

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
AMENDING CITY CODE TO CHANGE THE NAME OF CHAPTER 9.15, REPEAL  
SECTION 9.15.110, ADOPT NEW SECTION 9.15.090, AND AMEND SECTIONS  
9.15.100, 9.15.110 AND 9.15.120 TO REGULATE THE USE OF SINGLE-USE FOOD  
SERVICE WARE BY FOOD PROVIDERS AND REGULATE THE SALE OF SINGLE-  
USE FOOD SERVICE WARE AND EXPANDED POLYSTYRENE FOAM PACKING  
MATERIALS**

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1. The City Council of the City of Cupertino finds that:

WHEREAS, on February 5, 2014, the City of Cupertino adopted an ordinance to prohibit food vendors from providing prepared food using food packaging containing polystyrene foam, currently codified as Chapter 9.15 of the City Code; and

WHEREAS, this ordinance continues to prohibit the sale and use of polystyrene foam food service ware and also further regulates nonreusable food service ware and food service ware accessories in Cupertino; and

WHEREAS, the State recently adopted Assembly Bill 1200, which prohibits the sale or distribution of food packaging made primarily from paper, paperboard, or other natural fiber that contains per- and polyfluoroalkyl substances (PFAS) in California beginning January 1, 2023; and

WHEREAS, Assembly Bill 1200 does not include a verification mechanism to assist food providers in identifying whether the food packaging contains PFAS; and

WHEREAS, this ordinance requires that food service ware used by a food provider in Cupertino be certified as PFAS-free by an independent third-party certifying organization to assist Cupertino food providers in identifying PFAS-free food service ware; and

WHEREAS, the State also recently adopted Assembly Bill 1276, which prohibits the distribution of single-use food service ware accessories and standard condiments packaged for single use by food providers except upon request by the consumer; and

WHEREAS, a prohibition of plastics for specified nonreusable food service ware accessories furthers the City's goals and is more restrictive than the recently enacted State law; and

WHEREAS, this ordinance is consistent with the City of Cupertino's Zero Waste Policy and Climate Action Plan that seek to reduce solid waste at its source and reduce nonreusable food service ware and packaging; and

WHEREAS, the City Council of the City of Cupertino held a duly noticed public hearing on [date], and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Adoption.**

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

**SECTION 2: Severability and Continuity.**

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

**SECTION 3: California Environmental Quality Act.**

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty

to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action to regulate the use of single-use foodware by food providers would have no or only a de minimis effect on the environment because reducing disposable plastic foodware items such as straws, utensils, and stirrer sticks and having compostable alternatives offered only upon request and other provisions of the ordinance would not have the potential for causing a significant effect on the environment. The foregoing determination is made by the City Council in its independent judgment.

**SECTION 4: Effective Date.**

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

**SECTION 5: Publication.**

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

**INTRODUCED** at a regular meeting of the Cupertino City Council on [date] and **ENACTED** at a regular meeting of the Cupertino City Council on [date] by the following vote:

**Members of the City Council**

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:	
_____	_____

Darcy Paul, Mayor City of Cupertino	Date
ATTEST:  _____	_____
Kirsten Squarcia, City Clerk	Date
APPROVED AS TO FORM:  _____	_____
Christopher D. Jensen, City Attorney	Date

**Attachment A – AN ORDINANCE OF THE CITY OF CUPERTINO TO REGULATE  
THE USE OF SINGLE-USE FOOD SERVICE WARE BY FOOD PROVIDERS**

NOTE: The existing chapter language is quite brief, so for the purposes of readability while under development, existing chapter text is highlighted in gray and the rest shows as plain text.

*The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:*

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

*Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.*

*This ordinance amends several portions of the Municipal Code. For ease of review, the amendments advancing the primary objective are presented first followed by conforming amendments. There is a separate heading in bold italics for each portion of the Code being amended. Each portion is shown beginning on a separate page.*

**SECTION 1. ADDITION OF SECTION 9.15.090 CONCERNING THE PURPOSES OF  
REGULATION OF SINGLE-USE FOOD SERVICE WARE BY FOOD PROVIDERS**

***9.15.090 Purpose of Chapter***

- A. This chapter is determined and declared to be a health, sanitary and safety measure necessary for the promotion, protection and preservation of the health, safety and general welfare of the people and environment of the City of Cupertino.
- B. Nonreusable disposable food service ware and beverage packaging - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - are major contributors to street litter, ocean pollution, marine and other wildlife harm, depletion of natural resources, and greenhouse gas emissions.
- C. Plastic litter breaks down into smaller pieces that are not biodegradable, persist in the environment on land and sea, and are present in most of the world’s oceans.

- D. Discharge of litter into waters of the United States is prohibited by the Federal Clean Water Act and the City's stormwater pollution prevention permit as issued by the San Francisco Bay Regional Water Quality Control Board.
- E. Among other hazards, plastic debris attracts and concentrates ambient pollutants, such as endocrine disrupters and persistent organic pollutants, in seawater and freshwater that can transfer to fish, other seafood, and salt that is eventually sold for human consumption. Nine of the top ten most common debris items found on beaches in the U.S. during International Coastal Cleanup Day are nonreusable food and beverage plastic packaging items, and eight of them are plastic.
- F. Forty percent of all plastic produced globally is used to make packaging and one third of all plastic packaging ends up in the environment.
- G. One hundred and twenty (120) billion paper cups are consumed each year in the U.S. (375 per person per year), generating 2.2 billion pounds of waste, consuming over 11 million trees, resulting in 4 billion pounds of carbon dioxide emissions, and requiring the consumption of 35 billion gallons of water to manufacture.
- H. 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.
- I. Local governments in the U.S. spend \$11.5 billion annually cleaning up litter. It is in the interest of the health, safety and welfare of all who live, work and do business in Cupertino that the amount of litter on public streets, parks and in other public places be reduced.
- J. Even if accepted by the City of Cupertino's approved recyclables processor as recyclable, nonreusable plastic food service ware is often difficult to recycle after use because it becomes contaminated with food and grease.
- K. Many types of disposable food service ware are not accepted in commercial compost facilities because they cause contamination and lower the quality and value of compost.

- L. Food packaging materials, including food contact papers and compostable paperboard containers and molded plastics, frequently contain harmful per- and polyfluoroalkyl chemicals that are linked to serious health impacts.
- M. Approximately 12,000 chemicals are used in food packaging. Many of the chemical additives used in packaging are known to migrate into food and beverages. Hundreds of these chemicals are known to be hazardous to human health and in the environment, and many are extremely persistent and bioaccumulative.
- N. The City of Cupertino intends to eliminate solid waste at its source and maximize recycling and composting in accordance with Cupertino's Climate Action Plan, Zero Waste Policy, and stormwater pollution prevention permit.
- O. Reducing disposable packaging by eliminating unnecessary items and transitioning to reusable products provides greater environmental benefits than managing the products that become waste, even when recycled or composted.

## **SECTION 2. AMENDMENTS TO SECTION 9.15.100 CONCERNING DEFINITIONS**

### **9.15.100 Definitions**

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section, unless the context or the provision clearly requires otherwise:

1. "Beverage Provider" means any business, organization, entity, group, or person that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption. Beverage provider also includes any organization, group or person that regularly provides beverages to its members or the general public as a part of its activities or services.
2. "Biodegradable Products Institute (BPI)" refers to a certification program that ensures that products and packaging displaying the BPI logo have been independently tested and verified accordingly to scientifically based standards to successfully break down in professionally managed industrial composting facilities. BPI-certified products meet the standards of the American Society for Testing Materials (ASTM) D6400 or D6868 for compostability. Starting on January 1, 2020, all BPI-certified products will also be required to have (1) a limit of 100 parts per million (ppm) total Fluorinated Chemicals as the upper threshold for acceptance and (2) no intentionally added Fluorinated Chemicals.

3. "City" means the City of Cupertino.
4. "City Facility" means any building, structure, or vehicle owned or operated by the City.
5. "City Facility Food Provider" means an entity that provides, but does not sell, Prepared Food in City Facilities.
6. "County" means the County of Santa Clara.
7. "Compostable" means that an item or material is (1) accepted in City's available composting collection program as fully compostable; (2) is listed, described, or referenced on the City's website as compostable; and (3) as of January 1, 2020 is either certified compostable by the Biodegradable Product Institute or other third party recognized by the Department.
8. "Contractors and Lessees" means any person or entity that has a contract with the City of Cupertino for public works or improvements to be performed, for a franchise, concession, or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the City of Cupertino.
9. "Director" means the City of Cupertino's Director of Public Works or their designee.
10. "Distribute" means the sale, offer for sale, or other transfer of possession of an item for compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of possession of another item for compensation.
11. "Egg Carton" means a carton for raw eggs sold to consumers from a refrigerator case or similar retail appliance.
12. "Event" means any indoor event at a City facility, or any outdoor event subject to a City permit, where more than 100 people attend or participate.
13. "Event Food Vendor Provider" means any business selling or providing based on ticket purchase or entrance fee, Prepared Food at an Event.
14. "Event Producer" means a person or entity who contracts with or obtains a permit from the City, or an agent acting on the City of Cupertino's behalf to hold its own Event, or City of Cupertino staff holding an Event.



15. "Fluorinated Chemical" means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as perfluoroalkyl and polyfluoroalkyl substances, or PFAS chemicals.
16. "Fluorinated Chemical Free" means an item that (1) contains no intentionally added Fluorinated Chemicals, (2) is listed, described, or referenced as fluorinated chemical free on the City's website; and (3) is either certified by the Biodegradable Product Institute or other third party as recognized by the City of Cupertino.
17. "Food Container" means a container, bowl, plate, tray, or other vessel used to hold Prepared Food.
18. "Food Provider" means any establishment, provider, Non-Profit Vendor, or business, operating within the City that sells Prepared Food (1) to the public for consumption on or off its premises, at a catered event, and/or (2) at cafeterias, schools and places of employment, whether or not such establishments are open to the general public. "Food Provider" includes but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, retail sales outlets, grocery stores, delicatessens serving the public, mobile or temporary food providers, vehicles or carts, or roadside stands.
19. "Food Service Ware" means any products used for serving or consuming prepared food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrapper or liners, hinged or lidded containers (Clamshells), and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Provider's premises.
20. "Food Service Ware Accessory" means any type of accessory or accompanying items usually provided alongside Prepared Food in plates, containers, bowls, or cups, including but not limited to utensils, chopsticks, napkins, cup lids, cup sleeves, food or beverage trays, condiment packets and saucers, straws, stirrers, splash sticks, spill plugs, cocktail sticks, and toothpicks.
21. "Food vendor" means any establishment located in the City of Cupertino that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand.
22. "Meat and Fish Tray" means a tray for raw meat, fish, or poultry sold to consumers from a refrigerator case or similar retail appliance.

23. "Natural Fiber" means a plant- or animal-based, non-synthetic fiber, including but not limited to paper, wood, or bamboo. Natural Fiber does not include plastic of any kind.
24. "Nonreusable" means not meeting the definition of Reusable in these definitions.
25. "Packing Material" means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage.
26. "Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.
27. "Per and Polyfluoroalkyl Substances" means, for the purposes of food packaging, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
28. "Polystyrene" means a thermoplastic petrochemical material utilizing a styrene monomer, including but not limited to rigid polystyrene or expanded polystyrene, processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, expanded polystyrene molding, extrusion-blown molding (extruded polystyrene), and clear or solid polystyrene (oriented polystyrene). Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons. The resin code for Polystyrene is '6' or 'PS,' either alone or in combination with other letters. This definition applies to all polystyrene food service ware, regardless of whether it exhibits a resin code.
29. "Prepared food" means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. "Prepared food" does not include:
- a. Any raw, uncooked meat products, fruits, or vegetables, unless it is intended for consumption without further preparation; or
  - b. Prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.
30. "Prepared Food Provider" means any establishment, vendor, or business, operating within the City that sells Prepared Food or beverages (1) to the public for consumption on or off its premises, at a catered event, and/or (2) at cafeterias, private schools and places of employment, whether or not such establishments are

open to the general public. "Prepared Food Provider" includes but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, retail sales outlets, grocery stores, delicatessens serving the public, mobile or temporary food vendors, vehicle or carts, or roadside stands.

31. "Produce Tray" means any tray or carton for raw vegetables or fruit sold to consumers from a refrigerator case or similar retail appliance.
32. "Raw Food" means any meat, fish, poultry, vegetable, fruit, or egg.
33. "Recyclable" means material that can be sorted, cleansed, and reconstituted and accepted by the City's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. The term does not include material that will be burned, incinerated, or converted through gasification, pyrolysis, solvolysis, hydrolysis, methanolysis, enzymatic breakdown or a similar chemical conversion process used to transform materials into plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, or home heating oil.
34. "Reusable Food Service Ware" means all food service ware, 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.
35. "Standard Condiments and Spices" means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes or others as determined by the City.
36. "State" means the State of California.
37. "Takeout Food" means Prepared Food requiring no further preparation, which is purchased to be consumed off a Prepared Food Facility's premises. Takeout Food includes Prepared Food delivered by a Food Facility or by a third-party Takeout Food Delivery Service.
38. "Takeout Food Delivery Service" is a service that delivers Takeout Food from a Food Facility to a customer for consumption off the premises. This service can be provided directly by the Food Facility or by a third-party.

39. "Third Party Food Delivery Platform" means a business engaged in the service of online food ordering and/or delivery from a Prepared Food Provider to a consumer.

### **SECTION 3. AMENDMENTS TO SECTION 9.15.110 CONCERNING REGULATION OF SINGLE-USE FOOD SERVICE WARE BY FOOD PROVIDERS**

#### **9.15.110 Regulation of Food Service Ware by Food Providers**

No food provider shall sell or otherwise provide prepared food in single-use plastic or expanded polystyrene food service ware.

#### **A. ACCESSORIES ONLY UPON CUSTOMER REQUEST**

Effective 6/1/2022

1. Food providers shall provide Nonreusable Food Service Accessories and Standard Condiments in single serve packets only upon request by customers during on-premises dining or when using a third-party food delivery platform. Nonreusable Food Service Ware Accessories and Standard Condiments packaged for single use provided by Prepared Food Providers for use by consumers shall not be bundled or packaged in a manner that prohibits a consumer from taking only the type of Nonreusable Food Service Ware Accessory or Standard Condiment desired without also having to take a different type of Nonreusable Food Service Ware Accessory or Standard Condiment
2. Self-serve accessory stations will be prohibited.
3. Food providers and beverage providers, as well as City facilities, City-managed concessions, City-sponsored events, and City-permitted events, may retain and dispense plastic straws as an accommodation to people with disabilities who request them to enjoy equal access to food and beverage services within the City.
4. Prepared Food Providers offering Standard Condiments and Spices are encouraged to use dispensers or bulk containers rather than pre-packaged individual serving packets.
5. Takeout Food Delivery Services that utilize digital ordering/point of sale platforms, including but not limited to the internet and smart-phone, shall only offer Disposable Food Service Ware Accessories by providing clear options for customers to affirmatively request these items separate from orders for food and beverages. The default option on the digital ordering/point of sale platforms shall be that no Disposable Food Service Ware Accessories are requested. Each

individual Disposable Food Service Ware Accessory (e.g., each fork, knife, condiment packet, napkin, etc.) provided with Prepared Food must be specifically requested by the customer in order for a Food Facility to provide it.

6. A Prepared Food Provider may ask a drive-through consumer if the consumer wants a Nonreusable Food Service Ware Accessory if the Nonreusable Food Service Ware Accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.
7. For delivery orders, Prepared Food Providers may choose to include specific accessories, such as cup lids, spill plugs, and trays, in order to prevent spills and deliver food and beverages safely.

## **B. USE OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED**

Effective 6/1/2023

1. Prepared Food or Raw Food or Beverage Providers, including City Facility Prepared Food Providers, City contractors, and lessees may not sell, offer for sale, or otherwise Distribute Prepared Food or Raw Food prepared or packaged in Cupertino using:
  - a. Nonreusable Food Service Ware made, in whole or in part, from Polystyrene Foam;
  - b. Nonreusable Food Service Ware made, in whole or in part, from plastic including polyethylene, polyethylene terephthalate, polypropylene, polystyrene, even if accepted as recyclable by the City's approved recyclables processing facility;
  - c. Nonreusable Food Service Ware that is Compostable and not free of Fluorinated Chemicals;
  - d. Nonreusable Food Service Ware made in whole or in part from bio- or plant-based plastic or other compostable plastic.
2. The Director may adopt a list, or reference an approved list, of suitable alternative Compostable or Recyclable Nonreusable Food Service Ware products, which means Nonreusable Food Service Ware products that the Director determines serve the same intended purpose as non-compliant products, meet the standards for what is Compostable and/or Recyclable under this Chapter, and are reasonably affordable. The Director shall regularly update the list. If a product is included on the Director's list, it will be deemed to comply with this Section. If a product is not included on the Director's list or referenced on an approved list, the person using

the product as Nonreusable Food Service Ware will have the burden of establishing to the Director's satisfaction that the product complies with this Section.

3. It shall not be a violation of this Section to sell, provide, or purchase Prepared Food or Raw Food or Beverage packaged in Nonreusable Food Service Ware otherwise prohibited by subsection (1) if the Prepared Food or Raw Food or Beverage is packaged outside the City and is sold or otherwise provided to the consumer in the same Nonreusable Food Service Ware in which it originally was packaged. Businesses packaging Prepared Food outside the City are encouraged to use Nonreusable Food Service Ware that is Compostable or Recyclable, is Compostable and free of Fluorinated Chemicals, and is not made, in whole or in part, from Polystyrene.

### **C. REUSABLE FOOD SERVICE WARE FOR DINING ON PREMISES**

Effective 6/1/2023

1. Prepared Food served for consumption on the Prepared Food Provider's premises shall be served only on Reusable Food Service Ware, except that disposable paper food wrappers, sleeves, and bags, foil wrappers, paper napkins, paper tray and plate liners, and straws shall be permitted, so long as they meet the requirements set forth elsewhere in this Chapter.
2. Condiments, such as sauces, ketchup, or mustard, provided for on-site consumption, shall not be served in disposable, individual-serving packets.
3. Consumption is considered on-premises if it takes place at tables and/or seating provided by the Prepared Food Provider either on its own or in conjunction with another Prepared Food Provider.
4. New building permits and new or renewed business licenses for Food Service Providers applied for, and/or deemed complete after 6/1/2023 shall only be granted to Prepared Food Providers that can demonstrate adequate capacity to comply with subsection (C.1) herein.
5. This requirement does not prohibit a Prepared Food Provider from providing, upon a customer's request, Nonreusable Food Service Ware compliant with subsection (B.1) for the customer to take away leftover Prepared Food after dining on the premises.

6. Prepared Food Providers subject to the requirements of subsection (C.1) that do not have onsite or off-site dishwashing capacity, or are unable to contract for services to wash, rinse, and sanitize Reusable Food Service Ware, in order to comply with applicable provisions of the California Health and Safety Code, may petition the Director for an exemption or extension under 9.15.120.

#### **D. NONREUSABLE BEVERAGE CUP AND FOOD CONTAINER CHARGES AND CREDITS**

Effective 6/1/2023

1. No Prepared Food Vendor shall provide a Nonreusable Beverage Cup to a customer who is paying for a beverage to take off the premises (i.e. for takeout), unless the Prepared Food Provider charges the customer a Nonreusable Cup fee of at least \$0.25 per cup. A Food Vendor shall provide notice of this charge to each customer prior to completing the customer's order.
2. No Prepared Food Vendor shall provide a Nonreusable Food Container to a customer paying for Prepared Food to take off the premises (i.e. for takeout) unless the Food Vendor charges the customer a Nonreusable Food Container fee of at least \$0.25 per Nonreusable Food Container. A Prepared Food Vendor shall provide notice of this charge to each customer prior to completing the customer's order.
3. Charges for Non-Reusable Cups and Containers 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 Non-Reusable Cup and Container charges.
4. (Charge option) The \$0.25 fee imposed under subsections (D.1) and/or (D.2) of this Section shall be retained by the Prepared Food Vendor. Third-party food delivery services that process and/or deliver orders on behalf of Prepared Food Vendors and collect payment on behalf of Prepared Food Vendors shall remit the \$0.25 charge to the Food Vendor.
5. No earlier than 18 months, and no later than 24 months, after implementation of subsections (D.1) and/or (D.2) of this Section, the City shall arrange for a separate assessment and review of the economic impact on Prepared Food Vendors, both large and small, of the Nonreusable Cup Charge and the Nonreusable Food Container Charge. Based on such assessment and review, the City shall submit an analysis to the City Council of each charge type. Each analysis shall be based on

criteria deemed relevant by the City, but shall include a survey of whether and how the charge specifically has impacted Prepared Food Vendors' profits and losses.

6. Prepared Food Vendors may not waive or absorb the charges imposed in Subsections (D.1) and (D.2) except in the case of economic hardship as demonstrated by any customer provisioning, at the point of sale, a payment card or voucher issued under the California Special Supplemental Food Program for Women, Infants, and Children (WIC), or the California Department of Social Services Food Stamp Program or an Electronic Benefit Transfer card (EBT), or a MediCare (or California equivalent) benefits identification card (BIC) .
7. Customers may provide their own Reusable Beverage Cup or Container for food or beverage service.
8. Should customers provide their own Reusable Beverage Cup for beverage service, Prepared Food Providers may refuse, at their sole discretion, any customer-provided Reusable beverage cup that is an inappropriate size, material, or condition for the intended beverage or that appears to be soiled or unsanitary. Prepared Food Providers may instead require use of a reusable beverage cup provided by the Prepared Food Provider for a beverage to be consumed on the premises, or a Nonreusable Cup that confirms to the requirements of Section B.1, along with any charge required pursuant to Section D.1 and D.2.
9. Any Prepared Food Vendor may petition the Director for a full or partial exemption from the requirements of this Section per Section 9.15.120, except those set forth in subsections (D.1) and (D.2), for a period of up to one year at a time, if the owner or operator can demonstrate that application of the specified provisions of this Section would create undue hardship or practical difficulty for the Prepared Food Vendor not generally applicable to other Prepared Food Vendors in similar circumstances.

#### **E. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED**

Effective 6/1/2023

1. No person may sell, offer for sale, or otherwise Distribute within the City any Nonreusable Food Service Ware prohibited under Section B.1.
2. Per Section B.3, the Director may adopt, maintain, or reference a list of compliant products.



## **F. REUSABLE BEVERAGE CUPS AND CONTAINERS AT EVENTS**

Effective 6/1/2024

1. Event Producers providing beverages at Events must ensure that 25% of beverages served to attendees are in Returnable or customer-provided Reusable Beverage Cups. Effective 6/1/2026, a minimum of 50% of beverages provided at events shall be provided to attendees in Reusable Cups.
2. Beginning 6/1/2026 (2 years after beverage requirement) Event Producers providing Prepared Food at Events must ensure that 25% of food served to attendees is in Returnable or customer-provided Reusable Containers. Beginning 6/1/2028, a minimum of 50% of prepared food items provided at events shall be provided to attendees in Reusable Containers.
3. To meet the requirement in subsection (F1) and (F2), Event Producers may provide, lend, or sell Reusable Beverage Cups and Containers to Event attendees, and promote or incentivize attendees to bring their own Reusable Beverage Cups and Containers. A permit application for any Event must indicate how the requirement in subsection (F1) and (F2) shall be met. The Event Producer's selected method for meeting the requirement in subsection (F1) and (F2) must be included in any contract, agreement, or permit for the Event.
4. Use, handling, and sanitation of Reusable Beverage Cups and Containers at Events must comply with all applicable state and local laws, regulations, and guidelines.
5. Any Event Producer may petition the Director for a full or partial waiver of the requirements of this Section as they apply to a particular Event, if the Event Producer can (1) demonstrate that the Event Producer is not able to access Reusable Beverage Cups or Containers for the Event, or (2) that the application of this Section would create undue hardship or practical difficulty for the Event Producer that is not generally applicable to other Event Producers in similar circumstances.

## **SECTION 4. ADDITION OF NEW SECTION 9.15.115 CONCERNING REGULATION OF THE LOCAL SALE OF PACKING MATERIALS AND OTHER PRODUCTS MADE FROM EXPANDED POLYSTYRENE**

Effective 6/1/2023

#### 9.15.115 Regulation of Local Sale of Packing Materials and Other Products Made from Expanded Polystyrene

1. No person may sell, offer for sale, or otherwise Distribute for compensation within the City: Packing Materials, including shipping boxes and packing peanuts; coolers, ice chests, or similar containers; pool or beach toys; or dock floats, mooring buoys, or anchor or navigation markers; made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a more durable material.
2. For purposes of this section, Distribution of Packing Materials shall include using such materials to hold, cushion, or protect items to be packed in a container for shipping, transport, or storage, for compensation, where the packing takes place within the City.
3. For purposes of this Section, Distribution of Packing Material shall not include:
  - a. Receiving shipments within the City that include Expanded Polystyrene, or some other non-Compostable and non-Recyclable product, used as Packing Material;
  - b. Re-using Packing Materials within the City for shipping, transport, or storage within the same distribution system, where the Packing Materials are not sent to a consumer or end user;
  - c. Donating used Packing Materials within the City to another person, where the donor receives nothing of value for the donated Packing Materials; or.
  - d. Using Packing Materials donated under subsection (C) for shipping, transport, or storage, where the person using the Packing Materials receives nothing of value for the donated Packing Materials.

#### SECTION 4. AMENDMENTS TO SECTION 9.15.120 CONCERNING EXEMPTIONS

- A. A food vendor may seek an exemption from the requirements under Section 9.15.110 due to a "unique packaging hardship" under Subsection B of this section, "unused inventory" under Subsection C of this section, or "significant economic hardship" under Subsection D, or request a temporary exemption to request extra time for compliance under Subsection E.

- B. The food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary prohibited nonreusable food service ware item to qualify for a "unique packaging hardship" exemption.
- C. The food vendor must demonstrate that before [new effective date of this ordinance], it purchased the prohibited food service ware, which cannot be returned to the distributor, and, despite the food vendor's best efforts, will remain in inventory on[date], to qualify for an "unused inventory" exemption.
- D. The food vendor must demonstrate that the provisions of this Chapter would cause significant economic hardship. "Significant economic hardship" may be based on, but not limited to, demonstrating that suitable Nonreusable Food Service Ware is not available at a commercially reasonable price and the additional cost associated with providing the Disposable Food Service Ware is particularly burdensome to the Food Facility based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the Food Facility, and other factors. Reasonable added cost for a suitable item as compared to a similar item that the Food Facility can no longer use shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the Director or designee shall consider the following information: ability of the Food Facility to recover the additional expense by increasing its prices; the availability of tax credits and deductions; outside funding; and other options.
- E. The food vendor must demonstrate that for other reasons not already stated it needs additional time to comply with the provisions of this Chapter.
- F. The food provider may submit a written application for an exemption on a form provided by the Environmental Programs Division. The Director of Public Works designee ("Director") may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to one year. . The determination of the Director shall be final and is not subject to appeal.
- G. Prepackaged Food is exempt from the provisions of this Chapter.
- H. Coolers and ice chests made with expanded polystyrene wholly encapsulated or encased within a more durable material intended for reuse are exempt from the provisions of this Chapter.

- I. Disposable Food Service Ware that is entirely Aluminum Foil-based is exempt from the provisions of this Chapter.
- J. Temporary exemptions due to an emergency are automatic without the submission of a request for an exemption. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to natural disasters, emergencies due to the release of hazardous materials, emergencies associated with loss of power and/or water, or emergency medical response.

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