provide significant economic, environmental, and social benefits and is consistent with the Integrated Waste Management hierarchy that places “Reduce” and “Reuse” above “Recycling” and disposal.
- r) The availability of innovative services, systems, and businesses that deliver products in unpackaged or Reusable formats is increasingly creating new opportunities for local business entrepreneurship and economic development. Recycling and reusing create between 9 and 30 times more jobs than disposing of waste in landfills and incinerators.
- s) Requiring the use of 100% Reusable Food Service Ware for onsite dining and take-out food service in urban cities in the U.S. is estimated to achieve an 86% reduction in Disposable Food Service Ware, equal to 841 billion Food Service Ware items eliminated, 7.5 million tons of waste avoided, \$5 billion in net savings for the food service industry for food service operations, \$5.1 billion saved by business and local government in solid waste management costs, and 17 billion pieces of litter prevented. Meanwhile 193,000 local community-based jobs would be created.
- t) Public access to water refill stations supports personal efforts to avoid Disposable plastic bottles by using Reusable bottles, and helps people save money. A 20% increase in the use of Reusable bottles worldwide could reduce marine plastic pollution by 39%, keeping 8.1 to 13.5 billion PET bottles out of the ocean every year, based on 2018 data. Switching to Reusable bottles can save 8 billion metric tons of CO₂, 2% of the remaining carbon budget. Reusable glass beverage bottles are 85% more climate friendly than Disposable plastic beverage bottles. *Guidance: This finding applies to Sections 10 (City Purchase, Sale, or Distribution of Packaged Water Prohibited) and 11 (Accessible Water Bottle Refill Stations). Remove this finding if the Sections are not included.*
- u) Stainless steel and polypropylene cups for beverages at major events dramatically outperform disposable plastic and paper cups across all environmental metrics if they are washed and used more than six times. Reusable polypropylene cups can be washed hundreds of times and stainless-steel Reusable cups can be washed and reused thousands of times. *Guidance: This finding applies to Section 9 (Reusable Beverage Cups at Events). Remove this finding if the Section is not included.*
- v) In 2021, Governor Newsom signed into law California Assembly Bill (AB) 1276 (codified at Pub. Res. Code, Sections 42270 et seq.) which prohibits food facilities from providing any single-use Food Service Ware Accessories or condiment packages unless requested

by the customer. *Guidance: This finding applies to Section 6 (Accessories Only Upon Customer Request). Remove this finding if the Section is not included.*

- w) State law allows customers to provide their own Reusable Beverage Cups and Reusable Food Containers for service, and, consistent with the Centers for Disease Control and Prevention, the Alameda County Department of Environmental Health allows the use of Reusable Food Service Ware when properly washed, rinsed, and sanitized.
- x) [Additional Findings to be Added by City]
Guidance: This finding is a placeholder for the jurisdiction to add additional findings about local conditions, such as its progress toward its AB 939 goals, how Disposable Food Service Ware affects the jurisdiction's hauler (handling plastics and compostable Food Service Ware), and local data on plastic pollution in parks and waterways.
- y) The City Council does, accordingly, find and declare that it should restrict the use of Disposable Food Service Ware and Accessories by Prepared Food Vendors, promote customer-provided Reusable Beverage Cups and Food Service Ware for take-out, establish a Disposable Beverage Cup and Container charge, require that certain Foodware Accessories be provided only upon customer request, require use of Reusable Beverage Cups at City facilities and Returnable Reusable Beverage Cups at Large Venues and Events, prohibit the purchase, sale, or distribution of water in Disposable bottles by the City, require Accessible Water Bottle Refill Stations, set standards for Disposable Food Service Ware for food service and prohibit the sale or distribution of Polystyrene foam and certain non-recyclable non-compostable products. The City has a substantial interest in protecting its residents and the environment from negative impacts of Disposable Food Service Ware, Packaged Water, Polystyrene Foam and certain non-recyclable non-compostable products and in realizing the benefits of alternative products. This Chapter is consistent with relevant City plans including [list]. *Guidance: Revise this finding as needed if not adopting all provisions of the Model Ordinance.*

Section 2. Definitions.

Unless otherwise expressly stated, whenever used in this Chapter, the following terms shall have the meanings set forth below:

- a) "Accessible Water Bottle Refill Station" means a bottle filler that dispenses potable drinking water downward that complies with Section 116875 of the California Health and Safety Code standards and applicable standards under the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and accessibility requirements applicable to drinking fountains under the California Building Standards Code. *Guidance: This definition applies to Section 11 (Accessible Water Bottle Refill Stations). Remove this definition if the Section is not included.*
- b) "ASTM Standard Specification" means Standard Specification for Compostable Plastics D6400 or Standard Specification for Biodegradable Plastics D6868 as certified by the

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Biodegradable Products Institute (BPI), as adopted or subsequently amended by the American Society for Testing and Materials (ASTM).

- c) "Beverage Cup" means any cup, vessel, glass, container, or any other items in which a beverage (including water) is placed or packaged at a Prepared Food Vendor's premises.
- d) "Biodegradable Products Institute" or "BPI" is a multi-stakeholder association of key individuals and groups from government, industry, and academia, which promotes the use and recycling of biodegradable polymeric materials (via composting). BPI maintains and certifies a list of products that demonstrate that they meet the requirements of ASTM D6400 or D6868, based on testing in an approved laboratory.
- e) "Bulk" means material that is stored as unpackaged liquid or dry goods capable of being conveyed to a Reusable container in methods conforming to the California Retail Food Code, Health and Safety Code, Sections 113700 et seq. or packaging for a large amount of product, thereby offsetting the need for multiple smaller packaging units for the same amount of product. *Guidance: This definition applies to Section 6 (Accessories Only Upon Customer Request). Remove this definition if the Section is not included.*
- f) "City" means the City of _____.
- g) "City Property" means any City-owned properties or facilities, including but not limited to, indoor and outdoor recreation fields, parks and golf courses, gardens, open space and boulevards, buildings and rooms. *Guidance: Consider whether to add any exclusions here for city property where this ordinance should not apply.*
- h) "Compost Manufacturing Alliance" is a national certifier of compostable products for compost facilities.
- i) *[Guidance: This subsection offers three definitions of compostable, while ensuring that local governments' definitions align with the State's definition. Entities should select the option that best achieves their policy goals.]*

"Compostable" means an item or material that the State deems to be compostable pursuant to Public Resources Code Chapter 5.7 (commencing with Section 42355) AND that satisfies the following:

OPTION A: "Compostable" means an item or material is accepted in the City's available organics collection program as fully compostable, as determined by the City's _____ Department, and is listed, described, or referenced on the Department's website as compostable. The City shall list only items or materials that are Fiber-based and will break down into, or otherwise become a part of, usable compost (e.g., soil conditioning material, mulch) in a safe and timely manner. Products or packages made with plastics, either petroleum or biological based, and made with fluorinated chemicals shall not be considered compostable. Only items and materials certified to meet these standards by the Biodegradable Products Institute, Compost Manufacturing Alliance, and/or other third party recognized by the City shall be considered compostable. As used in this

definition, “Fiber-based” means a plant- or animal-based, non-synthetic fiber, including but not limited to paper, wood, or bamboo. Fiber-based items do not include or contain petroleum-based or biologically-based polymers of any kind. *Guidance: Select this option to disallow all plastics, including “compostable plastics” from the organics collection system.*

OPTION B: “Compostable” means an item or material is accepted in the City’s available organics collection program as fully compostable, as determined by the City’s Department, and is listed, described, or referenced on the Department’s website as compostable. The City shall list only items or materials that are certified to be compostable by the Biodegradable Products Institute, Compost Manufacturing Alliance, and/or other third-party certification program recognized by the City. *Guidance: Select this option to limit acceptable products to those that have been certified as compostable by a third-party certification program.*

OPTION C: “Compostable” means an item or material is accepted in the City’s available organics collection program. *Guidance: Select this option to limit acceptable products to those that are accepted in the City’s organics collection system without reference to a third-party certification program.*

- j) “Convenient drop-off” means customers returning Reusable products in a Reuse System can return to the retail location where the product was originally obtained, in curbside kiosks near the original retail location, or at nearby grocery stores or other retail locations, or the Reuse System provides frequent home pick-up services.
- k) “Dishwashing Capacity” means adequate onsite or offsite services, including those provided to a Prepared Food Vendor through a contracted service, to wash, rinse, and sanitize, in compliance with the California Health and Safety Code Division 104- Environmental Health, Part 7, California Retail Code, the necessary quantity of Reusable Food Service Ware items for all food and beverages prepared on the premises of the Prepared Food Vendor.
- l) “Disposable” means an item or product that is not Reusable, including Food Service Ware and products that are intended for single or a limited number of uses, regardless of the method of disposal, including whether, after use, the item or product is landfilled, treated with heat by conversion technologies, incinerated, recycled, or composted.
- m) “Egg Carton” means a carton for raw eggs sold to customers from a refrigerator case or similar retail appliance. *Guidance: This definition applies to Section 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if the Section is not included.*
- n) “Event” means any indoor or outdoor event within the City that is subject to a City permit and expected to have more than 500 attendees or participants. *Guidance: This definition applies to Section 9 (Reusable Beverage Cups at Events). Remove this definition if the Section is not included. The number of attendees can be adjusted to a number that*

seems appropriate for the types of events in the City.

- o) “Event Producer” means a person or entity, or their agent, who contracts with or obtains a permit from the City or a City agent, to hold an Event or Events within the City at a location other than a Large Venue. *Guidance: This definition applies to Section 9 (Reusable Beverage Cups at Events). Remove this definition if the Section is not included.*
- p) “Food Container” means any hinged or lidded container (clamshell, box, bowl), plate, tray or other vessel used to hold Prepared Food.
- q) “Food Service Ware” means any products used for serving, consuming, or packaging Prepared Food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrappers or liners, hinged or lidded containers (clamshells), utensils (forks, knives, spoons, sporks, and chopsticks), condiment cups, and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Vendor’s premises.
- r) “Food Service Ware Accessory” means any item or accessory that typically accompanies Food Service Ware, such as straws, stirrers, splash sticks, cocktail sticks, toothpicks, napkins and utensils (forks, knives, spoons, sporks, and chopsticks); condiment cups and packets; cup sleeves, tops, lids and spill plugs; and other similar accessory or accompanying items used as part of Prepared Food or beverage service or packaging. *Guidance: This definition applies to Section 6 (Accessories Only Upon Customer Request). Remove this definition if the Section is not included. Local jurisdictions may regulate Food Service Ware Accessories that are not already covered in AB 1276 - Single-Use Food Service Ware Accessories and Condiments. Napkins (perhaps the most heavily used and wasted accessory item), cup sleeves, tops, lids and spill plugs are not covered in AB 1276 but have been included in this definition.*
- s) “High Priority Toxic Food Packaging Chemical” means any Perfluoroalkyl or Polyfluoroalkyl Substances (PFAS) or any of the chemicals listed in California's Proposition 65 (Health & Safety Code § 25249.8; list set forth at 22 CCR § 69502.2(a)(1)(A)), the European Union's Substances of Very High Concern Candidate List (set forth at 22 CCR § 69502.2(a)(1)(C), (G)), and the International Agency for Research on Cancer lists Group 1 and Group 2a (set forth at 22 CCR § 69502.2(a)(1)(J)). *Guidance: These lists represent a prioritized subset of lists that inform the California Candidate Chemicals List for the California Safer Consumer Products Act. See 22 CCR § 69502.2(a)(1). Together, these lists address a wide array of food packaging chemicals that are listed by authoritative agencies as carcinogenic, mutagenic, endocrine disrupting, or cause developmental or reproductive toxicity.*
- t) “High Priority Toxic Material” means any kind of polyvinyl chloride (PVC), polystyrene, polycarbonate, or melamine material, or bamboo or any other material that uses a resin binding agent.
- u) “ISO 17025 Accredited Lab” means a laboratory accredited by the International

Organization for Standardization and International Electrochemical Commission to perform product testing, sampling, and calibration.

- v) "Large Venue" means a permanent facility that seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation over a typical calendar year. For purposes of this definition, a "facility" includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this Chapter, a site under common ownership or control that includes more than one Large Venue, where each Large Venue is contiguous with other Large Venue(s) in the site, is a single Large Venue. *Guidance: This definition applies to Section 9 (Reusable Beverage Cups at Events). Remove this definition if the Section is not included. The size of the venue can be adjusted to a number that seems appropriate for the types of venues and events in the City.*
- w) "Meat and Fish Tray" means a tray for raw meat, fish, or poultry sold to customers from a refrigerator case or from a similar retail appliance. *Guidance: This definition applies to Section 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if the Section is not included.*
- x) "Packaged Beverage" or "Packaged Water" means a drinking beverage, including water, in a sealed container, including a box, bag, can, glass bottle, Rigid Plastic #2 Bottle or other sealed container intended primarily for single-service use.
- y) "Packing Material" means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage. *Guidance: This definition applies to Section 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if the Section is not included.*
- z) "Person" means an individual, firm, limited liability company, association, partnership, corporation, or any other legal entity other than a governmental entity that is not specifically referenced in this ordinance.
- aa) "Perfluoroalkyl and Polyfluoroalkyl Substances" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- bb) "Polystyrene Foam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding and extrusion-blow molding (extruded foam polystyrene). "Polystyrene Foam" does not include clear or solid polystyrene (oriented polystyrene). *Guidance: This definition applies to Sections 12 (Compliant Disposable Food Service Ware for Food Service) and 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if these Sections are not included.*

- cc) “Prepared Food” means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the premises of a Prepared Food Vendor for consumption, including, but not limited to, ready-to-eat, dine-in, take-out, or complimentary food or beverage. “Prepared Food” does not include: (1) raw eggs and raw, butchered meat, fish, or poultry that is sold from a refrigerator case or from a similar retail appliance; or (2) prepackaged food that is delivered to a Prepared Food Vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the Prepared Food Vendor to the customer in the same container or packaging.
- dd) “Prepared Food Vendor” means any Person that that sells Prepared Food to be consumed on or off a premises located or operated within the City including, but not limited to, a restaurant, café, bar, nightclub, grocery store, convenience store, delicatessen, bakery, food service establishment (including carry out, quick service, and full-service), cafeteria, food court, food truck or mobile unit-based vendor, hotel, motel, bed and breakfast, inn, special event space, movie house, theater, itinerant restaurant, pushcart, farmers market, or other similar establishments, directly or indirectly under contract and including, but not limited to sales on City Property, Large Venues, and commercial office buildings. Notwithstanding the foregoing, the following are not considered Prepared Food Vendors: hospitals, public agencies other than the City, public and private schools, prisons and jails. *Guidance: Revise the list of exceptions to fit the circumstances of your city.*
- ee) “Produce Tray” means any tray or carton for raw vegetables or fruit sold to customers from a refrigerator case or from a similar retail appliance. *Guidance: This definition applies to Subsection 14(b). Remove this definition if the Subsection is not included.*
- ff) “Recyclable” means an item or material is accepted in the City’s recycling collection program as fully recyclable, as determined by the City’s _____ Department, and is listed, described, or referenced on the Department’s website as recyclable. The City shall not list items or materials that will be burned, incinerated, or converted through gasification, pyrolysis, enzymatic breakdown or a similar chemical conversion process used to transform materials into plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, energy, diesel, gasoline, or home heating oil. *Guidance: This definition applies if Option B of Section 12(b) is used - Compliant Disposable Food Service Ware for Food Service. Remove this definition if Option B is not included.*
- gg) “Reusable” means Food Service Ware that is manufactured of ceramic, porcelain, glass, or non-foil metal, or other durable materials that are specifically designed and manufactured to be washed and sanitized for at least 780 commercial wash cycles as warranted by the manufacturer, based on testing performed by an ISO 17025 Accredited Lab, are safe for washing and sanitizing according to California Health & Safety Code, Sections 114101 and 114099.7, respectively and all other applicable regulations, and are used in a system that enables repeated collection, washing, and return of Food Service Ware, thereby ensuring that the product is actually used repeatedly over an extended

period of time. Reusable products shall not be manufactured from a High Priority Toxic Material.

- hh) "Returnable" means an item for which a Reuse System is available.
- ii) "Reuse System" means a system in which (1) convenient drop-off of an item is available to the customer, and (2) there are suitable incentive systems to encourage customers to return the product, such as a deposit or charge for failure to return, or discounts, rewards, or other positive incentives.
- jj) "Standard Condiment" means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar and sugar substitutes.
- kk) "Take-Out Consumption" means consumption of food or beverages requiring no further preparation off the premises or away from the facilities of the Prepared Food Vendor.
- ll) "Take-Out Food Ordering Platform" means a Person engaged in the service of taking orders from customers for food or related items for pickup or delivery from a Prepared Food Vendor, and includes orders made by phone, on the Prepared Food Vendor website, or on a third-party site, any of which may also include delivery by a third-party. *Guidance: This definition applies to web-based and phone-based ordering systems on which customers order directly from a Prepared Food Vendor (like Square or Menufy) or indirectly from a third-party prepared food delivery company (like Doordash or GrubHub).*

FOOD SERVICE WARE WASTE REDUCTION AND REUSE

Guidance: Sections 3, 4, and 6 address top priorities to include in a Reusable Food Service Ware ordinance.

Section 3. Reusable Food Service Ware Required for Dining on Premises.

Beginning [specify date - 12 months after ordinance adoption suggested]:

- a) Prepared Food served for consumption on the premises of a Prepared Food Vendor shall be served using Reusable Food Service Ware, except that (1) Disposable paper food wrappers, bags, foil wrappers, and paper tray- and plate-liners shall be allowed provided they meet the requirements in Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service), and (2) Disposable Standard Condiment packets may be provided upon customer request in accordance with subsection b of this Section.
- b) Standard Condiments provided for on-site consumption on the premises of a Prepared Food Vendor must be served from Reusable containers or a Bulk dispenser. A supply of single-use Standard Condiment packets may be maintained and provided to customers upon request, based on medical necessity.

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- c) Consumption is considered on-premises if it takes place at tables and/or dining areas, including non-seated picnic areas provided by the Prepared Food Vendor either on its own or in conjunction with one or more other Prepared Food Vendor(s) or pursuant to an agreement between the Prepared Food Vendor and a third party.
- d) This Section does not prohibit a Prepared Food Vendor from providing, upon a customer's request, Disposable Food Service Ware compliant with the requirements in Section 5 of this Chapter (Disposable Beverage Cup and Food Container Charge), and Section 12 of this Chapter (Disposable Food Service Ware for Food Service), to take away leftover Prepared Food after dining on the premises. *Guidance: If the City does not include a cup and container charge in the Ordinance, the reference to Section 5 (Disposable Beverage Cup and Food Container Charge) should be removed.*
- e) Business licenses for Prepared Food Vendors, applied for or renewed after [specify date – at least 30 but not more than 180 days after adoption recommended] shall only be granted to Prepared Food Vendors that can demonstrate ability to comply with Subsection (a) by demonstrating that adequate Dishwashing Capacity will be provided on the premises or that dishwashing services will be provided by a third party. *Guidance: Along with encouraging reuse for existing businesses, future businesses should be designed to enable reuse. Including this Subsection will reduce future waiver requests and compliance issues. Consider adding a similar requirement to the City's building code and zoning code in a future update.*
- f) The requirements of Subsection (a) of this section shall not apply to Mobile Food Facilities or Temporary Food Facilities as defined by California Health and Safety Code Sections 113831 and 113930.
- g) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this Section. All leases, contracts, funding agreements, and sponsorships entered by the City shall require compliance with this Section for all activities in the City. *Guidance: Sample language is included in the Model Ordinance Toolkit.*
- h) Prepared Food Vendors that do not have Dishwashing Capacity may request a waiver or partial waiver of Subsections (a) and (e) of this Section. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints, undue financial hardship, and/or other insurmountable circumstances. Any waiver 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. *Guidance: See Section 15 (Process to Obtain Waivers) for more information on the waiver process. The \$60,000 figure is based on existing ordinances (e.g., City of Berkeley). The City may wish to adjust this number to suit local conditions.*

Section 4. Customer-Provided Reusable Beverage Cups and Food Containers for Take-Out.

- a) Customers shall be allowed to provide their own empty Reusable Beverage Cups and Reusable Food Containers for Take-Out Consumption by Prepared Food Vendors in accordance with California Retail Food Code, Health and Safety Code, Sections 113700 et seq.
- b) Prepared Food Vendors subject to this section may refuse, at their sole discretion, any customer-provided Reusable Beverage Cup or Reusable Food Container that is cracked, chipped, or corroded, or appears inappropriate in size, material, or condition for the intended beverage or food, or that appears to be excessively soiled or unsanitary.
- c) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this section for all activities in the City.
- d) Large Venues and Events are not subject to this Section.

Section 5. Disposable Beverage Cup and Food Container Charge.

Guidance: Throughout this Section, the City may opt to focus on cups only, or to apply charges to food containers as well. If the City does not plan to include a charge for food containers, the term should be removed throughout the Section.

Beginning *[specify date – 12 months after ordinance adoption suggested]*:

- a) **OPTION A.** Prepared Food Vendors shall charge customers twenty-five cents (\$0.25) for each Disposable Beverage Cup and Disposable Food Container provided for Take-Out Consumption. The maximum charge per order for all Disposable Beverage Cups and Food Containers shall be one dollar (\$1.00). Customers who provide their own Reusable Beverage Cup(s) and/or Reusable Food Container(s) shall not be charged for additional Disposable Beverage Cups or Disposable Food Containers needed. *Guidance: Select this option to charge \$.25 per disposable cup/container, up to a maximum of \$1/meal.*
OPTION B. Prepared Food Vendors shall charge customers twenty-five cents (\$0.25) for each order in which Disposable Beverage Cup(s) and/or Disposable Food Container(s) are provided. Customers who provide their own Reusable Beverage Cup(s) and/or Reusable Food Container(s) shall not be charged for additional Disposable Beverage Cups or Disposable Food Containers needed. *Guidance: Select this option to charge \$.25 per order that includes disposables, regardless of the number of cups/containers used.*
- b) Prepared Food Vendors shall provide a minimum twenty-five cent (\$0.25) discount for customers who use their own Reusable Beverage Cup(s) or Reusable Food Container(s). Prepared Food Vendors may provide a larger discount at their own discretion. *Guidance:*

Include this option to require that Food Vendors offer a \$.25 discount to customers that bring their own cup or container. This discount provides an additional incentive for customers to bring their own reusables but should not be used in lieu of the charge in Subsection (a) because discounts alone are not sufficient to drive the desired behavior change. The discount reduces some of the income the business receives from the charges for disposables. The discount would not apply if customer-provided reusables are rejected for some reason under Subsection 4(b); if the jurisdiction wishes to have the discount apply even if the reusables are not used then change the word "use" to "bring."

- c) Income from the Disposable Beverage Cup and Food Container charge shall be retained by the Prepared Food Vendor. *Guidance: These charges can help to offset the increased costs of compliant Disposable Beverage Cups or Food Containers and the costs to Prepared Food Vendors of offering Reusable Beverage Cups and Reusable Food Containers for Takeout Consumption, and these charges can also encourage customers to choose to use Reusable Beverage Cups and Reusable Food Containers to avoid the costs. In some cases, the income from the Disposable Beverage Cup and Food Container charges has led some businesses to promote Disposable options over Reusable ones. Therefore, the City may wish to add a requirement that Prepared Food Vendors who offer Disposable Beverage Cups and Food Containers for takeout consumption must provide a less expensive Returnable Reusable Beverage Cup and Returnable Reusable Takeout Container option to customers.*
- d) Take-Out Food Ordering Platforms that collect payment on behalf of Prepared Food Vendors shall remit the Disposable Beverage Cup and Food Container charges to the Prepared Food Vendor.
- e) Prepared Food Vendors shall not waive or otherwise fail to collect the Disposable Beverage Cup and Food Container charge(s) except for:
 - 1. Customers who use their own Reusable Beverage Cup(s) and/or Reusable Food Container(s);
 - 2. Customers who provide their own Reusable Beverage Cup(s) and/or Reusable Food Container(s) but are not allowed to use them because they are rejected in accordance with Subsection 4(b); or *Guidance: Omit this Subsection if the jurisdiction wishes to impose the charge on those who bring, but are not able to use, their own cups or containers.*
 - 3. Customers demonstrating economic hardship by providing 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, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, or a Medi-Cal benefits identification card (BIC) issued pursuant to Section 14017.7 of the California Welfare and Institutions Code.

- f) The Disposable Beverage Cup and Food Container charge(s) shall be identified to the customer before purchase separately as a stand-alone charge, on menus, menu boards, and prior to entering payment on Take-Out Food Ordering Platforms. Customers shall be informed of the charge(s) verbally by their server, at the cash register, and when placing orders by phone. Charges shall be reflected separately on any post-sale receipt whether provided in-person or online.
- g) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this Section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this Section for all activities in the City.
- h) Large Venues and Events are not subject to this Section.

Section 6. Accessories Only Upon Customer Request.

Guidance: AB 1276 requires food facilities to meet its requirements at a minimum and allows local jurisdictions to add additional requirements. Provisions that exceed the requirements of AB 1276 are noted below. Additionally, the definition of Food Service Ware Accessory in the model ordinance includes napkins, cup sleeves, tops, lids and spill plugs – none which are covered in AB 1276.

- a) Prepared Food Vendors shall provide Disposable Food Service Ware Accessories or Disposable Standard Condiments to customers for takeout and delivery orders only when specifically requested by the customer. No Disposable Food Service Ware Accessories shall be provided for dining on-premises, except Disposable napkins, cocktail sticks, toothpicks, and stir sticks may be provided for on-premises dining when specifically requested by the customer. Takeout and delivery orders include orders made directly with the Prepared Food Vendor and orders made using Take-Out Food Ordering Platforms. *Guidance: AB 1276 only applies to on-premises dining and online orders. This provision goes beyond AB 1276 by requiring that vendors utilize reusable accessories on-premises (with a few noted exceptions for accessories that do not have a readily available reusable alternative), and only provide disposable accessories or condiments by request for takeout and delivery situations.*
- b) Standard Condiments provided for consumption on the premises of a Prepared Food Vendor must be served from Reusable containers or a Bulk dispenser. A supply of single-use Standard Condiment packets may be maintained and provided to customers upon request, based on medical necessity. *Guidance: this is not required in AB 1276. It eliminates the need for individual portions of Standard Condiments for on-premises dining. But a business can keep single-portion condiments on hand for when a customer specifically requests them.*
- c) Disposable Food Service Ware Accessories and Standard Condiments shall not be bundled or packaged in a manner that prohibits a take-out customer from taking only the specific Disposable Food Service Ware Accessory and/or Standard Condiment desired without also having to take a different Disposable Food Service Ware Accessory

and/or Standard Condiment.

- d) Disposable Food Service Ware Accessories shall not be individually wrapped and may be provided to customers using refillable dispensers that dispense items one at a time.

Guidance: AB 1276 states that nothing shall prevent a food facility from providing unwrapped accessories in a refillable dispenser. This goes further in that it requires Disposable Foodware Accessories to be unwrapped.

- e) (1) A Take-Out Food Ordering Platform shall provide Prepared Food Vendors with a method to customize their menus to include the specific Disposable Food Service Ware Accessories and Standard Condiments that they offer for take-out and delivery orders. The Prepared Food Ordering Platform shall provide customers with the option to request the specific Single-use Food Service Ware Accessories or Standard Condiments they want included in their order from a Prepared Food Vendor.

(2) If a Prepared Food Vendor uses a Take-Out Food Ordering Platform, the Prepared Food Vendor shall customize its menu with a list of available Disposable Food Service Ware Accessories and Standard Condiments they offer, and only those Disposable Food Service Ware Accessories or Standard Condiments selected by the customer shall be provided by the Prepared Food Vendor. If a customer does not select any Single-use Food Service Ware Accessories or Standard Condiments, no Single-use Food Service Ware Accessory or Standard Condiment shall be provided by the Prepared Food Vendor. *Guidance: AB 1276 applies only to third party delivery platforms (like Doordash or Grub Hub) while this model ordinance applies to all ordering platforms, which means it extends also to web-based and phone-based ordering systems where customers order directly from a Prepared Food Vendor (like Square or Menufy). This language is more clear than AB 1276 about ordering platforms needing to provide the Prepared Food Vendor a way to customize its menu and about the platform making it possible for customers to order the specific accessory and condiment items they want.*

- f) Notwithstanding any other requirements of this Section, a Prepared Food Vendor that is (1) located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, or (2) a drive-through food service, may ask a customer if the customer wants a Disposable Food Service Ware Accessory if needed to consume or transport ready-to-eat food, or to prevent it from spilling. *Guidance: This is consistent with AB 1276.*

- g) Nothing in this Chapter shall restrict, or be construed to restrict, the ability of Prepared Food Vendors from providing Disposable plastic straws to individuals who may require and request them due to disability or other medical or physical conditions or circumstances. *Guidance: Straw exemptions are commonplace in many local ordinances.*

- h) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this Section for all activities in the City. *Guidance: This is not included in AB 1276.*

Section 7. Reusable Beverage Cups at City Facilities.

Guidance: This Section has the City establish a reuse system for its facilities and bans the sale or use of Disposable Beverage Cups on City properties, including by concessionaires, lessees, and contractors. This includes the City's purchasing supplies for its own events. Food containers could optionally be added to this Section.

Beginning [specify effective date – 12 months after ordinance adoption suggested]:

- a) Notwithstanding any other provision of this Code, the City shall establish a Reusable Beverage Cup Reuse System and all beverages served in City offices, City-owned buildings, or indoor facilities on City Property shall be served in Returnable Reusable Beverage Cups or a user's personal Reusable Beverage Cup.
- b) No person may distribute (for sale or otherwise) beverages in Disposable Beverage Cups at or on City Property, including a City office, office building, or food concession located indoors or outdoors on City Property.
- c) All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing any person to use indoor City Property, for purposes that contemplate or would allow the sale or distribution of non-packaged beverages (collectively, "use agreements") shall specifically require that the user comply with Subsections (a) and (b) of this Section. This requirement shall also apply to any such use agreement renewed, extended, or materially amended after implementation of this provision.

Section 8. Reusable Beverage Cups at Large Venues.

Guidance: This Section requires the use of Reusable Cups at large venues, initially at a low threshold, with the potential to ramp up over time. Food containers could optionally be added to this Section.

Beginning [specify date – 18 months after ordinance adoption suggested]:

- a) Any person operating a Large Venue that allows the sale of Prepared Food on premises shall establish a Reusable Beverage Cup Reuse System and ensure that all non-packaged beverages, not including drinking water from drinking water fountains and Accessible Water Refill Stations, are available for purchase in Returnable Reusable Beverage Cups.
- b) To meet the requirements of this Section, Large Venue operators may provide, lend, or rent Reusable Beverage Cups to attendees.
- c) Large Venue operators' contracts with Prepared Food Vendors for on-site services shall ensure compliance with this Section.
- d) Use, handling, and sanitation of Reusable Beverage Cups at Large Venues by venue staff and third-party contractors must comply with California Health & Safety Code, Sections 113700 et seq. and all other applicable health regulations.

- e) All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing Large Venues to operate within the jurisdiction shall specifically require that the permittee or contractor comply with this Section. This requirement shall also apply to any such permit or agreement renewed, extended, or materially amended after implementation of this provision.
- f) Any Large Venue operator may petition for a full or partial waiver of the requirements of this Section if the operator can demonstrate that the application of this section would create undue hardship or practical difficulty for the Large Venue that is not generally applicable to other Large Venues in similar circumstances. *Guidance: Include this Section if the City wants to allow waiver requests for this requirement.*

Section 9. Reusable Beverage Cups at Events.

Guidance: This Section requires the use of Returnable Reusable cups at events, initially at a low threshold, with the potential to ramp up over time. Events are often not closed venues and lack fixed infrastructure onsite, so requiring reusables can be more challenging. Food containers could optionally be added to this Section.

Beginning [specify date – 18 months after ordinance adoption suggested]

- a) Event Producers that allow the sale of Prepared Food at an Event must establish a Reuse System and make Returnable Reusable Cups available for the purchase of non-packaged beverages. Event producers must demonstrate that at least twenty-five percent (25%) of all non-packaged beverages served to attendees are in Reusable Beverage Cups. This requirement shall increase to one hundred percent (100%) beginning [select date – 36 months after ordinance adoption suggested]. To meet this requirement, Event Producers may cause Returnable Reusable Beverage Cups to be provided, lent, or rented to Event attendees. *Guidance: The City may choose to amend the ordinance in the future in order to provide incremental goals or to change the required threshold.*
- b) The permit application for each Event must indicate how the requirements of this Section will be met and describe the tracking system that will be used to document the total number of beverages sold or otherwise provided and the number provided, lent, or rented in Reusable Beverage Cups. The Event Producer’s selected method for meeting the requirements of this Section must be included in any contract, agreement or permit for the Event related to or otherwise including beverage service. Event Producers shall report the percentage of beverages sold in Reusable Beverage Cups to the City within 3 months of the Event to the City _____ Department and prior to the return of any deposit collected by the City in connection with the Event.
- c) Use, handling, and sanitation of Reusable Beverage Cups at Events by Persons serving non-packaged beverages must comply with California Health & Safety Code, Sections 113700 et seq. and all other applicable state and local laws, regulations, and guidelines.

- d) Event Producers' contracts with Prepared Food Vendors for on-site services shall ensure compliance with this Section.
- e) All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing Events to operate within the jurisdiction shall specifically require that the Event Producer comply with this Section. This requirement shall also apply to any such permit or agreement renewed, extended, or materially amended after implementation of this provision.
- f) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), any Event Producer may petition for a full or partial waiver of the requirements of this Section as they apply to a particular Event, if the Event Producer can demonstrate 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. *Guidance: Include this Section if the City wants to allow waiver requests for this requirement.*

DISPOSABLE PACKAGED WATER REDUCTION AND REUSE

Section 10 City Purchase, Sale, or Distribution of Disposable Packaged Water Prohibited.

Guidance: This Section prohibits the City from purchasing, selling, or otherwise distributing water in disposable packaging.

- a) No City funds shall be used to purchase Packaged Water.
- b) No person may distribute (for sale or otherwise) Packaged Water on City property or at any event or activity for which the City has issued a permit allowing the activity to be held on or in City property.

Section 11. Accessible Water Bottle Refill Stations.

Guidance: This Section requires the installation and maintenance of refill stations for reusable water bottles. This is critical infrastructure to support the use of reusable cup and water bottles.

Beginning [specify date- 18 months after ordinance adoption suggested]:

- a) All facilities used for Events, facilities on City Property other than office buildings, and Large Venues that have access to drinking water shall install and maintain at least one, or maintain at least one existing, Accessible Water Bottle Refill Station on-site per every 500 daily visitors, located to ensure maximum access by all visitors.
- b) An office building owned by the City or on City Property shall have at least one Accessible Water Bottle Refill Station per 500 occupants authorized under the building's maximum occupancy.

- c) All facilities used for Events, facilities on City Property, and Large Venues shall allow visitors to bring their own Reusable beverage bottle for use at an Accessible Water Bottle Refill Station.
- d) If any existing Water Bottle Refill Station in a facility used for Events, on City Property, or in a Large Venue, is not Accessible, the owner or operator of the facility or Large Venue shall upgrade the water bottle refill station to an Accessible Water Bottle Refill Station by January 1, 2025.
- e) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), any person subject to this section may petition for a full or partial waiver of the requirements of this Section, if the person can demonstrate that the application of this Section would create undue hardship or practical difficulty for the that is not generally applicable to others in similar circumstances. *Guidance: Include this Section if the City wants to allow waiver requests for this requirement.*

COMPLIANT DISPOSABLE FOOD SERVICE WARE

Section 12. Compliant Disposable Food Service Ware for Food Service.

Guidance: This section defines what disposable food service ware items are acceptable for use in the City. This section only applies to Food Service Ware; it does not apply to Food Service Ware Accessories, as certain accessories (e.g., cup lids, condiment packets) are not always available in a readily compostable format and are not currently certified by third-party certification programs.

Beginning [specify date – 18 months after ordinance adoption suggested]:

- a) When Disposable Food Service Ware is authorized for use by this Chapter, Prepared Food Vendors may provide Prepared Food in Disposable Food Service Ware only if that Disposable Food Service Ware is:
 - 1. Free of High Priority Toxic Food Packaging Chemicals as determined by a third-party certification program for Disposable Food Service Ware that requires full disclosure of intentionally added chemicals as a condition of certification. If the City determines that there is no certified version of a particular type of Disposable Food Service Ware, this section does not apply to that type of Disposable Food Service Ware. *Guidance: The City will need to issue a list of certified versions and items for which there is no certified version and update the list periodically or refer to a list published by a third-party certification program. There are currently two certification programs for Disposable Food Service Ware that address the scope of chemicals covered in the definition of High Priority Food Packaging Chemicals – Green Screen (™) Certified and Cradle to Cradle Certified™. At this time, Green Screen (™) Certified has a more robust list of certified Food Service Ware products. The reason for the 18-month phase-in period before this requirement becomes mandatory is to give more manufacturers time to get their products certified. Jurisdictions may choose to*

eliminate the 6-month phase-in period and make it mandatory at the 18 months milestone when the rest of this Section becomes effective.

2. Not made of Polystyrene Foam. *Guidance: Include this Subsection if the City wants to prohibit the use of Polystyrene Foam Food Service Ware by Food Vendors and does not have an existing ordinance doing so.*
3. **OPTION A.** Compostable, provided, however, that non-Compostable foil wrappers that are Recyclable may be used for burritos, wraps, and other items that require foil to contain and form the food item. *Guidance: Select this option to allow Disposable Food Service Ware and Food Service Ware Accessories that are accepted in the City's collection program. It does not allow recyclable food service ware other than foil wrappers.*

OPTION B. Compostable or Recyclable. *Guidance: Select this option to allow disposable food service ware and accessories that are accepted in the City's organics or recycling collection programs.*

- b) Neither the City nor its contractors or lessees shall purchase Disposable Food Service Ware for use in the City that is not compliant with the requirements of this Section.
- c) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), a Prepared Food Vendor may petition for a full or partial waiver of the requirements of this Section if the Prepared Food Vendor can demonstrate that compliance will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.
 1. Notwithstanding the foregoing, once the City has determined that there is a version of a Disposable Food Service Ware that is certified as being Free of High Priority Toxic Food Packaging Chemicals, no waiver may be granted for (1) the use of that Disposable Food Service Ware that contain any High Priority Toxic Food Packaging Chemicals or High Priority Toxic Materials, or (2) use of Polystyrene Foam Food Service Ware.

Section 13. Sale or Distribution of Non-Compliant Food Service Ware Prohibited.

Guidance: This Section applies to retailers selling food service ware, such as supermarkets, restaurant suppliers and big box stores. It prohibits the sale of food service ware that do not comply with the requirements of this ordinance.

Beginning [specify date – 12 months after ordinance adoption suggested]:

- a) Except as specifically authorized by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service) no Person may distribute (for sale or otherwise) within the City any Disposable Food Service Ware that are not compliant with Section 12 of this Chapter.

- b) It shall not be a violation of this Section to provide (for sale or otherwise) Prepared Food in Disposable Food Service Ware otherwise prohibited by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service) if the Prepared Food is packaged outside the City and is sold or otherwise provided to the customer in the same Disposable Food Service Ware in which it originally was packaged.
- c) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), any Person may petition for a full or partial waiver of the requirements of this Section if that Person can demonstrate that compliance will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.
 - 1. Notwithstanding the foregoing, once the City has determined that there is a version of a Disposable Food Service Ware that is certified as being Free of High Priority Toxic Food Packaging Chemicals, no waiver may be granted for (1) the distribution of that Disposable Food Service Ware that contains any High Priority Toxic Food Packaging Chemicals or High Priority Toxic Materials or (2) the distribution of Polystyrene Foam Food Service Ware.

Section 14. Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products.

Guidance: This Section restricts the sale of many types of Polystyrene Foam products and other packaging, especially if they are not wholly encapsulated in a more durable material.

Beginning [specify date – 12 months after ordinance adoption suggested]

- a) Except as specifically authorized by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service) no person shall sell, offer for sale, or otherwise distribute for compensation within the City any of the following items if made in whole or in part from Polystyrene Foam:
 - 1) Packing Materials, including shipping boxes and packing peanuts;
 - 2) Coolers, ice chests, or similar containers;
 - 3) Pool or beach toys made from Polystyrene foam that is not wholly encapsulated and encased within a more durable material; or
 - 4) Dock floats, mooring buoys, anchors 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) Except as specifically authorized by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service), no person shall sell, offer for sale, or otherwise distribute for compensation within the City, Meat and Fish Trays, Produce Trays, and Egg Cartons that are not Compostable or Recyclable either as separate items or as part of the sale of raw meat, fish, poultry, vegetables, fruit, or eggs sold to customers from a refrigerator case or similar retail appliance. *Guidance: Specifies that meat, fish, produce*

trays, and egg cartons must be compostable or recyclable. Modify the language above to indicate whether only compostable packaging is accepted, or if recyclable packaging is also accepted. When considering whether to accept recyclable packaging, consider that the items listed in this Subsection may be more likely to include food residue and introduce contamination to the recycling.

- c) No Person shall sell, offer for sale, or otherwise distribute (for compensation or otherwise) within the City any Packing Materials that are not Compostable or Recyclable.
- d) No Person shall use within the City any Packing Materials that are not Compostable or Recyclable. This includes 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. *Guidance: Void fill, packing peanuts, and other packing materials must be compostable or recyclable if packed in the City. See next Subsection for exceptions.*
- e) For purposes of this Section, distribution and use of Packing Materials shall not include:
 - 1) Receiving within the City shipments from outside the City that include Packing Material;
 - 2) Reusing Packing Materials within the City for shipping, transport, or storage within the same distribution system, where the Packing Materials are not sent to a customer or end user;
 - 3) Donating used Packing Materials within the City to another person, where the donor receives nothing of value in exchange for the donated Packing Materials; or
 - 4) Using Packing Materials donated under Subsection (e)(3) for shipping, transport, or storage, where the person using the Packing Materials receives nothing of value for the donated materials.

ENFORCEMENT

Section 15. Process to Obtain Waivers.

Guidance: Additional information on waivers is included in the Model Ordinance Toolkit.

- a) The City Manager or their designee shall prescribe and adopt rules, regulations, and forms to obtain full or partial waivers from any requirement of this Ordinance that is explicitly subject to waiver. Waivers may be granted based upon documentation provided by the applicant for the waiver and, at the City Manager's discretion, independent verification that may include

site visits and documentation.

- b) To obtain a waiver, the applicant must demonstrate inability to comply due to factors specified in the provision authorizing the waiver.
- c) The City Manager or their designee shall issue a written decision to grant or deny a waiver for up to two years from the date of the decision. The written decision shall be final and is not subject to appeal. *Guidance: The City may choose to include an appeal process.*
- d) During the waiver term, the waiver recipient shall make diligent efforts to become compliant.
- e) In circumstances existing prior to *[specify date on or after adoption of this ordinance]*, where the waiver applicant 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 their designee may grant a waiver for a longer specified term at the end of the initial waiver term, upon application from the waiver recipient for an additional waiver.
- f) Nothing in this Chapter shall be construed to limit the ability of the City Manager to suspend this ordinance in a state of emergency in accordance with applicable laws.

Section 16. Enforcement.

Guidance: The City may wish to adjust this provision to track its existing code enforcement process.

- a) Any Person may provide notice to the City of any observed lack of compliance with the requirements of this Chapter. The City shall provide a publicly available online option to provide such notice.
- b) Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter [] or charged with an infraction as set forth in Chapter [] of the City 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. *Guidance: Note that this Section defers enforcement until one year after a particular requirement takes effect.*
- c) 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 15 of this Chapter (Process to Obtain Waivers).
- d) If, after issuing a written notice of noncompliance, the City finds that the person continues to violate the provisions of this Chapter, the City may impose a fine of not more than \$100 for a first violation; not more than \$200 for a second violation in the same 12-month period; and not more than \$500 for each subsequent violation in the same 12-month period.
- e) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- f) If continued violations occur, the City reserves the right to suspend the vendor's business license.

- g) The remedies and penalties provided in this Section are cumulative and not exclusive.

IMPLEMENTATION

Section 17. Severability.

If any provision of this Chapter is declared invalid or unconstitutional as applied by a court of competent jurisdiction, such decision shall not affect the remaining portions of the Chapter, which can be given effect without the invalid provisions or application. It is the intent of the City Council that such invalid provision be severed from the remaining provisions of the ordinance.

Section 18. Chapter Supersedes Existing Laws and Regulations.

- a) The provisions of this Chapter shall supersede any conflicting law or regulations.
- b) This Chapter 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. 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.

Section 19. California Environmental Quality Act.

This Chapter is exempt from the California Environmental Quality Act ("CEQA") pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(2) because it is exempt pursuant to a categorical exemption and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2. This Chapter is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources. In addition, this Chapter is subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the provisions of this Chapter would not have the potential for causing a significant effect on the environment. The foregoing determination is made by the City Council in its independent judgment.