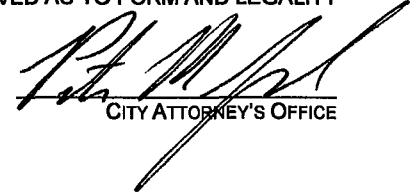


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INTRODUCED BY COUNCILMEMBERS GUILLEN AND KALB


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. 13488 C.M.S.

ORDINANCE AMENDING AND RESTATING CHAPTER 8.07 OF THE OAKLAND MUNICIPAL CODE, "POLYSTYRENE FOAM FOOD SERVICE WARE," RENAMING THE CHAPTER AS "DISPOSABLE FOOD SERVICE WARE" AND ADDITIONALLY ESTABLISHING PROCEDURES AND PROHIBITIONS REGARDING THE DISTRIBUTION OF SINGLE-USE BEVERAGE STRAWS TO CUSTOMERS OF RESTAURANTS

WHEREAS, in December of 2006, the City Council adopted Resolution 80286 C.M.S., delineating a broad set of policy objectives and initiatives to establish a Zero Waste Strategic Plan; and

WHEREAS, one of the policy strategies articulated in the Zero Waste Management Plan encourages the City Council to consider regulatory actions that will "ban the use or sale of problematic products"; and

WHEREAS, the City Council wishes to continue implementation of the Zero Waste Management Plan by adopting ordinances and policies that will act to conserve natural resources and reduce the volume of greenhouse gas emissions, waste, litter and the creation of pollution; and

WHEREAS, while certain plastics can be recycled, the vast majority of single-use straws are often discarded into solid waste and landfill and cannot be recycled due to their lack of resin code and small size, which can damage sorting machinery; and

WHEREAS, since single-use beverage straws, whether plastic or biodegradable, are rarely recycled, they often end up in overcrowded landfills, waterways and in the ocean, where they will remain in most cases for hundreds of years. Non-biodegradable single-use straws often end up in waterways where they break down into smaller, micro-size pieces that are often times mistaken as food by marine life. This in turn has detrimental effects not only on marine life, but may eventually cause harm to humans by way of consumption and collateral environmental effects; and

WHEREAS, eliminating the distribution of unneeded single-use beverage straws provided to customers of dine-in full-service restaurants will reduce the amount of plastic that will end up in Oakland storm drains and waterways through littering and the circulation of windblown debris; and

WHEREAS, by adoption of Resolution No. _____ C.M.S. on _____, 2018, the City Council endorsed and expressed its full support for California Assembly Bill 1984, introduced by California Assembly Member Ian Calderon on January 17, 2018, which would amend the California Public Resources Code to add Section 42359 to prohibit a food facility, as specified in Section 113789(a) of the Health and Safety Code, where food may be consumed on the premises from providing single-use plastic straws to consumers unless requested by the consumer; and

WHEREAS, pending the consideration of regulatory legislation at the state level, the City Council wishes to adopt local legislation that will prohibit food vendors from providing single-use beverage straws to customers of dine-in restaurants except upon request of the customer; and

WHEREAS, adoption of this Ordinance will increase awareness in the City and in the community of daily simple decisions that consumers may make to reduce solid waste and the risk of plastics entering the waste stream or into storm drains or local waterways; and

WHEREAS, Chapter 8.07 of the Oakland Municipal Code. "Polystyrene Foam Food Service Ware," prohibits food vendors within the City from providing prepared food to customers in disposable food ware that is made out of polystyrene foam; and

WHEREAS, Chapter 8.07 generally requires that, with certain exceptions, food vendors within the City must use biodegradable or compostable food service ware for serving prepared food to their customers; and

WHEREAS, the City Council wishes to integrate a new requirement that food vendors provide single use beverage straws to customers of dine-in restaurants only upon request into the City's existing Ordinance regulating disposable food service ware more broadly, to clarify that Chapter 8.07~~9~~ regulates the use of disposable food service ware generally, and to rename the Chapter accordingly; and

WHEREAS, the City Council intends that this Ordinance shall be followed with a second ordinance in six months to include a wider list of items of disposable food service ware that may be made available to customers only upon request; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff and any information provided during public meetings.

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

SECTION 1. CEQA FINDINGS.

The City Council hereby finds that this Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA"), since in accordance with CEQA Guidelines Section 15061, subd. (b)(3), it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment. This Ordinance restates amends and restates Chapter 8.07 of the Oakland Municipal Code. The only substantive amendment to the Chapter is to require that food vendors provide single use beverage straws to customers of dine-in restaurants only upon request. The remaining changes are minor conforming clerical updates and changes in numeration. The City Council finds that Chapter 8.07 already requires food vendors to use biodegradable or compostable food service ware, including single use beverage straws, and that the requirement to offer single use beverage straws to customers only upon request will serve to help prevent single use beverage straws, both biodegradable or compostable and plastic, from entering into the waste stream or ending up in Oakland waterways. The City Council further finds that the activity authorized by these amendments will result in no foreseeable collateral effects from the manufacture, transportation, recycling and landfill disposal of alternate types of disposable food service ware, since the Ordinance only requires food service vendors to offer single use beverage straws only upon request, and does not require that food vendors utilize new types of disposable food service ware not already required under Chapter 8.07 as it was codified prior to the amendments enacted under this Ordinance. As additional independent and sufficient bases for this conclusion, the City Council additionally finds that the actions authorized by this Ordinance are exempt from CEQA pursuant to CEQA Guidelines Sections 15307 and 15308, which exempt actions by regulatory agencies for protection of natural resources, and actions by regulatory agencies for protection of the environment, respectively.

SECTION 2. The City Council hereby adopts the recitals of this Ordinance as true and correct and such recitals are hereby incorporated by reference as though fully set forth in the text of this Ordinance.

SECTION 3: The City Council hereby directs the City Administrator to return to the City Council six months following the introduction of this Ordinance with draft legislation to further amend Chapter 8.079 of the Oakland Municipal Code to identify additional items of disposable food service ware beyond single use beverage straws that shall be offered to dine in customers of restaurants only upon specific request of the customer.

SECTION 4. Amendment. Oakland Municipal Code Chapter 8.07, "Polystyrene Foam Food Service Ware," is hereby amended to rename the Chapter as "Disposable Food Service Ware," and to add, delete, modify or renumber sections as set forth below (chapter and section numbers and titles are indicated in **bold type**; additions and section re-numberings are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed).

Chapter 8.079 – ~~POLYSTYRENE FOAM FOOD SERVICE WARE DISPOSABLE~~ FOOD SERVICE WARE

8.09.010 Purpose and findings.

- 8.079.020 Definitions.
- 8.079.030 Prohibited food service ware.
- 8.079.040 Required biodegradable and compostable disposable food service ware. Biodegradable and compostable food service ware required.
- 8.079.050 Exemptions.
- 8.079.060 Single-use beverage straws upon request.
- 8.09.070 Study.
- 8.079.070 Liability and enforcement.
- 8.079.080 Violations-Penalties.

8.079.010 Purpose and findings

The purpose of this Chapter is to eliminate the unnecessary distribution of disposable food service ware that is not reusable or readily compostable or recyclable. The City Council wishes to reduce the amount of non-biodegradable solid waste that will end up outside of the waste stream and in Oakland storm drains and waterways through litter and the circulation of windblown debris. The City Council finds that disposable food service ware that is not reusable or readily compostable or recyclable constitutes a significant adverse environmental impact, and that it presents a challenge to the City's program of integrated waste management. Disposable food service ware ends up on City streets, in parks, public places and open spaces, and can clog storm drains, arch culverts and catch basins, increasing time and expense of the work performed by Public Works staff during storm events. Pieces and fragments of disposable food service ware often enter the marine environment through storm drains and can be damaging and injurious to marine wildlife. By increasing awareness in the City and in the community of daily simple decisions that consumers may make to reduce solid waste and the risk of plastics and non-biodegradable waste entering the waste stream or into storm drains or local waterways, this Chapter aims to change consumer habits within the City to reduce the amount of disposable food service ware that ends up outside of the waste stream and to further implement objectives of the City's Zero Waste Strategic Plan.

Biodegradable and compostable products offer environmentally superior alternatives to non-compostable and non-recyclable disposable food service ware, pose less of a danger to the natural and urban environment, are more likely to be processed into valuable materials and byproducts to support agriculture and landscaping, and requiring their use by food vendors can serve to reduce the costly waste of natural resources and the energy required to produce new products and new disposable food service ware.

Disposable food service ware made of polystyrene, plastic utensils, and single use beverage straws are particularly challenging to the City of Oakland as it is slow to degrade, is widely prevalent as litter within the City's urban landscape, along the shores of Lake Merritt, and within watersheds and along beaches, and substitutes and alternatives to single use disposable food service ware are currently widely available and affordable for Oakland food vendors.

8.079.020 Definitions

As used in this Chapter:

"Affordable" means purchasable by the Food Vendor for same or less purchase cost than the non-biodegradable, non-polystyrene foam alternative.

"ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics.

"Biodegradable" means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

"Compostable" means all materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Compostable disposable food service ware includes ASTM-Standard BioPlastics (plastic-like products) that are clearly labeled, preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic.

"City Facilities" means any building, structure or vehicles owned or operated by the city of Oakland, its agent, agencies, departments and franchisees.

"Customer" means any person obtaining prepared food from a restaurant or retail food vendor.

"Dine-in Customer" means a customer that orders and consumes prepared food on a restaurant's premises.

"Disposable Food Service Ware" means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items that are designed for one-time use and on, or in, which any restaurant or retail food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at restaurants or retail food vendors.

"Food Vendor" means any restaurant or retail food vendor located or operating within the city of Oakland.

"Polystyrene Foam" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

"Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food vendor's premises or within the city of Oakland. For the purposes of this ordinance, "prepared food" does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared food may be eaten either on or off the premises, also known as "takeout food".

"Restaurant" means any establishment located within the city of Oakland that sells prepared food for consumption on, near, or off its premises by customers. "Restaurant," for purposes of this Chapter, includes itinerant restaurants, pushcarts and vehicular food vendors as those terms are defined in chapters 5.49, 8.08, and 8.09 of the City of Oakland Municipal Code.

"Retail Food Vendor" means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the city of Oakland that sells prepared food.

"Single Use Beverage Straw" means a hollow tube for sucking up a beverage from a container that is designed to be used one time in its same form by a customer.

"Take Out Food Order" means prepared meals or other food or beverage items or prepared food that a customer purchases at a restaurant and consumes away from the premises.

8.079.030 Prohibited food service ware.

- A. Except as provided in Section 8.07.050 of this Chapter, food vendors are prohibited from providing prepared food to customers in disposable food service ware that uses polystyrene foam.
- B. All city facilities are prohibited from using polystyrene foam disposable food service ware and all no city departments and agencies will not may purchase or acquire polystyrene foam disposable food service ware for use at city facilities.
- C. City franchises, contractors and vendors doing business with the city shall be prohibited from using polystyrene foam disposable food service ware in city facilities or on city projects within the city of Oakland.

~~On and after July 1, 2018, no Full Service Restaurant shall provide a Single Use Beverage Straw to a Dine In Customer or other Person except on the customer's specific request.~~

8.079.040 Required biodegradable and compostable disposable food service ware. Biodegradable and compostable food service ware required.

- A. All food vendors using any disposable food service ware ~~will~~ shall use biodegradable or compostable disposable food service ware unless they can show an affordable biodegradable or compostable product is not available for a specific application. Food vendors are strongly encouraged to reuse food service ware in place of using disposable food service ware. In instances that food vendors wish to use a biodegradable or compostable disposable food service ware product that is not affordable, a food vendor may charge a "take out fee" to customers to cover the cost difference.
- B. All city facilities ~~will~~ shall use biodegradable or compostable disposable food service ware unless they can show an affordable biodegradable or compostable product is not available for a specific application.
- C. City franchises, contractors and vendors doing business with the city ~~will~~ shall use biodegradable or compostable disposable food service ware unless they can show an affordable biodegradable or compostable product is not available for a specific application.

8.079.050 Exemptions.

- A. Prepared foods prepared or packaged outside the city City of Oakland are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Oakland are encouraged to follow the provisions of this Chapter.
- B. Food vendors will be exempted from the provisions of this Chapter for specific items or types of disposable food service ware if the City Administrator or his/her designee finds that a suitable affordable biodegradable or compostable alternative does not exist and/or that imposing the requirements of this Chapter on that item or type of disposable food service ware would cause undue hardship.
- C. Polystyrene foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.
- D. Disposable food service ware composed entirely of aluminum is exempt from the provisions of this Chapter.
- E. Emergency Supply and Services Procurement: In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, city facilities, food vendors, city franchises, contractors and vendors doing business with the city shall be exempt from the provisions of this Chapter.

8.079.060 Single use beverage straws upon request.

- A. On and after July 1, 2018, no restaurant shall provide a single use beverage straw to a dine-in customer except on the customer's specific request.

- B. Take-out food orders are exempt from the requirements of this Section 8.09.060. Restaurants may also have single use beverage straws available for use by dine-in customers at locations within the restaurant, including but not limited to self-service beverage stations and kiosks.

8.079.070 — Study

~~One year after the effective date of this Chapter, the City Administrator will conduct a study on the effectiveness of this Chapter.~~

8.079.070 Liability and enforcement.

- A. The City Administrator or his/her designee will have primary responsibility for enforcement of this Chapter. The City Administrator or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, entering the premises of any food vendor to verify compliance. The City Administrator, or his or her designee, is authorized to enforce the provisions of this Chapter and to exercise any enforcement powers in accordance with the provisions of Chapter 1.08 of the Oakland Municipal Code.
- B. Anyone violating or failing to comply with any of the requirements of this Chapter will be guilty of an infraction pursuant to Chapter 1.28, of the Oakland Municipal Code.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

8.079.080 Violations-Penalties

1. If the City Administrator or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the food vendor that a violation has occurred.
2. If the food vendor has subsequent violations of this Chapter, the following penalties will apply:
 - a. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
 - b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
 - c. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.
3. Food vendors may request an administrative hearing to adjudicate any penalties issued under this Chapter by filing a written request with the City Administrator, or

his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter. Any determination from the administrative hearing on penalties issued under this Chapter will be final and conclusive.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 6. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

MAY 15 2018

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN ~~AND~~ - 7
~~PRESENCE~~

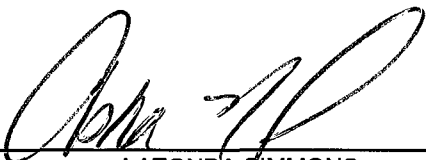
NOES - 0

ABSENT - 0

ABSTENTION - 0

1 Excused - *Kard*

Introduction Date
MAY 01 2018

ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: *May 18, 2018*