



Sophie Hahn
Councilmember District 5

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: December 11, 2018

Item Number: 27

Item Description: **Single Use Disposable Foodware and Litter Reduction Ordinance**

Submitted by: **Councilmember Sophie Hahn**

Incorporates further clarifying changes from the City Manager, Deputy City Manager, Public Works Department, the Ecology Center and other community partners.

Adds referral to the City Manager, requesting a report prior to January 2022 on implementation of the Single Use Disposable Foodware and Litter Reduction Ordinance and other referred programs.



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ITEM 27

Supplemental 2

ACTION CALENDAR

December 11, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmember Sophie Hahn and Mayor Jesse Arreguín
Subject: Single Use Disposable Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
 - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”).
 - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing Reusable Foodware requirements for eating on the premises.
 - c. Create a Reusable Takeout Foodware program for launch three years after the effective date of the Single Use Disposable Foodware and Litter Reduction Ordinance, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste.
 - d. Prior to launch of the Reusable Takeout Foodware program, draft for approval amendments to the Single Use Disposable Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
 - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.
 - f. Prior to January 1, 2022 report to the City Council on progress towards full implementation of and compliance with the Single Use Disposable Foodware and Litter Reduction Ordinance and these referrals

3. Refer to the City Manager to determine funding and staffing needs and sources of funds to implement each program/phase. Consider and suggest implementation alternatives to achieve similar results at lower cost to the City, if any. Submit recommended alternatives to the Zero Waste Commission and City Council for consideration, and funding allocations or requests to the budget process.

FINANCIAL IMPLICATIONS

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management. Even for "recyclable" items that are properly placed in a recycling bin, these items are costly to sort and process and have limited markets resulting in additional costs to the City. Many of these items result in contamination to the composting program which increase the cost of composting.

Staff time will be required to launch programs related to the Single Use Foodware and Litter Reduction Ordinance. Some programs and services may be provided by community partners at relatively low cost. Once launched, staff time for administration and enforcement of the Ordinance will be limited.

Costs, sources of funding and community partnerships to be determined by the City Manager.

BACKGROUND

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. The use of disposable foodware has grown exponentially over the past few decades. Because the environmental costs of these products is largely hidden to the business operator and consumer, little attention is paid to the quantity of packaging consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging. SUDs often become litter therefore minimizing their use will assist the City with achieving stormwater program requirements and could reduce costs for maintenance of full trash capture devices that the City has installed in stormdrains.

Environmental Impacts of Single-Use Disposables

The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California.¹
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter.²
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish.³
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year.

Most SUDs are used for just a few minutes before becoming waste, while most are made to last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).⁴

Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater⁵, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.⁶ Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.⁷

Strategies to Regulate SUDs

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have

¹ <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

² See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

³ Ellen MacArthur Foundation (2016)

⁴ D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

⁵ Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646-1654.

⁶ Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

⁷ In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time⁸. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002, equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%⁹. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.¹⁰ Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.¹¹

There is growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.¹² The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.¹³ Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.¹⁴

Reducing SUDs in the City of Berkeley

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation’s first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. The city reached a height of 78% waste diversion by AB 939 standards, and there has been a 50% reduction in solid waste disposal between 2000 to 2013¹⁵. Despite these achievements, Berkeley has not addressed the significant increase in takeout food

⁸ “Successful Results from Bag Ordinance”, 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

⁹ Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

¹⁰ <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

¹¹ T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

¹² <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

¹³ European Commission, EU Plastics Strategy-http://ec.europa.eu/environment/waste/plastic_waste.htm

¹⁴ “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

¹⁵ Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf

packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as “biodegradable” or “made from plants” which misleads consumers to believe it is compostable) contaminates compost, adding costs and reducing the quality of compost¹⁶. With China’s recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City’s collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of single-use food and beverage packaging.

Thanks to the leadership of Berkeley’s Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, the City Council unanimously referred a proposed Single Use Disposable Foodware and Litter Reduction ordinance to the Zero Waste Commission on April 24, 2018.

The Zero Waste Commission was tasked with review of the proposed ordinance and the conduct of community meetings to gather feedback on the proposed ordinance, and make recommendations. Since that time, the Zero Waste Commission Foodware Subcommittee conducted 4 community meetings between June and September of 2018, and collected comments from over 60 restaurateurs, environmental advocates, members of the disability community, and other community members. Meetings were held on different days and times of the day, at locations throughout Berkeley, and were noticed to the restaurant and food service community with the help of the City’s Economic Development staff. The Commission analyzed comments received in writing and through public testimony, and on September 24, 2018 unanimously referred their findings to the City Council (Attachment 2).

In addition, Councilmember Hahn met on-site with the owners of three restaurants that expressed concerns about implementation of the proposed ordinance, reviewing their current practices and challenges. All three have already implemented important measures to reduce the use of harmful Single Use Disposables, and shared important insights.

¹⁶ Clean Water Action, *What’s in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

Ordinance Elements

The attached ordinance (Attachment 1) incorporates many of the Zero Waste Commission's recommendations and makes a number of changes to accommodate concerns and questions that were discussed as part of the Commission's public process. Changes include:

- Phasing-in elements of the ordinance, to allow Prepared Food Vendors time to adjust practices.
- Opportunities for limited exemptions, based on demonstrated hardship or extraordinary circumstances.
- Establishment of mini-grant and technical assistance programs, to help Prepared Food Vendors transition to Reusable and Compostable Foodware.
- Elimination of charges for all Single Use Disposable Foodware, except for cups, pending establishment of a Reusable Takeout Foodware program.
- Addition of standards for Prepared Food Vendors to reject customer-supplied cups that appear inappropriate or unsanitary.
- Addition of a recommendation that Prepared Food Vendors customarily offering straws keep a supply of compostable bioplastic straws for use by individuals specifically requesting "plastic" straws.
- Enforcement with notice and opportunities to cure, either by adopting practices or obtaining a waiver, if warranted, prior to imposition of fines or other penalties.

City Manager Referral Components

To complement the roll out of the Single Use Disposable Foodware and Litter Reduction Ordinance, the Zero Waste Commission recommends a number of City-sponsored programs to support implementation of the Ordinance's requirements, including:

- A mini-grant program to help cover one-time costs associated with the transition to Reusable Foodware for on-site dining;
- Technical assistance to support implementation of ordinance requirements.

Both programs must be operative by June 2019, six months before the key elements of the ordinance take effect.

It is incumbent upon the City to further expand composting resources – potentially including compost receptacles - for residents and customers. Many restaurants do provide composting receptacles in-store currently, but many residential countertop kitchen pails are too small to accommodate a significant increase in compostable foodware which is expected with widespread adoption of the Single Use Foodware and

Litter Reduction Ordinance. The expansion of composting collection efforts also supports the goals and requirements of AB1826 and SB1383 to divert organics from the landfill. .

ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

CONTACT PERSON

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Mayor Jesse Arreguín, (510) 981-7100

Attachments

1. Single Use Foodware and Litter Reduction Ordinance, amended to incorporate Zero Waste Commission recommendations
2. Zero Waste Commission recommendations to City Council, September 24, 2018
3. Referral to the Zero Waste Commission: Berkeley Single Use Foodware and Litter Reduction Ordinance, April 24, 2018

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION

Sections:

- 11.64.010 Findings and Purpose
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Chapter supersedes existing laws and regulations

11.64.010 Findings and Purpose.

The Council of the City of Berkeley finds and declares as follows:

- A. 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.

- B. 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.
- C. 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.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. In the Bay Area, 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.
- E. 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.
- F. The City of Berkeley 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.
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

11.64.020 Definitions.

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, or raw uncooked meat products.
- B. "Takeout Food" means Prepared Food 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.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "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.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks and alcoholic beverages.
- F. "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.
- G. "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.
- H. "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.

11.64.030 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 Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, 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 11.64.070, 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.

11.64.040 Reusable Customer Cups

- A. Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, customers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) 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 for a beverage to be consumed off the premises, with any charge required pursuant to Section 11.64.050.D.

11.64.050 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 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards in 11.64.070.
- 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 11.64.070.
- 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 and used for the purposes set forth in Section 11.64.100.C.
 2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (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 and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.
 3. Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.
- E. Notwithstanding the requirements at Section 11.64.050, subsections A-C, a Prepared Food Vendor may request a waiver or waivers pursuant to Section 11.64.090 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 11.64.070 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 of Berkeley recyclable collection program.
 3. The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.
 4. Records of attempts to obtain a compliant item shall include:
 - a. Emails, letters or other correspondence with two or more 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 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.

11.64.060 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, 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 11.64.070.
- B. Notwithstanding the requirements at Section 11.64.060.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 California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.

11.64.070 Disposable Foodware Standards

- A. Disposable Foodware must be accepted by City of Berkeley 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 of Berkeley 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 of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

11.64.080 Separate Disposable Foodware Waste Receptacles

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, 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.

11.64.090 Waivers

- 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 agents, 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 agents 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 period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, 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.

11.64.100 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. All charges collected by the Prepared Food Vendor pursuant to Section 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
 - 1. Costs associated with complying with the requirements of this Chapter.
 - 2. Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
 - 3. Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.

11.64.110 Duties responsibilities and authority of the City of BerkeleyThe City Manager 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.

11.64.120 City of Berkeley: purchases prohibited

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

11.64.130 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 Berkeley 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 11.64.090.
- 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.

11.64.140 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.

11.64.150 Chapter supersedes existing laws and regulations

The provisions of this chapter shall supersede any conflicting law or regulations.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



SOPHIE HAHN

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ACTION CALENDAR

December 11, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmember Sophie Hahn and Mayor Jesse Arreguín
Subject: Single Use Disposable Foodware and Litter Reduction Ordinance

RECOMMENDATION

1. Adopt a first reading of the Single Use Foodware and Litter Reduction Ordinance.
2. Refer to the City Manager to:
 - a. Establish a mini-grant program administered and funded either directly by the City or by community partners to help Prepared Food Vendors with one-time costs associated with conversion to Reusable Foodware for eating on the premises (“eating-in”), ~~to be launched by January 1, 2020 (six months before the date Reusable Foodware requirements become effective).~~
 - b. Establish a program administered and funded either directly by the City or by community partners to provide technical assistance to Prepared Food Vendors implementing Reusable Foodware requirements for eating on the premises. the Single Use Foodware Ordinance, on a free or sliding-scale fee basis, to be launched by July 1, 2019.
 - c. Create a Reusable Takeout Foodware program for launch three years after the effective date of the Single Use Disposable Foodware and Litter Reduction Ordinance July 1, 2021, in collaboration with community partners such as the Ecology Center, Rethink Disposables and StopWaste.
 - d. Prior to launch of the Reusable Takeout Foodware program, Draft for approval amendments to the Single Use Disposable Foodware and Litter Reduction Ordinance to implement the Reusable Takeout Foodware program as an alternative to Compostable Takeout Foodware, and impose a charge, similar to or the same as the Disposable Cup charge, on other Disposable Foodware containers.
 - e. Create a program to expand and support composting, to ensure Single Use Disposable Foodware is actually composted.

e.f. Prior to January 1, 2022 report to the City Council on progress towards full implementation of and compliance with the Single Use Disposable Foodware and Litter Reduction Ordinance and these referrals

3. Refer to the City Manager to determine funding and staffing needs and sources of funds to implement ~~for~~ each program/phase. Consider and suggest implementation alternatives to achieve similar results at lower cost to the City, if any. and submit recommended alternatives to the Zero Waste Commission and City Council for consideration, and funding allocations or requests to the budget process. ~~funding allocations or requests to the budget process.~~

FINANCIAL IMPLICATIONS

Reducing use and disposal of products that make up the majority of Berkeley's street and storm-drain litter has the potential to significantly lower City expenses including costs related to collection of debris from over 400 city trash receptacles, from clearing of clogged stormwater intakes city-wide, and from daily street sweeping and litter management. Even for "recyclable" items that are properly placed in a recycling bin, these items are costly to sort and process and have limited markets resulting in additional costs to the City. Many of these items result in contamination to the composting program which increase the cost of composting.

Staff time will be required to launch programs related to the Single Use Foodware and Litter Reduction Ordinance. Some programs and services may be provided by community partners at relatively low cost. Once launched, staff time for administration and enforcement of the Ordinance will be limited.

Costs, sources of funding and community partnerships to be determined by the City Manager.

BACKGROUND

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. The use of disposable foodware has grown exponentially over the past few decades. Because the environmental costs of these products is largely hidden to the business operator and consumer, little attention is paid to the quantity of packaging consumed and quickly thrown away. Reducing the use of SUDs in the City of Berkeley is a key strategy to achieve the City's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging. SUDs often become litter therefore minimizing their use will

assist the City with achieving stormwater program requirements and could reduce costs for maintenance of full trash capture devices that the City has installed in stormdrains.

Environmental Impacts of Single-Use Disposables

The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources. It is a major component of litter on streets and in waterways, and of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up approximately 25% of all waste produced in California.¹
- Bay Area litter studies have found that food and beverage packaging comprises the majority of street litter.²
- Without dramatic systems change, by 2050, there will be more plastic in the ocean than fish.³
- Based on Berkeley's population of approximately 120,000 people, it is estimated that almost 40 million single use cups are used in the City of Berkeley every year.

Most SUDs are used for just a few minutes before becoming waste, while most are made to last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Plastics in waterways and oceans break down into smaller pieces (but do not biodegrade) and are present in most of the world's oceans, at all levels (surface, water column, and bottom).⁴

Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater⁵, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.⁶ Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.⁷

¹ <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

² See Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011) http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf ; California Coastal Cleanup Results 1989-2014 showing Food and Beverage packaging items are 7 out of the top 10 items collected and account for 34% of the total trash - <https://www.coastal.ca.gov/publiced/ccd/history.html#top10> ; BanList 2.0 shows food and beverage packaging items are 74% of top 20 littered items among 6 different beach cleanup datasets- <https://upstreampolicy.org/ban-list-20>

³ Ellen MacArthur Foundation (2016)

⁴ D. Barnes et al, 2009, *Accumulation and fragmentation of plastic debris in global environments*, Phil. Trans. R. Soc. B., 364-1985-98.

⁵ Rochman, C.M., et al., 2013, Long-Term Field Measurement of Sorption of Organic Contaminants to Five Types of Plastic Pellets: Implications for Plastic Marine Debris. *Environmental Science and Technology*. 47, 1646-1654.

⁶ Rochman C Met al, 2015a Anthropogenic debris in seafood: plastic debris and fibers from textiles in fish and bivalves sold for human consumption *Sci. Rep.* 5 14340.

⁷ In 2015, the FDA barred from use three such fluorinated chemicals from food contact materials due to safety risks associated with cancer, toxicity, and other health effects; other fluorinated chemicals have similar chemical structures and pose similar risk.

Strategies to Regulate SUDs

Alameda County implemented its reusable bag ordinance in January 2013, and has seen dramatic results. Countywide, bag purchases by affected retail stores have declined by 85 percent. The number of shoppers bringing a reusable bag to affected stores, or not using a bag at all, has more than doubled during this time⁸. Globally, a number of strategies have been implemented to reduce the use of SUDs. Charges for single-use plastic bags have proven to decrease plastic bag consumption. When Ireland instituted a “Plas-Tax” in 2002, equivalent to about 20 cents per bag, plastic bag use declined by 90% and litter from plastic bags declined by 40%⁹. Similar charges have been implemented in Taiwan, Washington D.C., and the United Kingdom, resulting in decreases in plastic bag use of up to 80%. A 2016 plastic bag ban in California reduced the number of plastic bags found on beaches by half.¹⁰ Studies have also shown that customers in areas with taxes on single use bags were more likely to use reusable bags.¹¹

There is growing support for reducing the use of other single use disposables. Ireland is considering banning single use coffee cups, with 50% of the population surveyed in support.¹² The European Union announced in 2018 that it is implementing a policy for all plastic packaging to be recyclable or reusable by 2030.¹³ Taiwan will be imposing charges for straws, plastic shopping bags, disposable utensils, and beverage cups by 2025, and will impose a complete ban on single-use plastic items, including straws, cups, and shopping bags, by 2030.¹⁴

Reducing SUDs in the City of Berkeley

The City of Berkeley has a long history of leadership in sustainability and environmental protections including the adoption of an ambitious Climate Action Plan in 2009, with a goal of achieving Zero Waste by 2020; the nation’s first curbside recycling program and styrofoam foodware ban; and one of the first commercial organics collection programs. The city reached a height of 78% waste diversion by AB 939 standards, and there has

⁸ “Successful Results from Bag Ordinance”, 2014, Alameda County Waste Management authority, <http://reusablebagsac.org/news/successful-results-bag-ordinance>

⁹ Mauro Anastasio and James Nix, Plastic Bag Levy in Ireland, Institute European Environmental Policy, 2016. <https://ieep.eu/uploads/articles/attachments/7f91cb97-8cb7-49c39cf0d34062a9192e/IE%20Plastic%20Bag%20Levy%20conference%20draft.pdf?v=63673818840>

¹⁰ <http://www.latimes.com/opinion/editorials/la-ed-plastic-bag-ban-anniversary-20171118-story.html>

¹¹ T. A. Homonoff, *Can Small Incentives Have Large Effects? The Impact of Taxes versus Bonuses on Disposable Bag Use* National Tax Association Proceedings, Princeton University- <http://ntanet.org/wp-content/uploads/proceedings/2012/008-homonoff-can-small-incentives-2012-nta-proceedings.pdf>

¹² <http://www.thejournal.ie/coffee-cups-poll-3642333-Oct2017/>

¹³ European Commission, EU Plastics Strategy-http://ec.europa.eu/environment/waste/plastic_waste.htm

¹⁴ “Taiwan to ban disposable plastic items by 2030,” February 22, 2108- <https://phys.org/news/2018-02-taiwan-disposable-plastic-items.html>

been a 50% reduction in solid waste disposal between 2000 to 2013¹⁵. Despite these achievements, Berkeley has not addressed the significant increase in takeout food packaging littering city streets, filling storm drains, requiring management in the waste stream, polluting our waterways, Bay and ocean, and threatening both human and animal health.

In addition, SUDs are particularly costly and challenging to divert from landfill. Non-recyclable food and beverage packaging is costly to remove from the waste stream and reduces the quality and value of recyclables, while non-compostable food packaging (some of which is advertised as “biodegradable” or “made from plants” which misleads consumers to believe it is compostable) contaminates compost, adding costs and reducing the quality of compost¹⁶. With China’s recent rejection of mixed recycled plastic imports, the value of recyclable plastics has dropped sharply and the final destination for these plastic SUDs is uncertain. This adds significant costs to the City’s collection, sorting, and processing of compostables and recyclables. To reach its Zero Waste goals, the City must reduce use of single-use food and beverage packaging.

Thanks to the leadership of Berkeley’s Ecology Center, working closely with UpStream, Clean Water Action, the Clean Water Fund, Story of Stuff, Surfrider Foundation, GAIA (Global Alliance for Incinerator Alternatives), the Green Science Policy Institute, Excellent Packaging, and numerous active residents and volunteers, the City Council unanimously referred a proposed Single Use Disposable Foodware and Litter Reduction ordinance to the Zero Waste Commission on April 24, 2018.

The Zero Waste Commission was tasked with review of the proposed ordinance and the conduct of community meetings to gather feedback on the proposed ordinance, and make recommendations. Since that time, the Zero Waste Commission Foodware Subcommittee conducted 4 community meetings between June and September of 2018, and collected comments from over 60 restaurateurs, environmental advocates, members of the disability community, and other community members. Meetings were held on different days and times of the day, at locations throughout Berkeley, and were noticed to the restaurant and food service community with the help of the City’s Economic Development staff. The Commission analyzed comments received in writing and through public testimony, and on September 24, 2018 unanimously referred their findings to the City Council (Attachment 2).

¹⁵ Berkeley Climate Action Plan: Tracking our Progress Waste Reduction & Recycling – Total Landfilled, https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/PDF%20total%20landfilled%20final.pdf

¹⁶ Clean Water Action, *What’s in the Package?* 2016 <https://www.cleanwateraction.org/features/what%E2%80%99s-package>

In addition, Councilmember Hahn met on-site with the owners of three restaurants that expressed concerns about implementation of the proposed ordinance, reviewing their current practices and challenges. All three have already implemented important measures to reduce the use of harmful Single Use Disposables, and shared important insights.

Ordinance Elements

The attached ordinance (Attachment 1) incorporates many of the Zero Waste Commission's recommendations and makes a number of changes to accommodate concerns and questions that were discussed as part of the Commission's public process. Changes include:

- Phasing-in elements of the ordinance, to allow Prepared Food Vendors time to adjust practices.
- Opportunities for limited exemptions, based on demonstrated hardship or extraordinary circumstances.
- Establishment of mini-grant and technical assistance programs, to help Prepared Food Vendors transition to Reusable and Compostable Foodware.
- Elimination of charges for all Single Use Disposable Foodware, except for cups, pending establishment of a Reusable Takeout Foodware program.
- Addition of standards for Prepared Food Vendors to reject customer-supplied cups that appear inappropriate or unsanitary.
- Addition of a recommendation that Prepared Food Vendors customarily offering straws keep a supply of compostable bioplastic straws for use by individuals specifically requesting "plastic" straws.
- Enforcement with notice and opportunities to cure, either by adopting practices or obtaining a waiver, if warranted, prior to imposition of fines or other penalties.

City Manager Referral Components

To complement the roll out of the Single Use Disposable Foodware and Litter Reduction Ordinance, the Zero Waste Commission recommends a number of City-sponsored programs to support implementation of the Ordinance's requirements, including:

- A mini-grant program to help cover one-time costs associated with the transition to Reusable Foodware for on-site dining;
- Technical assistance to support implementation of ordinance requirements.

Both programs must be operative by June 2019, six months before the key elements of the ordinance take effect.

It is incumbent upon the City to further expand composting resources – potentially including compost receptacles - for residents and customers. Many restaurants do provide composting receptacles in-store currently, but many residential countertop kitchen pails are too small to accommodate a significant increase in compostable foodware which is expected with widespread adoption of the Single Use Foodware and Litter Reduction Ordinance. The expansion of composting collection efforts also supports the goals and requirements of AB1826 and SB1383 to divert organics from the landfill. .

ENVIRONMENTAL SUSTAINABILITY

The production, consumption and disposal of single use food and beverage packaging is a major contributor to litter in our streets, plastic in landfills, pollution in waterways and oceans, GHG emissions, and harm to wildlife. This environmental ordinance represent a huge step forward in reducing the use of disposable foodware in Berkeley, fulfilling Berkeley's Zero Waste and Climate Action Goals, reducing greenhouse gas emissions 80% by 2050, and meeting State trash load level mandates.

CONTACT PERSON

Councilmember Sophie Hahn, District 5, (510) 981-7150

Mayor Jesse Arreguín, (510) 981-7100

Attachments

1. Single Use Foodware and Litter Reduction Ordinance, amended to incorporate Zero Waste Commission recommendations
2. Zero Waste Commission recommendations to City Council, September 24, 2018
3. Referral to the Zero Waste Commission: Berkeley Single Use Foodware and Litter Reduction Ordinance, April 24, 2018

ORDINANCE NO. -N.S.

ADDING CHAPTER 11.64 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A
SINGLE USE FOODWARE AND LITTER REDUCTION ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That a new Chapter 11.64 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 11.64

SINGLE USE FOODWARE AND LITTER REDUCTION ~~ORDINANCE~~

Sections:

- 11.64.010 Findings and Purposes
- 11.64.020 Definitions
- 11.64.030 Accessory disposable foodware items
- 11.64.040 Reusable customer cups
- 11.64.050 Compostable disposable foodware
- 11.64.060 Reusable foodware for dining on the premises
- 11.64.070 Disposable foodware standards
- 11.64.080 Separate disposable foodware waste receptacles
- 11.64.090 Waivers
- 11.64.100 Regulations applicable to all prepared food vendors
- 11.64.110 Duties responsibilities and authority of the City of Berkeley
- 11.64.120 City of Berkeley: purchases prohibited
- 11.64.130 Liability and enforcement
- 11.64.140 Severability
- 11.64.150 Ordinance Chapter supersedes existing laws and regulations

11.64.010 Findings and Purposes.

The eCouncil of the City of Berkeley finds and declares as follows:

- A. 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.

- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources, ~~and~~ ~~p~~Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.
- C. 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.
- D. Food and beverage SUDs make up approximately 25% of all waste produced in California. ~~In the Bay Area, food and beverage packaging comprises the majority of street litter, and is a significant contributor to the total amount of waste entering the~~ ~~City's~~ waste stream.
- E. 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.~~
- F. The City of Berkeley 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.~~
- G. This Chapter is consistent with the City of Berkeley's 2009 Climate Action Plan, the County of Alameda Integrated Waste Management Plan, ~~as amended,~~ ~~in~~ ~~2017,~~ and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

11.64.020 Definitions.

- A. "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, ~~or~~ raw uncooked meat products.
- B. "Takeout Food" means Prepared Food 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.

- C. "Prepared Food Vendor" means any establishment located within the City of Berkeley, including a Bakery, Cafeteria, Drive In, Food Products Store, Food Service Establishment (Carry Out, Quick Service, Full Service), Drugstore or Theater, as defined in BMC 23F.04, Mobile Food Facility, Temporary Food Facility (CA Health and Safety Code Sections 113831 and 113930 and as amended), bar and other similar establishment, selling Prepared Food to be consumed on and/or off its premises.
- D. "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.
- E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, and alcoholic beverages ~~and other drinks~~.
- F. "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.
- G. "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.
- H. "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.

11.64.030 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 Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include tops, 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 [sectionSection](#) 11.64.070, 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.

11.64.040 Reusable Customer Cups

- A. Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, Ccustomers may provide their own Reusable Foodware cups for beverage service in accordance with California State Health Code 114075(e) 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 for a beverage to be consumed off the premises, with any charge required pursuant to [sectionSection](#) 11.64.050.D.

11.64.050 Compostable Disposable Foodware

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards [at-in sectionSection](#) 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards [at-in](#) 11.64.070.
- 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 [at-in](#) 11.64.070.
- D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.

~~a.1.~~ Income from the Disposable Cup charge shall be retained by the Prepared Food Vendor and used for the purposes set forth in Section 11.64.100.C for use in its discretion.

~~b.2.~~ All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (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 and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the Disposable Cup charge.

~~c.3.~~ Charges for Disposable Cups shall be identified separately on menus, ordering platforms and menu boards and on any receipt provided to the customer. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.

E. Notwithstanding the requirements at ~~section~~Sections 11.64.050, ~~subsections (A)-(C)~~, a Prepared Food Vendor may request a waiver or waivers pursuant to ~~section~~Section 11.64.090 for specific Disposable Foodware items. To obtain a waiver for a Disposable Foodware item, the Prepared Food Vendor must demonstrate that:

~~a.1.~~ No Disposable Foodware item exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards ~~at in s~~Section 11.64.070 or, if such an item exists, that costs of using such item would cause undue financial hardship, and;

~~b.2.~~ The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City of Berkeley recyclable collection program.

~~c.3.~~ The Prepared Food Vendor must provide documentation of efforts to obtain a substantially similar compliant item at a non-prohibitive price.

~~d.4.~~ Records of attempts to obtain a compliant item shall include:

~~i.a.~~ Emails, letters or other correspondence with two or more vendors that furnish Compostable Disposable Foodware, seeking the compliant item.

~~ii.b.~~ Responses from such Compostable Disposable Foodware vendors including, where applicable, specifications and pricing for such item.

~~iii-c.~~ _____ Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and

~~iv-d.~~ _____ Any other records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

~~e-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.

11.64.060 Reusable Foodware for Dining on the Premises (i.e. “Eating-in”)

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, 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~~Section 11.64.070.
- B. Notwithstanding the requirements at ~~section~~Section 11.64.060~~.(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 California Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints and/or undue financial hardship.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.

~~D. Zoning permits and Business Licenses for Prepared Food Vendors applied for, renewed and/or deemed complete on or after January 1, 2019 shall only be granted to Prepared Food Vendors that demonstrate compliance with section 11.64.060.(A). Installation and/or maintenance of appropriate dishwashing capacity in conformance with section 11.64.060.(A) shall be included as a specific condition of approval for such permits and licenses.~~

11.64.070 Disposable Foodware Standards

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

11.64.080 Separate Disposable Foodware Waste Receptacles

All Prepared Food Vendors, except Full Service Restaurants as defined in Chapter 23F.04 of the Berkeley Municipal Code, must provide at least one set of three easily accessed receptacles s each for discarded items to be composted, -or 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:
 - a.1. Blue for recyclables
 - b.2. Green for compostables
 - c.3. Black or gray for items to be landfilled or otherwise wasted
- C. Prepared Food Vendors that share premises may share receptacles.

11.64.090 Waivers

- 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 agents, 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 agents 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 period of up to two (2) years. During the waiver period, the Prepared Food Vendor shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close of a granted waiver period, 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.

11.64.100 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. All charges collected by the Prepared Food Vendor pursuant to ~~section~~[Section](#) 11.64.050 of this Chapter and retained by the Prepared Food Vendor may be used only for the following purposes:
 - ~~a.1.~~ [1.](#) Costs associated with complying with the requirements of this Chapter.
 - ~~b.2.~~ [2.](#) Actual costs of labor, equipment and materials for washing Reusable Foodware and providing customers with Reusable Foodware; costs of providing customers with compliant compostable Disposable Foodware; costs for reducing litter; and other costs associated with reducing the use of Disposable Foodware and litter.
 - ~~c.3.~~ [3.](#) Costs associated with a store's educational materials or educational campaign for reducing and/or encouraging the reduction of Disposable Foodware and litter.
 - ~~d.~~ [Costs associated with supplying customers with Reusable Foodware for Takeout Food that can be returned to the business for washing or as part of a City-wide system of Reusable Foodware for Takeout Food.](#)

11.64.110 Duties responsibilities and authority of the City of BerkeleyCity Manager's Powers

The City Manager 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.

~~A. In June of 2021 the City shall report to the City Council on progress towards full implementation of and compliance with this ordinance.~~

11.64.120 City of Berkeley: purchases prohibited

The City of Berkeley shall not purchase any Disposable Foodware that does not comply with the Disposable Foodware Standards at-in Section 11.64.070, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

11.64.130 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 Berkeley 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 11.64.090.
- 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.

11.64.140 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.~~If any part or provision of this chapter or the~~

~~application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable.~~

11.64.150 Ordinance Chapter supersedes existing laws and regulations

The provisions of this chapter shall supersede any conflicting law or regulation s.
~~restricting the use of polystyrene foam.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.