

This Model Foodware and Packaging Reduction Ordinance can be used to guide policy drafting efforts at the local, state, or federal level. As a whole, it provides a comprehensive approach to building reduction and reuse in food service, while controlling threats to human health posed by high priority chemicals in food packaging, and ensuring that disposable foodware meets specific criteria. The model can be treated like a menu of options. Policy makers select specific provisions to create stand-alone policies, and take a more narrowly focused approach.

Text provided in **Red** indicates that language needs to be customized based on the jurisdiction.

## A Model Foodware and Packaging Reduction Ordinance for City, County, or State Government

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## Sec. 1: Title

This **Chapter X** shall be known as the Food Service Packaging Reduction and Reuse Ordinance.

## Sec. 2: Findings and Purpose

The City/County/State of **XXX** finds and declares as follows:

- a.** The U.S. generates 12% of global waste, but represents only 4% of the world population.<sup>1</sup>
- b.** The production and disposal of Non-Reusable disposable food and beverage packaging has significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable polluting fossil fuels, and greenhouse gas emissions.<sup>2</sup>
- 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.<sup>3</sup>
- d.** Discharge of litter into waters of the United States is prohibited by the Federal Clean Water Act, according to many stormwater permits issued by government agencies around the nation.
- e.** Plastic debris attracts and concentrates ambient pollutants, such as endocrine disruptors and persistent organic pollutants, in seawater and freshwater that can transfer to fish, other seafood and salt that is eventually sold for human consumption.<sup>4</sup>
- f.** Nine of the top ten most common debris items found on beaches in the U.S. during International Coastal Cleanup Day are Non-Reusable food and beverage plastic packaging items.<sup>5</sup>
- g.** Forty percent of all plastic produced globally is used to make packaging and one third of all plastic packaging ends up in the environment.<sup>6</sup>
- h.** 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.<sup>7,8</sup>
- i.** In the City/County/State of **XXX**, 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.
- j.** Local governments in the U.S. spend \$11.5 billion annually cleaning up litter.<sup>9</sup> It is in the interest of the health, safety and welfare of all who live, work and do business in the City/County/State that the amount of litter on public streets, parks and in other public places be reduced.
- k.** Most disposable foodware is not recyclable after use because it becomes contaminated with food and grease.
- l.** Many types of disposable foodware are not accepted in commercial compost facilities because they cause contamination and lower the quality and value of compost.<sup>10</sup>
- m.** Food packaging materials, including food contact papers and compostable paperboard containers and molded plastics, frequently contain harmful poly and perfluoroalkyl chemicals that are linked to serious health impacts.<sup>11</sup>
- n.** 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, many are extremely persistent and bioaccumulative.<sup>12, 13</sup>

- o. Switching to just 20% of disposable plastic packaging to reusable offers a \$10 billion dollar opportunity for businesses to save money. Eighty-six percent (86%) of disposable foodware can be replaced by reusable options, saving U.S. food businesses \$5 billion in procuring disposables, and businesses and local communities can save \$5.1 in avoided solid waste management costs, while preventing 17 billion pieces of litter, and creating 193,00 jobs.<sup>14, 15</sup>
- p. Eliminating solid waste and litter at its source and maximizing recycling and composting meets the **City/State's XXXX** goals (cite general plan, litter, stormwater/clean water act, toxics, environmentally preferable purchasing policies, precautionary principle, zero waste, workforce development, budget, liability reduction, resilient landscaping, and/or climate action goals/policies/ordinances/laws to insert).
- q. 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.

### Sec. 3: Definitions

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

**“ASTM Standard Specification”** means Standard Specification for Compostable Plastics D6400 or Standard Specification for Biodegradable Plastics D6868 as certified by the Biodegradable Products Institute (BPI), as adopted or subsequently amended by the American Society for Testing and Materials (ASTM).

**“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.

**“Biodegradable Products Institute” or “BPI”** is a multi-stakeholder association of key individuals and groups from government, industry, and academia, which promotes the use, and recycling of biodegradable polymeric materials (via composting). The BPI is open to any materials and products that demonstrate that they meet the requirements in ASTM D6400 or D6868, based on testing in an approved laboratory.

**“City”** means the City of **XXX**.

**“City/County/State Facility”** means any building, structure, or vehicle owned or operated by the City/County/State.

**“City/County/State Facility Food Provider”** means an entity that provides, but does not sell, Prepared Food or Raw Food or Beverages in **City/County/State** Facilities, including without limitation, hospitals and prisons.

**“Compostable”** means that an item or material is (1) accepted in **City/County/State’s** available composting collection program as fully compostable, as determined by the **Regulatory Agency TBD**; (2) is listed, described, or referenced on the **Regulatory Agency TBD** website as compostable; and (3) as of January 1, 2020 is either certified compostable by the Biodegradable Products Institute, Compost Manufacturing Alliance, and/or other third party recognized by the **City/County/State**.

**“Compost Manufacturers Alliance”** is a national certifier of compostable products for compost facilities.

**“County”** means the County of **XXX**.

**“Contractors and Lessees”** means any person or entity that has a contract with the **City/County/State** 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/County/State**, or to be paid out of monies deposited in the Treasury or out of trust monies under the control of or collected by the **County**.

**“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.

**“Egg Carton”** means a carton for raw eggs sold to consumers from a refrigerator case or similar retail appliance.

**“Event”** means any indoor event at a **City/County/State** facility, or any outdoor event subject to a **City/County/State** permit, where more than 100 people attend or participate.

**“Event Food Provider”** means any Person, Entity, or Non-Profit Vendor selling or providing based on ticket purchase or entrance fee, Prepared Food at an Event.

**“Event Producer”** means a person or entity who contracts with or obtains a permit from the **City/County/State**, or an agent acting on the **City/County/State’s** behalf, to hold its own Event, or a **City/County/State** entity or department holding its own Event.

**“Food Container”** means a container, bowl, plate, tray, or other vessel used to hold Prepared Food.

**“Foodware”** 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.

**“Foodware 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 tooth-picks.

**“Food Provider”** means any establishment, provider, Non-Profit Vendor, or business, operating within the **City/County/State** 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.

**“High Priority Chemical”** means any of the following chemicals and any chemicals in the following chemical classes: ortho-phthalates; bisphenols; per and polyfluoroalkyl substances (PFAS); lead and lead compounds; cadmium; mercury; hexavalent chromium and compounds; perchlorate; benzophenone and its derivatives; formaldehyde; toluene; and halogenated flame retardants.

**“High Priority Material”** means any kind of polyvinyl chloride (PVC), polystyrene, polycarbonate, or melamine material, or any bamboo material that uses resin or other form of binding agent containing PVC, polycarbonate, melamine or a High Priority Chemical.

**“Meat and Fish Tray”** means a tray for raw meat, fish, or poultry sold to consumers from a refrigerator case or similar retail appliance.

**“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 or contain petroleum-based or biologically-based polymers of any kind.

**“Non-Profit Vendor”** means a recognized tax exempt organization which provides goods as a part of its services.

**“Non-Reusable”** means not meeting the definition of Reusable in this [Chapter](#).

**“Packing Material”** means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage.

**“Person”** means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, non-profit or private entity, agency or institution or other organization or group, however organized as association.

**“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.

**“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 foodware, regardless of whether it exhibits a resin code.

**“Prepared Food”** means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, poured, or otherwise prepared (collectively “prepared”) for individual customers or consumers. Prepared Food does not include raw eggs or raw, butchered meats, fish, raw vegetables or fruit, and/or poultry sold from

a butcher case, a refrigerator case, or similar retail appliance.

**“Produce Tray”** means any tray or carton for raw vegetables or fruit sold to consumers from a refrigerator case or similar retail appliance.

**“Raw Food”** means any meat, fish, poultry, vegetable, fruit, or egg.

**“Recyclable”** means material that can be sorted, cleansed, and reconstituted and accepted by the City’s/County’s available recycling collection programs [for States, insert: “... accepted by 60% of municipal recycling programs within the State of xxx] 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.

**“Reusable”** means a foodware or beverage bottle designed and manufactured to maintain its shape and structure, and to be materially durable for repeated (at least 750 times each) sanitizing in water at 171 degrees Fahrenheit for at least 30 continuous seconds, washing via commercial dishwashing machine, and reuse. When the product is Returnable, the actual number of use cycles shall meet the following criteria:

- **Cups:** a minimum of 125 uses
- **Utensils:** a minimum of 3 uses
- **Plates:** a minimum of 63 uses
- **Clamshells:** a minimum of 50 uses
- **Glass and plastic bottles:** a minimum of 20 uses



Reusable foodware shall not be made from, treated with, or contain any High Priority Chemicals, High Priority Materials, or aluminum.

**“Returnable”** means that a reuse system exists in which reusable products can be conveniently returned after use to any locale where such products are provided for delivery of Prepared Food, or the vendor provides a convenient collection option to the customer. Return systems shall have an average return rate of no less than 80 percent for each covered product.

**“Standard Condiment”** means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes or others as determined by the [City/County/State](#).

**“State”** means the State of [XXX](#).

**“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.

## Sec. 4: Accessories Only Upon Customer Request

[Effective 6-12 months after adoption of ordinance/law.]

- a. Prepared Food or Raw Food or Beverage Providers must provide Non-Reusable Foodware 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.

[OPTIONAL Disability accommodations].

Food providers and beverage providers, as well as [City/County/State](#) facilities, [City/County/State](#)-managed concessions, [City/County/State](#)-sponsored events, and [City/County/State](#)-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/State/County](#).

- b. Non-Reusable Foodware Accessories and Standard Condiments packaged for single use provided by Prepared Food or Raw Food or Beverage Providers for use by consumers shall not be bundled or packaged in a manner that prohibits a consumer from taking only the type of Non-Reusable Foodware Accessory or Standard Condiment desired without also having to take a different type of Non-Reusable Foodware Accessory or Standard Condiment.
- c. A Prepared Food or Raw Food or Beverage Provider may ask a drive-through consumer if the consumer wants a Non-Reusable Foodware Accessory if the Non-Reusable Foodware Accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.
- d. A Prepared Food or Raw Food or Beverage Provider that is located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, may ask a walk-through consumer if the consumer wants a Non-Reusable Foodware Accessory if it is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

e. (1) A Third-Party Food Delivery Platform shall provide consumers with the option to request Non-Reusable Foodware Accessories or Standard Condiments from a Prepared Food or Raw Food or Beverage Provider

(2) If a Prepared Food or Raw Food or Beverage Provider uses any Third-Party Food Delivery Platform for ready-to-eat food, the Prepared Food or Raw Food or Beverage Provider shall customize its menu with a list of available Non-Reusable Foodware Accessories and Standard Condiments, and only those Non-Reusable Foodware Accessories or Standard Condiments selected by the consumer shall be provided by the Prepared Food or Raw Food or Beverage Provider. If a consumer does not select any Non-Reusable Foodware Accessories or Standard Condiments, no Non-Reusable Foodware Accessory or Standard Condiment shall be provided by the Prepared Food or Raw Food or Beverage Provider.

f. Non-Reusable Foodware Accessories shall conform with Section 10, Non-Compliant Foodware.

**Optional for States:** Nothing in this section shall prevent a jurisdiction from adopting and implementing an ordinance or rule that would further restrict a Prepared Food or Raw Food or Beverage Provider or a Third-Party Food Delivery platform from providing Non-Reusable Foodware Accessories or Standard Condiments to a consumer.

## Sec. 5: Reusable Foodware for Dining on Premises

[Effective 12-18 months after ordinance adoption.]

- a. Prepared Food or Raw Food or Beverage Providers shall only serve Prepared Food or Raw Food or Beverage for consumption on the premises using Reusable Foodware, except that Non-Reusable 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 requirements of Section 4.
- b. Condiments, such as sauces, ketchup, or mustard, provided for on-site consumption must be served in Reusable containers.
- c. Consumption is considered on-premises if it takes place at tables and/or seating provided by the Prepared Food or Raw Food or Beverage Provider, either on its own or in conjunction with other Prepared Food or Raw Food or Beverage Providers.
- d. New building permits and business licenses for Food Service Providers applied for, renewed, and/or deemed complete after the effective date of this Chapter shall only be granted to Prepared Food or Raw Food or Beverage Providers that can demonstrate adequate capacity to comply with subsection a herein. Installation and/or maintenance of appropriate dishwashing capacity in conformance with Section (a) shall be included as a specific condition of approval for such permits and licenses
- e. This requirement does not prohibit a Prepared Food or Raw Food or Beverage Provider from offering, upon a customer's request, Non-Reusable Foodware to take away leftover Prepared Food or Raw Food or Beverage after dining on the premises.

Optional waiver if jurisdiction chooses to include one:

f. Prepared Food or Raw Food or Beverage Providers subject to the requirements of subsection (a) that do not have onsite or off-site dishwashing capacity, or are unable to contract for services to wash, rinse, and sanitize Reusable Foodware, in order to comply with applicable provisions of the **insert state** Health and Safety Code, may petition the {Director} for a full or partial waiver. To obtain a waiver, the Prepared Food or Raw Food or Beverage Provider must demonstrate inability to comply due to insurmountable space constraints, undue financial hardship, and/or other extraordinary circumstances. Non-Reusable Foodware used pursuant to a waiver obtained under this Section must comply with all requirements set forth elsewhere in this **Chapter**.

**Optional for States:** (i) Nothing in this section shall prevent a city, county, city and county, or other local public agency from adopting and implementing an ordinance or rule that would further restrict a Prepared Food Provider or a Third-Party Food Delivery platform from providing Non-Reusable Foodware Accessories or Standard Condiments to a consumer.

## Sec. 6: Non-Reusable Beverage Cups and Food Containers Charges

[Effective 12-18 months after ordinance/law adoption.]

- a. No Prepared Food shall provide a Non-Reusable Beverage Cup to a customer who is paying for a beverage to take off the premises (i.e. for take-out), unless the Prepared Food or Raw Food or Beverage Provider charges the customer a Non-Reusable Cup charge of at least \$0.25 per cup.
- b. No Prepared Food Provider shall provide a Non-Reusable Food Container to a custom-

er paying for Prepared Food to take off the premises (i.e. for takeout) unless the Food Provider charges the customer a Non-Reusable Food Container charge of at least \$0.25 per Non-Reusable Food Container. A Prepared Food or Raw Food or Beverage Provider shall provide notice of this charge to each customer prior completing the customer's order.

- c. 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.

### d. Two Optional Approaches:

1. Charge: The \$0.25 charge imposed under subsections (a) and/or (b) of this Section shall be retained by the Prepared Food Provider. Third-Party Food Delivery Services that process and/or deliver orders on behalf of Prepared Food Providers and collect payment on behalf of Prepared Food Providers shall remit the \$0.25 charge to the Prepared Food Provider.
  2. Tax: The Prepared Food Provider shall remit \$0.20 of the fee imposed under subsections (a) and (b) of this Section to the **City/County/State XXX Fund** to support funding for reusable food and beverage systems within the **City/County/State**.
- e. Prepared Food Providers must offer customers paying for a beverage or Prepared Food a Reusable option at a cost no higher than \$0.10 that can be returned at the Prepared Food Provider's premises or in a nearby drop off location. The Prepared Food Provider may charge the customer an additional refundable deposit to ensure the return of the Reusable Cup or Container.



f. [No earlier than 18 months, and no later than 24 months], after implementation each of subsections (a) and/or (b) of this Section, the Controller shall perform a separate assessment and review of the economic impact on Prepared Food Providers, both large and small, of the Non-Reusable Cup Charge and the Non-Reusable Food Container Charge. Based on such assessment and review, the Controller shall submit an analysis to the **Insert Name of Legislative Body** of each charge type. Each analysis shall be based on criteria deemed relevant by the Controller, but shall include a survey of whether and how the charge specifically has impacted Prepared Food Providers' profits and losses and the percentage of to-go beverages and meals served in Reusable Cups or Containers.

g. Prepared Food Providers may not waive or absorb the charges imposed in Subsections (a) and (b) except in the case of economic hardship as demonstrated by any customer provisioning a, at the point of sale, a payment card or voucher issued under the **State** Special Supplemental Food Program for Women, Infants, and Children (WIC), or the **Name of State** Department of Social Services Food Stamp Program or an Electronic Benefit Transfer card (EBT), or a MediCare (or State equivalent) benefits identification card (BIC).

h. Customers may provide their own Reusable Beverage Cup or Container for food or beverage service. Prepared Food Providers may refuse, at their sole discretion, any customer-provided Reusable Cup or Container that is an inappropriate size, material, or condition for the intended beverage or food item or that appears to be soiled or unsanitary. Prepared Food Providers may instead require use of a Reusable Cup or Container provided by the Prepared Food Provider for a beverage or food item to be consumed on the premises, or a Non-Reusable Cup that confirms to the requirements of section 5,

along with any charge required pursuant to this Section.

**Optional waiver if jurisdiction chooses to include one:**

i. Any Prepared Food Provider may petition the Director of **Insert Regulatory Agency** for a full or partial waiver of the requirements of this Section 8, except those set forth in subsections (a) and (b), 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 Provider not generally applicable to other Prepared Food Providers in similar circumstances.

## **Sec. 7: Reusable Beverage Cups At Events**

[Effective 18-24 months after adoption.]

a. Event Producers providing beverages at Events must ensure that 25% of beverages served to attendees are in returnable or customer-provided Reusable Beverage Cups. Within 4 years of adoption of this **Chapter**, a minimum of 50% of beverages provided at events shall be provided to attendees in Reusable Cups.

b. To meet the requirement in subsection (a), Event Producers may provide, lend, or sell Reusable Beverage Cups to Event attendees, and incentivize attendees to bring their own Reusable Beverage Cups. A permit application for any Event must indicate how the requirement in subsection (a) shall be met. The Event Producer's selected method for meeting the requirement in subsection (a) must be included in any contract, agreement, or permit for the Event.

c. Use, handling, and sanitation of Reusable Beverage Cups at Events must comply with

all applicable state and local laws, regulations, and guidelines.

Optional waiver if jurisdiction chooses to include it:

- d. 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 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.

## Sec. 8: Non-Reusable Cups at Government Facilities Prohibited

Effective 12-18 months after adoption.

- a. No person may sell or distribute beverages in Non-reusable cups at or on **City/County/State** property, including a **City/County/State** office, office building, or food concession located on **City/County/State** property.
- b. All new leases, permits, management agreements or other agreements awarded by the **City/County/State** allowing any person to use **City/County/State** property, including a **City/County/State** Street, for purposes that contemplate or would allow the sale or distribution of beverages shall specifically require that the permittee comply with (a) of this section. This requirement shall also apply to any such permit renewed, extended, or materially amended after **[insert date]**.
- c. It shall be the **City/County/State** policy that beverages served on **City/County/State** property shall be served in Reusable cups.

## Sec. 9: Sale or Distribution of Non-Compliant Foodware Prohibited

(Effective within 6-12 months of enactment)

- a. No person may sell, offer for sale, or otherwise Distribute within the **City/County/State** (1) any Non-Reusable Foodware that is not either (**Compostable or Recyclable to be determined based on that which can be either composted or recycled in local waste management programs**), (2) any Non-Reusable Foodware made, in whole or in part, from Polystyrene, (3) any Non-Reusable stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic, including compostable, bio- or plant-based plastic, or (4) any Non-Reusable Foodware that is made from, treated with, or contains any High Priority Chemicals or High Priority Materials.
- b. The Director of **Insert Regulatory Agency** may adopt a list of suitable alternative Compostable or Recyclable Non-Reusable Foodware products, that the Director determines 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.

## Sec. 10: Use Of Non-Compliant Foodware Prohibited

[Effective 6-12 months after ordinance adoption.]

- a. Prepared Food or Raw Food or Beverage Providers may not sell, offer for sale, or otherwise Distribute Prepared Food or Raw Food or Beverages (1) in Non-Reusable Foodware made, in whole or in part, from Polystyrene, (2) in Non-Reusable Foodware that is not (**Compostable or Recyclable – to be determined based on that which can be either composted or recycled in local waste management programs**), or (3) in Non-Reusable Foodware that is made from, treated with, or contains any High Priority Chemicals or

High Priority Materials.

- b. **City/County/State** Facility Prepared Food or Raw Food or Beverage Providers may not provide Prepared Food or Raw Food or Beverage to **City/County/State** Facilities (1) in Non-Reusable Foodware made, in whole or in part, from Polystyrene, (2) in Non-Reusable Foodware that is not **Compostable or Recyclable – to be determined based on that which can either be composted or recycled in local waste management programs**, or (3) in Non-Reusable Foodware that is made from, treated with, or contains any High Priority Chemicals or High Priority Materials.
- c. **City/County/State** Departments may not purchase, acquire, or use Non-Reusable Foodware for Prepared Food or Raw Food or Beverage (1) where the Non-Reusable Foodware is made, in whole or in part, from Polystyrene, (2) where the Non-Reusable Foodware is not **Compostable or Recyclable – to be determined based on that which can be either composted or recycled in local waste management programs**, or (3) where the Non-Reusable Foodware is made from, treated with, or contains any High Priority Chemicals or High Priority Materials
- d. **City/County/State** contractors and lessees may not use Non-Reusable Foodware for Prepared Food or Raw Food or Beverage in **City/County/State** Facilities and while performing under a **City/County/State** contract or lease (1) where the Non-Reusable Foodware is made, in whole or in part, from Polystyrene, (2) where the Non-Reusable Foodware is not **Compostable or Recyclable – to be determined based on that which can be either composted or recycled in local waste management programs**, or (3) where the Non-Reusable Foodware is made from, treated with, or contains any High Priority Chemicals or High Priority Materials. All new leases and permits authorizing the sale of food and beverages at the **City/County/State** Airport and all renewals, extensions, or material amendments thereto, must incor-

porate terms requiring the lessee or permittee to comply with the terms of this **Chapter**.

- e. The Director may adopt a list of suitable alternative **Compostable or Recyclable (to be determined)** Non-Reusable Foodware products, which means Non-Reusable Foodware 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 Section 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, the person using the product as Non-Reusable Foodware will have the burden of establishing to the Director's satisfaction that the product complies with this Section.

- f. It shall not be a violation of this Section to sell, provide, or purchase Prepared Food packaged in Non-Reusable Foodware otherwise prohibited by subsections (a) through (c), or to use Non-Reusable Foodware otherwise prohibited by subsection (d), if the Prepared Food or Raw Food or Beverage is packaged outside the **City/County/State** and is sold or otherwise provided to the consumer in the same Non-Reusable Foodware in which it originally was packaged. Businesses packaging Prepared Food outside the **City/County/State** are encouraged to use Non-Reusable Foodware that is **Compostable or Recyclable – to be determined** – is made from, treated with, or contains any High Priority Chemicals or High Priority Materials and is not made, in whole or in part, from Polystyrene.

**Note:** requiring Non-Reusable Foodware to be recyclable or compostable does not prohibit the use of plastic, unless the plastic cannot be recycled or composted locally. Your jurisdiction may opt for a more direct prohibition on plastic foodware using language such as: "Disposable Foodware shall not be made of plastic, including compostable, bio- or plant-based plastic."

## Sec. 11: Other Expanded Polystyrene Products

- a.** No Person shall sell, offer for sale, or otherwise Distribute for compensation within the unincorporated area of the **City/County/State**:
1. Packing Materials, including shipping boxes and packing peanuts;
  2. coolers, ice chests, or similar containers;
  3. pool or beach toys; or
  4. dock floats, mooring buoys, or anchor or navigation markers; made, in whole or in part, from Expanded Polystyrene that is not wholly encapsulated or encased within a more durable material.
- b.** No Person shall sell, offer for sale, or otherwise Distribute for compensation within the **City/County/State**, Meat and Fish Trays, Produce Trays, and Egg Cartons made, in whole or in part, from Expanded Polystyrene, or that are not Compostable or Recyclable, either as separate items or as part of the sale of raw meat, fish, poultry, vegetables, fruit, or eggs sold to consumers from a refrigerator case or similar retail appliance.
- c.** No Person shall sell, offer for sale, or otherwise Distribute within the **City/County/State** any Packing Materials made, in whole or in part, from Expanded Polystyrene, as prohibited in subsection (a), or that are not Compostable or Recyclable. 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/County/State**.

- d.** For purposes of this Section, Distribution of Packing Material shall not include:

1. Receiving shipments within the **City/County/State** that include Expanded Polystyrene, or some other non-Compostable and non-Recyclable product, used as Packing Material;
2. Re-using Packing Materials within the **City/County/State** for shipping, transport, or storage within the same distribution system, where the Packing Materials are not sent to a consumer or end user;
3. Donating used Packing Materials within the **City/County/State** to another person, where the donor receives nothing of value for the donated Packing Materials; or.
4. Using Packing Materials donated under subsection (d)(3) for shipping, transport, or storage, where the person using the Packing Materials receives nothing of value for the donated Packing Materials.

## Sec 12: Implementation

- a.** The Director is authorized to promulgate regulations, guidelines and forms and to take any and all other actions reasonable and necessary to implement and enforce this **Chapter**. The Director may require maintenance of records and provision of such records upon the Director's request as a condition of a full or partial waiver provided for in this **Chapter**.
- b.** Nothing in this **Chapter** shall conflict, or be construed to conflict, with the Americans with Disabilities Act, the Unruh Act, the Disabled Persons Act, or other applicable laws concerning the rights of individuals with disabilities. In particular, nothing in this **Chapter** shall restrict, or be construed to restrict, the availability of Non-Reusable plastic straws to individuals who may require and request the use of Non-Reusable plastic straws.



- c. The Department shall conduct multi-lingual public outreach and education, including providing information to educate affected Prepared Food Providers, businesses, and customers, about the provisions of this Chapter.

### Sec. 13: Enforcement and Penalties

- a. Any person or entity may provide notice or complaint to the Director of any observed lack of compliance with the requirements of this Chapter. The Director shall provide a publicly available online option for such notification or complaints.
- b. The Director shall issue a written warning to any person he or she determines is violating any section of this Chapter. If after issuing a written warning of violation from the Director, the Director finds that person continues to violate the aforementioned provisions the Director may apply for or impose the various sanctions provided in this Section.
- c. Any person who violates this Chapter shall be guilty of an infraction. If charged as an infraction, upon conviction thereof, said person shall be punished for the first offense by a fine of not more than \$100 for a first violation; not more than \$200 for a second violation in the same year and not more than \$500 for each subsequent violation in the same 12-month period.
- d. The Director may issue an administrative fine to any person violating any section of this Chapter in accordance with Administrative Code XXX, which is hereby incorporated by reference.
- e. The City/County/State Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter, including without limitation, civil penalties in an amount not exceeding \$100 for the first violation, \$200 for the second violation, and \$500 for each subsequent violation in any given 12-month period.

- f. The City/County/State may not recover both administrative and civil penalties pursuant to subsections (c) and (d) for the same violation. Penalties collected under subsections (c) and (d), which may include recovery of enforcement costs, shall be used to fund implementation and enforcement of this Chapter.

### Sec. 14: Severability

If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The Insert Legislative Body hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

### Sec. 15. No Conflict With Federal Or State Law

This Chapter is intended to be a proper exercise of the City/County/State's police power and role as a market participant, to operate only upon its own officers, agents, employees, and facilities, and other persons acting within the City/County/State's boundaries, and not to regulate inter-city or interstate commerce. Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law.



## Endnotes

- 1 Verisk Maplecroft, [Waste Generation and Recycling Indices 2019: Overview and Findings](#).
- 2 CIEL, Earthworks, Healthy Babies Bright Futures, IPEN, E.J.A.S, Upstream, Gaia, #break-freefromplastic, (2019) [Plastic & Health: The Hidden Costs of a Plastic Planet](#).
- 3 Napper, I. E., Thompson, R. C., [Plastic Debris in the Marine Environment: History and Future Challenges](#). Global Challenges 2020, 4, 1900081.
- 4 Rochman, C., Hoh, E., Kurobe, T. et al. [Ingested plastic transfers hazardous chemicals to fish and induces hepatic stress](#). Sci Rep 3, 3263 (2013).
- 5 Ocean Conservancy, [Trash Free Seas: Annual Data Release](#)
- 6 Geyer, R., Jambeck, J.R., Law, K.L. (2017), [Production, use, and fate of all plastics ever made](#), Science Advances 3:7.
- 7 <https://www.freedoniagroup.com/industry-study/cups-lids-3174.htm>
- 8 Clean Water Action/Fun, ReThink Disposable – [Infographic](#).
- 9 Keep America Beautiful (2009), [National Visible Litter Survey and Litter Cost Study](#).
- 10 Oregon Dept of Environmental Quality, [A Message from Composters Serving Oregon: Why We Don't Want Compostable Packaging and Service Ware](#).
- 11 U. S. Environmental Protection Agency (2021) [Emerging Issues in Food Waste Management: Persistent Chemical Contaminants](#). See also, Neltner, T. (2021) [Beyond paper, part 2: PFAS intentionally used to make plastic food packaging](#), Environmental Defense Fund.
- 12 Muncke, J. et al (2020) [Impacts of food contact chemicals on human health: a consensus statement](#), Environ Health 19(1):25.
- 13 Grohe, K.J., Geueke, B., Olwenn, M., Maffini, M., Muncke, J., (2021) [Overview of intentionally used food contact chemicals and their hazards](#), Environment Int'l, 150: 106225.
- 14 Ellen MacArthur Foundation, [Upstream Innovation: a guide to packaging solutions](#).
- 15 Upstream (2021), [Reuse Wins: The environmental, economic, and business case for transitioning to reuse in food service](#).