

ORDINANCE NO. 7,639-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: process to obtain.
- 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 for safety reasons Disposable Cups for delivery by a Prepared Food Vendor or a Takeout Food Delivery Service may include lids, spill plugs and sleeves without request.

B. Prepared Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Accessory Disposable Foodware Items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.

C. Prepared Food Vendors that customarily offer straws are encouraged to maintain a small supply of plastic-type straws which meet the Disposable Foodware Standards set forth in Section 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 that conforms to the Disposable Foodware Standards in 11.64.070 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.

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 any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms and/or menu boards. Customers placing orders by telephone shall be informed verbally of Disposable Cup charges.

E. Notwithstanding the requirements at Section 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 good faith efforts to obtain a substantially similar compliant item at a non-prohibitive price.

4. Records of attempts to obtain a compliant item may include:

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

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

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

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

5. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.

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, sleeves and bags; foil wrappers; paper napkins; straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in Section 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 State 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, undue financial hardship and/or other extraordinary, insurmountable circumstances.

C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 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 and other Prepared Food Vendors that provide full bussing service and do not customarily provide waste receptacles for customer use, must provide at least one set of three easily accessed receptacles for discarded items to be composted, recycled, and, if needed, to be landfilled or otherwise wasted.

A. To the extent possible given space constraints, all three receptacles should be placed together in the same location.

B. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:

1. Blue for recyclables
2. Green for compostables
3. Black or gray for items to be landfilled or otherwise wasted

C. Prepared Food Vendors that share premises may share receptacles.

11.64.090 Waivers: process to obtain.

A. The City Manager shall prescribe and adopt rules, regulations and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.

B. Waivers shall be granted by the City Manager or his or her designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.

C. The City Manager or his or her designees shall act on a waiver application no later than 180 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.

D. Waivers may be granted for a specified term of up to two (2) years. During the waiver term, the Prepared Food Vendor shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Prepared Food Vendor demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Prepared Food Vendor's responsibility to apply for any subsequent waivers in a timely manner.

E. Notwithstanding the two (2) year maximum term for waivers set forth in Section 11.64.090 (D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Prepared Food Vendor demonstrates diligent efforts to comply but, due to insurmountable space or economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or his or her designee may grant a waiver for a longer specified term.

F. All waivers shall expire automatically in the event of a significant remodel, renovation or other alteration of the premises with a construction valuation that exceeds \$60,000 or if the Prepared Food Vendor ceases operations at the location for which the waiver has been granted.

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.

11.64.110 Duties responsibilities and authority of the City of Berkeley.

The City Manager or his or her designee shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Prepared Food Vendor's premises to verify compliance.

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 the Maudelle Shirek Building, 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.

At a regular meeting of the Council of the City of Berkeley held on January 22, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.