

INTRODUCED BY COUNCILMEMBER DAN KALB
& COUNCILMEMBER NOEL GALLO

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE TO REDUCE LITTER ON OUR STREETS AND IN OUR WATER WAYS BY: (1) REQUIRING PREPARED FOOD VENDORS TO USE REUSABLE FOOD SERVICE WARE FOR DINING ON PREMISES, (2) ALLOWING CUSTOMER-PROVIDED REUSABLE BEVERAGE CUPS AND FOOD CONTAINERS FOR TAKE-OUT, (3) REQUIRING THAT PREPARED FOOD VENDORS SHALL ONLY PROVIDE DISPOSABLE FOODWARE ACCESSORIES UPON REQUEST, (4) REQUIRING REUSABLE BEVERAGE CUPS AT CITY FACILITIES, (5) REQUIRING REUSABLE BEVERAGE CUPS AT LARGE VENUES, (6) REQUIRING REUSABLE BEVERAGE CUPS AT LARGE EVENTS, (7) PROHIBITING THE CITY PURCHASE, SALE, OR DISTRIBUTION OF PACKAGED WATER, (8) ENCOURAGING THE INSTALLATION OF ACCESSIBLE WATER BOTTLE REFILL STATIONS AT CITY OWNED AND OPERATED FACILITIES, AND (9) REQUIRING COMPLIANT DISPOSABLE FOOD SERVICE WARE FOR FOOD SERVICE; AND MAKING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, illegal dumping and litter in Oakland streets is an ever-growing issue; and

WHEREAS, the production, consumption and end-of-life management of Disposable Food Service Ware, typically used for only a few minutes before being discarded, have significant environmental impacts including substantial greenhouse gas emissions, litter, marine pollution, environmental contamination, increased cancer risk to production employees, harm to wildlife, the depletion of precious natural resources, decrease of biodiversity, and the generation of hard-to-manage waste; and

WHEREAS, prior to the COVID-19 pandemic, nearly 1 trillion individual pieces of Disposable Food Service Ware and packaging were used annually by U.S. food service operators – 21% for on-site dining and 79% for takeout and delivery – usage which increased dramatically during the pandemic as takeout and delivery became the most common forms of prepared food service; and

WHEREAS, pre-pandemic, restaurants and foodservice businesses in the U.S. spent \$24 billion on disposables each year. Local businesses and city governments spend nearly \$6 billion

per year on solid waste management costs attributable to disposable food packaging. Roughly 20 billion pieces of litter per year are from disposable food-service packaging; and

WHEREAS, recycling plastics face the economic challenges of high-operating and collections costs, low participation, low capacity and efficiency of sorting operations and insufficient volume of low-cost, high-quality recycled materials; and

WHEREAS, disposable Food Service Ware substantially contributes to hard-to-recycle wastes. Packaging comprises 27% of California's disposed waste stream annually. The generation of municipal solid waste in 1960 was just 2.68 pounds per person per day in California and reached 4.9 pounds per person per day in 2018, the last time EPA reported generation rates; and

WHEREAS, each year in California and globally, during International Coastal Cleanup Day, seven of the top ten littered items collected on beaches and shorelines are Disposable food and beverage packaging, nearly all of which are plastic; and

WHEREAS, the City of Oakland is mandated by the SF Bay Area Regional Water Quality Control Board under our Municipal Regional Stormwater Permit to significantly reduce the volume of trash in our stormwater system; and

WHEREAS, plastic beverage bottles are number one of the top ten most commonly found plastic items on beaches when measured by weight. Every hour, Americans use 3 million plastic water bottles. Californians used more than 12 billion plastic beverage bottles in 2017, of which about 70% were not recycled; and

WHEREAS, every year, about 8 million tons of plastic waste escape into the oceans from coastal nations. That's the equivalent of dumping the contents of one garbage truck into the ocean every minute. Research indicates that as of 2015, there were over 150 million tons of plastics in the ocean. If plastic inputs are not significantly curtailed, the ocean will contain 3 times more plastic by weight than fish by 2025. Over 900 species of marine wildlife have been impacted by plastic ingestion and entanglement; and

WHEREAS, plastic may last for hundreds and even thousands of years, and has broad, long-lasting negative impacts. Plastics are persistent and accumulating dramatically in oceans worldwide. Scientists document a complex toxicology of plastic micro- and nano- particles in marine life that transfers up the food chain, including to people; and

WHEREAS, packaging, including Food Service Ware, is a primary user of virgin materials and resources. 55% of paper produced each year is used for packaging. Paper production is responsible for 3 billion trees logged in the U.S. each year, which causes loss of habitat and biodiversity, results in sedimentation of streams, and reduces the availability of trees to capture CO₂ from the atmosphere; and

WHEREAS, the growth of plastics production in the past 65 years has substantially outpaced any other manufactured material. 42% of non-fiber plastics produced are used for packaging and 60% of all plastics produced between 1950 and 2015 were landfilled or entered the environment. Half of all global plastic production is for single-use applications; and

WHEREAS, cheap, fracked natural gas is driving a ramp-up in plastics production worldwide. The production capacity for plastic is poised to grow by 33% or more in less than a decade and is causing the plastics industry to identify or create new markets – primarily packaging – for an ever-growing flow of cheap plastic; and

WHEREAS, reducing the production and disposal of plastic is essential to reducing greenhouse gas emissions. It is estimated that in 2019 alone the global production and incineration of plastic produced more than 850 million metric tons of greenhouse gasses—equal to the emissions from 189 five-hundred-megawatt coal power plants; and

WHEREAS, disposable Food Service Ware poses numerous threats to human health. Over 12,000 chemicals are used in food packaging and other materials that contact food. Many are known to cause cancer, endocrine disruption, chronic diseases and other illnesses in people, and to harm aquatic and terrestrial ecosystems. Many of the most toxic chemicals used in Disposable Food Service Ware migrate into food and beverages; and

WHEREAS, disadvantaged and low-income communities are disproportionately impacted by the human health and environmental impacts of toxic chemicals in Disposable Food Service Ware, plastic pollution, and fossil fuel extraction; and

WHEREAS, micro- and nano- plastics are released from Disposable Food Service Ware, including polypropylene food containers and PET beverage bottles (Polyethylene terephthalate, commonly recognized in single-use water bottles and labeled with the #1 recycling code). People inhale microplastics through the air, consume them through food and water, and even absorb them through the skin. Microplastics have been found within human lungs, livers, spleens, and kidneys, in the placentas of newborn babies, and in breast milk; and

WHEREAS, prioritizing reduction and reuse of packaging can provide significant economic, environmental, and social benefits and is consistent with the Integrated Waste Management hierarchy that places “Reduce” and “Reuse” above “Recycling” and disposal; and

WHEREAS, the availability of innovative services, systems, and businesses that deliver products in unpackaged or Reusable formats is increasingly creating new opportunities for local business entrepreneurship and economic development. Recycling and reusing create between 9 and 30 times more jobs than disposing of waste in landfills and incinerators; and

WHEREAS, requiring the use of 100% Reusable Food Service Ware for onsite dining and take-out food service in urban cities in the U.S. is estimated to achieve an 86% reduction in Disposable Food Service Ware, equal to 841 billion Food Service Ware items eliminated, 7.5 million tons of waste avoided, \$5 billion in net savings for the food service industry for food service operations, \$5.1 billion saved by business and local government in solid waste management costs, and 17 billion pieces of litter prevented, in addition to the creation of 193,000 local community-based jobs; and

WHEREAS, public access to water refill stations supports personal efforts to avoid disposable plastic bottles by using reusable bottles, and helps people save money; and

WHEREAS, a 20% increase in the use of reusable bottles worldwide could reduce marine plastic pollution by 39%, keeping 8.1 to 13.5 billion PET bottles out of the ocean every year, based on 2018 data. Switching to Reusable bottles can save 8 billion metric tons of CO₂, 2% of the remaining carbon budget; and

WHEREAS, reusable glass beverage bottles are 85% more climate-friendly than disposable plastic beverage bottles; and

WHEREAS, stainless steel and polypropylene cups for beverages at major events dramatically outperform disposable plastic and paper cups across all environmental metrics if they are washed and used more than six times; and

WHEREAS, reusable polypropylene cups can be washed hundreds of times and stainless-steel Reusable cups can be washed and reused thousands of times; and

WHEREAS, in 2021, Governor Newsom signed into law California Assembly Bill (AB) 1276 (codified at Pub. Res. Code, Sections 42270 et seq.) which prohibits food facilities from providing any single-use Food Service Ware Accessories or condiment packages unless requested by the customer; and

WHEREAS, State law allows customers to provide their own Reusable Beverage Cups and Reusable Food Containers for service, and, consistent with the Centers for Disease Control and Prevention, the Alameda County Department of Environmental Health allows the use of Reusable Food Service Ware when properly washed, rinsed, and sanitized; and

WHEREAS, Oakland's Equitable Climate Action Plan (ECAP), adopted by Oakland City Council in July 2020 via Resolution no. 88267, contains Action MCW-3, which directs the City to work with regional partners by 2023 to pass an ordinance to reduce the prevalence of single-use plastic in Oakland and to ensure that reusable food service ware is the default in dining; and

WHEREAS, the City understands that businesses will require assistance and support to implement some of these policies; and

WHEREAS, the City Council asks that the City take steps to analyze that the materials and on-site systems necessary for compliance with these Sections are sufficiently available and affordable such that a clear of affected Oakland businesses can purchase and/or implement them as relevant without experiencing an undue financial burden; and

WHEREAS; the City Council asks that the City conduct sufficient outreach and engagement with potentially affected businesses to inform them of the provisions of this Section, to understand their concerns and challenges related to this Section, and to receive and, as appropriate, act on their suggestions for improving relevance of and ease-of-compliance with this section for impacted businesses; reaching a majority of affected businesses City-wide with a specific emphasis on businesses in Priority Communities; and

WHEREAS, the City Council does, accordingly, find and declare that it should restrict the use of disposable food service ware and accessories by prepared food vendors; promote customer-provided reusable beverage cups and food service ware for take-out; require that certain food ware accessories be provided only upon customer request; require use of reusable beverage cups at City facilities and returnable reusable beverage cups at large venues and events; prohibit the purchase, sale, or distribution of water in disposable bottles by the City; encourage accessible water bottle refill stations; and set standards for disposable food service ware for food service; and

WHEREAS, the City has a substantial interest in protecting its residents and the environment from negative impacts of disposable food service ware, packaged water, polystyrene foam, and certain non-recyclable non-compostable products, and in realizing the benefits of alternative products; and

WHEREAS, this Chapter is consistent with the Oakland Equitable Climate Action Plan (ECAP) that was adopted in July 2020; and

WHEREAS, this ordinance was heard by the Public Works Committee on November 14, 2023 and was forwarded on to the City Council for consideration; and

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

SECTION 1. The City Council hereby adopts the recitals of this Ordinance to be true and correct and such recitals are hereby incorporated by reference as though fully set forth in the text of this Ordinance.

SECTION 2. Amendment to Oakland Municipal Code Chapter 8.07.

Oakland Municipal Code Chapter 8.07, “Disposable 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 renumberings 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 8.07 – DISPOSABLE FOOD SERVICE WARE

8.07.010 Purpose and findings.

8.07.020 Definitions.

8.07.030 ~~Prohibited food service ware.~~ Reusable Food Service Ware Required for Dining on Premises.

8.07.040 ~~Biodegradable and compostable food service ware required.~~ Customer-Provided Reusable Beverage Cups and Food Containers for Take-Out.

8.07.050 ~~Exemptions.~~ Accessories Only Upon Customer Request.

8.07.060 ~~Single-use beverage straws upon request.~~ Reusable Beverage Cups at City Facilities.

8.07.070 ~~Liability and enforcement.~~ Reusable Beverage Cups at Large Venues.

- ~~8.07.080 Violations Penalties. Reusable Beverage Cups at Events.~~
- ~~8.07.090 City Purchase, Sale, or Distribution of Packaged Water Prohibited.~~
- ~~8.07.100 Accessible Water Bottle Refill Stations.~~
- ~~8.07.110 Compliant Disposable Food Service Ware for Food Service.~~
- ~~8.07.120 Distribution of Non-Compliant Food Service Ware Prohibited.~~
- ~~8.07.130 Polystyrene Foam.~~
- ~~8.07.140 Process to Obtain Waivers.~~
- ~~8.07.150 Enforcement.~~
- ~~8.07.160 Technical Bulletins and Administrative Regulations.~~
- ~~8.07.180 Severability~~
- ~~8.07.190 Effective Date~~

8.07.010 - 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.~~

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. Following the direction of the 2030 Equitable Climate Action Plan, the City Council wishes to reduce the amount of 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 other 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 and 2030 Equitable Climate Action Plan.

8.07.020 - 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~~ a compliant alternative as specified in section 8.07.120. A negligible increase in cost of less than 1.5% shall be considered affordable for the purposes of this Chapter.

"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 Chapter, "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 (1) 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.~~

"Accessible Water Bottle Refill Station" means a bottle filler that dispenses potable drinking water downward that complies with Section 116875 of the California Health and Safety Code standards and applicable standards under the federal Americans with Disabilities Act of 1990 (42

U.S.C. Sec. 12101 et seq.) and accessibility requirements applicable to drinking fountains under the California Building Standards Code.

“Beverage Cup” means any cup, vessel, glass, container, or any other items in which a beverage (including water) is placed or packaged at a Prepared Food Vendor’s premises.

“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). BPI maintains and certifies a list of products that demonstrate that they meet the requirements of ASTM D6400 or D6868, based on testing in an approved laboratory.

“Bio-Plastics” means any polymer that is labeled, marketed, or sold as compostable plastic including but not limited to those that meet the State of California’s definition of Compostable Plastics in SB 1201 Section 4f.

“Bulk” means material that is stored as unpackaged liquid or dry goods capable of being conveyed to a Reusable container in methods conforming to the California Retail Food Code, Health and Safety Code, Sections 113700 et seq. or packaging for a large amount of product, thereby offsetting the need for multiple smaller packaging units for the same amount of product.

“City” means the City of Oakland.

“City Facilities” means any City-owned properties or facilities limited to, libraries, recreation centers, senior centers, office buildings, enterprise facilities, police facilities, the firehouse training center and municipal corporation yards.

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

“Compostable” means an item or material that will break down into, or otherwise become a part of, usable compost (e.g., soil conditioning material, mulch) in a safe and timely manner, and is listed on the City’s website. Products or packages made with plastics, either petroleum or biological based, and made with fluorinated chemicals shall not be considered compostable. Only items and materials certified to meet these standards by the Biodegradable Products Institute, Compost Manufacturing Alliance, and/or other third party recognized by the City shall be considered compostable.

“Convenient drop-off” means customers returning Reusable products in a Reuse System can return to the retail location where the product was originally obtained, in curbside kiosks near the original retail location, or at nearby grocery stores or other retail locations, or the Reuse System provides frequent home pick-up services.

“Dishwashing Capacity” means adequate onsite or offsite services, including those provided to a Prepared Food Vendor through a contracted service, to wash, rinse, and sanitize, in compliance with the California Health and Safety Code Division 104-Environmental Health, Part 7, California Retail Code, the necessary quantity of Reusable Food Service Ware items for all food and beverages prepared on the premises of the Prepared Food Vendor.

“Disposable” means an item or product that is not Reusable or intended for reuse, including Food Service Ware and products that are intended for single or a limited number of uses, regardless of the method of disposal, including whether, after use, the item or product is landfilled, treated with heat by conversion technologies, incinerated, recycled, or composted.

“Event” means any indoor or outdoor event within the City that is subject to a City permit and expected to have more than 500 attendees or participants.

“Event Producer” means a person or entity, or their agent, who contracts with or obtains a permit from the City or a City agent, to hold an Event or Events within the City at a location other than a Large Venue.

“Fiber-based” means a plant- or animal-based, non-synthetic fiber, including but not limited to paper, wood, or bamboo. Fiber-based items do not include or contain petroleum-based or biologically-based polymers of any kind.

“Food Container” means any hinged or lidded container (clamshell, box, bowl), plate, tray or other vessel used to hold Prepared Food.

“Food Service Ware” means any products used for serving, consuming, or packaging Prepared Food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrappers or liners, hinged or lidded containers (clamshells), utensils (forks, knives, spoons, sporks, and chopsticks), condiment cups, and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Vendor’s premises.

“Food Service Ware Accessory” means any item or accessory that typically accompanies Food Service Ware, such as straws, stirrers, splash sticks, cocktail sticks, toothpicks, napkins and utensils (forks, knives, spoons, sporks, and chopsticks); condiment cups and packets; cup sleeves, tops, lids and spill plugs; and other similar accessory or accompanying items used as part of Prepared Food or beverage service or packaging.

“High Priority Toxic Food Packaging Chemical” means any Perfluoroalkyl or Polyfluoroalkyl Substances (PFAS) or any of the chemicals listed in California's Proposition 65 (Health & Safety Code § 25249.8; list set forth at 22 CCR § 69502.2(a)(1)(A)), the European Union's Substances of Very High Concern Candidate List (set forth at 22 CCR § 69502.2(a)(1)(C), (G)), and the International Agency for Research on Cancer lists Group 1 and Group 2a (set forth at 22 CCR § 69502.2(a)(1)(J)).

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

“ISO 17025 Accredited Lab” means a laboratory accredited by the International Organization for Standardization and International Electrochemical Commission to perform product testing, sampling, and calibration.

“Large Venue” means a permanent facility that seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation over a typical calendar year. For purposes of this definition, a “facility” includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or

civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this Chapter, a site under common ownership or control that includes more than one Large Venue, where each Large Venue is contiguous with other Large Venue(s) in the site, is a single Large Venue.

“Packaged Beverage” or “Packaged Water” means a drinking beverage, including water, in a sealed container, including a box, bag, can, glass bottle, Rigid Plastic #2 Bottle or other sealed container intended primarily for single-service use.

“Person” means an individual, firm, limited liability company, association, partnership, corporation, or any other legal entity other than a governmental entity that is not specifically referenced in this ordinance.

“Perfluoroalkyl and Polyfluoroalkyl Substances” means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

“Polystyrene Foam” means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding and extrusion-blow molding (extruded foam polystyrene). “Polystyrene Foam” does not include clear or solid polystyrene (oriented polystyrene).

“Prepared Food” means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the premises of a Prepared Food Vendor for consumption, including, but not limited to, ready-to-eat, dine-in, take-out, or complimentary food or beverage. “Prepared Food” does not include: (1) raw eggs and raw, butchered meat, fish, or poultry that is sold from a refrigerator case or from a similar retail appliance; or (2) prepackaged food that is delivered to a Prepared Food Vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the Prepared Food Vendor to the customer in the same container or packaging.

“Prepared Food Vendor” means any Person that that sells Prepared Food to be consumed on or off a premises located or operated within the City including, but not limited to, a restaurant, café, bar, nightclub, grocery store, convenience store, delicatessen, bakery, food service establishment (including carry out, quick service, and full-service), cafeteria, food court, food truck or mobile unit-based vendor, hotel, motel, bed and breakfast, inn, special event space, movie house, theater, itinerant restaurant, pushcart, farmers market, or other similar establishments, directly or indirectly under contract and including, but not limited to sales in City Facilities, Large Venues, and commercial office buildings. Notwithstanding the foregoing, the following are not considered Prepared Food Vendors: hospitals, public agencies other than the City, public and private schools, senior centers, prisons and jails.

“Recyclable” means items that are accepted in Oakland’s residential recycling service, as listed on the City’s web site and as may be amended from time to time.

“Reusable” means Food Service Ware that is manufactured of ceramic, porcelain, glass, or non-foil metal, or other durable materials that are specifically designed and manufactured to be washed and sanitized for at least 780 commercial wash cycles as warranted by the manufacturer, based on testing performed by an ISO 17025 Accredited Lab, are safe for washing and sanitizing

according to California Health & Safety Code, Sections 114101 and 114099.7, respectively and all other applicable regulations, and are used in a system that enables repeated collection, washing, and return of Food Service Ware, thereby ensuring that the product is actually used repeatedly over an extended period of time. Reusable products shall not be manufactured from a High Priority Toxic Material.

“Returnable” means an item for which a Reuse System is available.

“Reuse System” means a system in which (1) convenient drop-off of an item is available to the customer, and (2) there are suitable incentive systems to encourage customers to return the product, such as a deposit or charge for failure to return, or discounts, rewards, or other positive incentives.

“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.

“Take-Out Consumption” means consumption of food or beverages requiring no further preparation off the premises or away from the facilities of the Prepared Food Vendor.

“Take-Out Food Ordering Platform” means a Person engaged in the service of taking orders from customers for food or related items for pickup or delivery from a Prepared Food Vendor, and includes orders made by phone, on the Prepared Food Vendor website, or on a third-party site, any of which may also include delivery by a third-party.

8.07.030 - Prohibited food service ware. Reusable Food Service Ware Required for Dining on Premises.

~~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 no city departments and agencies 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.~~

Beginning July 1, 2025:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall be served using Reusable Food Service Ware, except that: (1) Disposable paper food wrappers, bags, foil wrappers, and paper tray- and plate-liners shall be allowed provided they meet the requirements in Section 8.07.110 of

this Chapter (Compliant Disposable Food Service Ware for Food Service), and (2) Disposable Standard Condiment packets and Disposable straws may be provided upon customer request in accordance with subsection (B) of this Section.

- B. Standard Condiments provided for on-site consumption on the premises of a Prepared Food Vendor must be served from Reusable containers or a Bulk dispenser. A supply of single-use Standard Condiment packets and Disposable straws may be maintained and provided to customers upon request, based on medical necessity.
- C. This Section does not prohibit a Prepared Food Vendor from providing, upon a customer's request, Disposable Food Service Ware compliant with Section 8.07.110 of this Chapter (Disposable Food Service Ware for Food Service), to take away leftover Prepared Food after dining on the premises.
- D. Consumption is considered "on-premises" if it takes place at tables and/or dining areas, including non-seated picnic areas provided by the Prepared Food Vendor either on its own or in conjunction with one or more other Prepared Food Vendor(s) or pursuant to an agreement between the Prepared Food Vendor and a third party.
- E. Business licenses for Prepared Food Vendors, applied for or renewed after December 31, 2025 shall only be granted to Prepared Food Vendors that can demonstrate ability to comply with Subsection (B) by demonstrating to the City that adequate Dishwashing Capacity will be provided on the premises or that dishwashing services will be provided by a third party.
- F. The requirements of Subsection (B) of this section shall not apply to Mobile Food Facilities or Temporary Food Facilities as defined by California Health and Safety Code Sections 113831 and 113930.
- G. Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Facilities shall comply with this Section. All leases, contracts, funding agreements, and sponsorships entered by the City shall require compliance with this Section for all activities in the City.
- H. Prepared Food Vendors that do not have Dishwashing Capacity may request a waiver or partial waiver of Subsections (B) and (F) of this Section. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints, undue financial hardship, and/or other insurmountable circumstances. Any waiver shall expire automatically in the event of a significant remodel, renovation, or other alteration of the premises with a construction valuation that exceeds \$60,000, or if the Prepared Food Vendor ceases operations at the location for which the waiver has been granted.

8.07.040 - Biodegradable and compostable food service ware required. Customer-Provided Reusable Beverage Cups and Food Containers for Take-Out.

~~A. All food vendors using any disposable food service ware 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 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 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.~~

- A. Customers shall be allowed to provide their own empty Reusable Beverage Cups and Reusable Food Containers for Take-Out Consumption by Prepared Food Vendors in accordance with California Retail Food Code, Health and Safety Code, Sections 113700 et seq.
- B. Prepared Food Vendors subject to this section may refuse, at their sole discretion, any customer-provided Reusable Beverage Cup or Reusable Food Container that is cracked, chipped, or corroded, or appears inappropriate in size, material, or condition for the intended beverage or food, or that appears to be excessively soiled or unsanitary.
- C. Customers who opt to provide their own empty Reusable Food Service Ware containers shall ensure that these consumer-owned containers are washed, rinsed, and sanitized prior to being provided or returned to the food facility for filling, and must ensure that the consumer-owned container be designed and constructed for reuse, as defined herein.
 - 1. In accordance with California Retail Food Code, Health and Safety Code section 114121, clean consumer-owned containers provided or returned to the food facility for filling may be filled by either the employee or the owner of the container. The food facility shall be required to isolate the consumer-owned containers from the serving surface or sanitize the serving surface after each filling; and shall prepare, maintain, and adhere to written procedures to prevent cross-contamination.
 - 1. Customers and consumers who provide consumer-owned containers for filling, shall be solely responsible for the condition of the containers. Food service providers will not be held liable for illness caused by consumer provided containers, provided that food service providers adhere to the requirements stated above.

- D. Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating in City Facilities shall comply with this section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this section for all activities in the City.
- E. Large Venues and Events are not subject to this Section.

8.07.050 - Exemptions- Accessories Only Upon Customer Request.

~~A. Prepared foods prepared or packaged outside the 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.~~

- A. Prepared Food Vendors shall provide Disposable Food Service Ware Accessories or Disposable Standard Condiments to customers for takeout and delivery orders only when specifically requested by the customer. No Disposable Food Service Ware Accessories shall be provided for dining on-premises, except Disposable napkins, cocktail sticks, toothpicks, and stir sticks may be provided for on-premises dining when specifically requested by the customer. Takeout and delivery orders include orders made directly with the Prepared Food Vendor and orders made using Take-Out Food Ordering Platforms.
- B. Standard Condiments provided for consumption on the premises of a Prepared Food Vendor must be served from Reusable containers or a Bulk dispenser. A supply of single-use Standard Condiment packets may be maintained and provided to customers upon request, based on medical necessity.
- C. Disposable Food Service Ware Accessories and Standard Condiments shall not be bundled or packaged in a manner that prohibits a take-out customer from taking only the specific Disposable Food Service Ware Accessory and/or Standard

Condiment desired without also having to take a different Disposable Food Service Ware Accessory and/or Standard Condiment.

- D. Disposable Food Service Ware Accessories shall not be individually wrapped and may be provided to customers using refillable dispensers that dispense items one at a time.
- E. (1) If a Food Vendor uses a Food Ordering Platform, the Food Vendor shall list on that Food Ordering Platform all available Food Service Ware Accessories and Standard Condiments the Food Vendor offers, and the Food Vendor shall provide to the customer only those Food Service Ware Accessories or Standard Condiments the customer has selected. If a customer does not select Food Service Ware Accessories or Standard Condiments, the Food Vendor shall provide no Food Service Ware Accessories or Standard Condiments to the customer.

(2) Food Ordering Platforms must provide Food Vendors with the opportunity to itemize which Food Service Ware Accessories and Standard Condiments, if any, the Food Vendor chooses to offer to customers in connection with an order placed on a Food Ordering Platform, and the opportunity for customers to select which Food Service Ware Accessories and Standard Condiments, if any, they choose to have included with their order.

- F. Notwithstanding any other requirements of this Section, a Prepared Food Vendor that is (1) located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, or (2) a drive-through food service, may ask a customer if the customer wants a Disposable Food Service Ware Accessory if needed to consume or transport ready-to-eat food, or to prevent it from spilling.
- G. Nothing in this Chapter shall restrict, or be construed to restrict, the ability of Prepared Food Vendors from providing Disposable plastic straws to individuals who may require and request them due to disability or other medical or physical conditions or circumstances.
- H. Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating in City Facilities shall comply with this section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this Section for all activities in the City.

8.07.060 - ~~Single use beverage straws upon request.~~ Reusable Beverage Cups at City Facilities.

~~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.~~

Beginning July 1, 2025 after ordinance adoption:

- A. Notwithstanding any other provision of this Code, the City shall establish a Reusable Beverage Cup Reuse System and all beverages provided by the City and served in City Facilities shall be served in Returnable Reusable Beverage Cups or a user's personal Reusable Beverage Cup.
- B. No City employee may distribute (for sale or otherwise) beverages in Disposable Beverage Cups at or in City Facilities.
- C. All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing any person to use indoor City Facilities, for purposes that contemplate or would allow the sale or distribution of non-packaged beverages (collectively, "use agreements") shall specifically require that the user comply with Subsections (a) and (b) of this Section. This requirement shall also apply to any such use agreement renewed, extended, or materially amended after implementation of this provision.
 - a. In the instance that a member of the public or organization rents out an enterprise facility for a one-time event, they are exempt from this section, 8.07.060

8.07.070 - ~~Liability and enforcement.~~ Reusable Beverage Cups at Large Venues.

~~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.~~

Beginning July 1, 2025:

- A. Any person operating a Large Venue that allows the sale of Prepared Food on premises shall establish a Reusable Beverage Cup Reuse System and ensure that all non-packaged beverages, not including drinking water from drinking water fountains and Accessible Water Refill Stations, are available for purchase in Returnable Reusable Beverage Cups. Venue operators must demonstrate that at least twenty-five percent (25%) of all non-packaged beverages served to attendees are in Reusable Beverage Cups. This requirement shall increase to one hundred percent (100%) beginning January 1, 2027.

- B. To meet the requirements of this Section, Large Venue operators may provide, lend, or rent Reusable Beverage Cups to attendees.
- C. Large Venue operators' contracts with Prepared Food Vendors for on-site services shall ensure compliance with this Section.
- D. Use, handling, and sanitation of Reusable Beverage Cups at Large Venues by venue staff and third-party contractors must comply with California Health & Safety Code, Sections 113700 et seq. and all other applicable health regulations.
- E. All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing Large Venues to operate within the jurisdiction shall specifically require that the permittee or contractor comply with this Section. This requirement shall also apply to any such permit or agreement renewed, extended, or materially amended after implementation of this provision.
- F. Any Large Venue operator may petition for a full or partial waiver of the requirements of this Section if the operator can demonstrate that the application of this section would create undue hardship or practical difficulty for the Large Venue that is not generally applicable to other Large Venues in similar circumstances.

8.07.080 - Violations—Penalties. Reusable Beverage Cups at Events.

~~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.~~

Beginning July 1, 2025

- A. Event Producers that allow the sale of Prepared Food at an Event must establish a Reuse System and make Returnable Reusable Cups available for the purchase of non-packaged beverages. Event producers must demonstrate that at least twenty-five percent (25%) of all non-packaged beverages served to attendees are in Reusable Beverage Cups. This requirement shall increase to one hundred percent (100%) beginning January 1, 2027. To meet this requirement, Event Producers may cause Returnable Reusable Beverage Cups to be provided, lent, or rented to Event attendees.
- B. The permit application for each Event must indicate how the requirements of this Section will be met and describe the tracking system that will be used to document the total number of beverages sold or otherwise provided and the number provided, lent, or rented in Reusable Beverage Cups. The Event Producer's selected method for meeting the requirements of this Section must be included in any contract, agreement or permit for the Event related to or otherwise including beverage service. Event Producers shall report the percentage of beverages sold in Reusable Beverage Cups to the City within 3 months of the Event to the City Economic & Workforce and Development Department and prior to the return of any deposit collected by the City in connection with the event.
- C. Use, handling, and sanitation of Reusable Beverage Cups at Events by Persons serving non-packaged beverages must comply with California Health & Safety Code, Sections 113700 et seq. and all other applicable state and local laws, regulations, and guidelines.
- D. Event Producers' contracts with Prepared Food Vendors for on-site services shall ensure compliance with this Section.
- E. All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing Events to operate within the jurisdiction shall specifically require that the Event Producer comply with this Section. This requirement shall also apply to any such permit or agreement renewed, extended, or materially amended after implementation of this provision.
- F. In accordance with Section 8.07.140 of this Ordinance (Process to Obtain Waivers), any Event Producer may petition for a full or partial waiver of the requirements of this Section as they apply to a particular Event, if the Event Producer can demonstrate 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.

8.07.090 City Purchase, Sale or Distribution of Packaged Water Prohibited

No City funds shall be used to purchase Packaged Water for use in City Facilities, unless it is for an emergency.

8.07.100 Encouragement of Accessible Water Bottle Refill Stations.

- A. All City Facilities used for Events, City Facilities other than office buildings, and Large Venues that have access to drinking water are encouraged to install and maintain at least one, or maintain at least one existing, Accessible Water Bottle Refill Station on-site per every 500 daily visitors, located to ensure maximum access by all visitors.
- B. An office building owned by the City or in City Facilities are encouraged to have at least one Accessible Water Bottle Refill Station per 500 occupants authorized under the building's maximum occupancy.
- C. All facilities used for Events, City Facilities, and Large Venues are encouraged to allow visitors to bring their own Reusable beverage bottle for use at an Accessible Water Bottle Refill Station.
- D. If any existing Water Bottle Refill Station in a City Facility used for Events, in City Facilities, or in a Large Venue, is not Accessible, the owner or operator of the facility or Large Venue are encouraged to upgrade the water bottle refill station to an Accessible Water Bottle Refill Station by January 1, 2026.

In accordance with Section 8.07.120 (Process to Obtain Waivers), any person subject to this section may petition for a full or partial waiver of the requirements of this Section, if the person can demonstrate that the application of this Section would create undue hardship or practical difficulty for the that is not generally applicable to others in similar circumstances.

8.07.110 Compliant Disposable Food Service Ware for Food Service.

- A. When Disposable Food Service Ware is authorized for use by this Chapter, Prepared Food Vendors may provide Prepared Food in Disposable Food Service Ware only if that Disposable Food Service Ware is:
 - 1. Not made of Polystyrene Foam.
 - 2. Not made of Bio-Plastic.
 - 3. Free of High Priority Toxic Food Packaging Chemicals as determined by a third-party certification program for Disposable Food Service Ware that requires full disclosure of intentionally added chemicals as a condition of certification. If the City determines that there are less than three product options of a particular type of Disposable Food Service Ware or that products are not commercially available, this section does not apply to that type of Disposable Food Service Ware.
- B. Neither the City nor its contractors or lessees shall purchase Disposable Food Service Ware for use in the City that is not compliant with the requirements of this Section.

- C. The City shall maintain a list, updated annually, with Food Service Ware or Food Service Ware Accessories deemed not commercially available.
- D. In accordance with Section 8.07.140 of this Ordinance (Process to Obtain Waivers), a Prepared Food Vendor may petition for a full or partial waiver of the requirements of this Section if the Prepared Food Vendor can demonstrate that compliance will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.
 - 1. Notwithstanding the foregoing, once the City has determined that there is a version of a Disposable Food Service Ware that is certified as being Free of High Priority Toxic Food Packaging Chemicals, no waiver may be granted for (1) the use of that Disposable Food Service Ware that contain any High Priority Toxic Food Packaging Chemicals or High Priority Toxic Materials, (2) use of Polystyrene Foam Food Service Ware, or (3) use of Bio-Plastic Food Service Ware.

8.07.120 Distribution of Non-Compliant Food Service Ware Prohibited

- A. Except as specifically authorized by Section 8.07.110 of this Chapter (Compliant Disposable Food Service Ware for Food Service) no Person may distribute within the City any Disposable Food Service Ware that are not compliant with Section 8.07.110.
- B. It shall not be a violation of this Section to provide Prepared Food in Disposable Food Service Ware otherwise prohibited by Section 8.07.120 (Compliant Disposable Food Service Ware for Food Service) if the Prepared Food is packaged outside the City and is sold or otherwise provided to the customer in the same Disposable Food Service Ware in which it originally was packaged.
- C. In accordance with Section 8.07.140 of this Chapter (Process to Obtain Waivers), any person may petition for a full or partial waiver of the requirements of this Section if that person can demonstrate that compliance will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.
 - 1. Notwithstanding the foregoing, once the City has determined that there is a version of a Disposable Food Service Ware that is certified as being Free of High Priority Toxic Food Packaging Chemicals, no waiver may be granted for (1) the distribution of that Disposable Food Service Ware that contains any High Priority Toxic Food Packaging Chemicals or High Priority Toxic Materials,(2) the distribution of Polystyrene Foam Food Service Ware, or (3) use of Bio-Plastic Food Service Ware.

8.07.130 Polystyrene Foam

Beginning July 1, 2025

- A. Except as specifically authorized by Section 8.07.110 of this Chapter (Compliant Disposable Food Service Ware for Food Service) no person shall distribute for compensation within the City any Food Service Ware or Food Service Ware Accessory made from Polystyrene.

8.07.140 Process to Obtain Waivers

- A. The City Administrator shall prescribe and adopt rules, regulations, and forms to obtain full or partial waivers from any requirement of this Ordinance that is explicitly subject to waiver. Waivers may be granted based upon documentation provided by the applicant for the waiver and, at the City Administrator's discretion, independent verification that may include site visits and documentation.
- B. To obtain a waiver, the applicant must demonstrate inability to comply due to factors specified in the provision authorizing the waiver.
- C. The City Administrator shall issue a written decision to grant or deny a waiver for up to two years from the date of the decision. The written decision shall be final and is not subject to appeal.
- D. During the waiver term, the waiver recipient shall make diligent efforts to become compliant.
- E. In circumstances existing prior to the effective date of the section of this ordinance in question, where the waiver applicant demonstrates diligent efforts to comply but, due to insurmountable space or economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Administrator may grant a waiver for a longer specified term at the end of the initial waiver term, upon application from the waiver recipient for an additional waiver.

Section 8.07.150 Enforcement

- A. Any Person may provide notice to the City of any observed lack of compliance with the requirements of this Chapter.
- B. Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter 1.12 or subject to the administrative assessment of civil penalties as set forth in Chapter 1.08 of the City Municipal Code; however, no administrative citation may be issued, or civil penalty charged for violation of a requirement of this Chapter until one year after the effective date of such requirement.
- C. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 15 of this Chapter (Process to Obtain Waivers).
- D. If, after issuing a written notice of noncompliance, the City finds that the person or business continues to violate the provisions of this Chapter, the City may impose a fine

of not more than \$100 for a first violation; not more than \$200 for a second violation in the same 12-month period; and not more than \$500 for each subsequent violation in the same 12-month period.

- E. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- F. If continued violations occur, the City reserves the right to suspend the vendor's business license.
- G. The remedies and penalties provided in this Section are cumulative and not exclusive.
- H. The City shall maintain an accessible webpage, translated at minimum into Chinese and Spanish, summarizing the requirements of this Section, resources and local businesses available to aid in compliance with this Section, and any City staff or technical assistance available to provide relevant information to support understanding of and compliance with this Section.

8.07.160 Technical Bulletins and Administrative Regulations.

The City Administrator or his or her designee is responsible for the administration of this Chapter, and is authorized to develop and require compliance with one or more technical bulletins and/or administrative regulations containing interpretations, clarifications, forms, and commentary to facilitate implementation of any requirements set forth in this Chapter.

8.07.180 Chapter Supersedes Existing Laws and Regulations.

- A. The provisions of this Chapter shall supersede any conflicting law or regulations.
- B. This Chapter is intended to be a proper exercise of the City'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's boundaries. 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.

SECTION 3. California Environmental Quality Act Findings.

This Chapter is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources. In addition, this Chapter is subject to 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. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4. 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 there of irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 5. 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,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE TO REDUCE LITTER ON OUR STREETS AND IN OUR WATER WAYS BY (1) REQUIRING PREPARED FOOD VENDORS TO USE REUSABLE FOOD SERVICE WARE FOR DINING ON PREMISES, (2) ALLOWING CUSTOMER-PROVIDED REUSABLE BEVERAGE CUPS AND FOOD CONTAINERS FOR TAKE-OUT, (3) REQUIRING THAT PREPARED FOOD VENDORS SHALL ONLY PROVIDE DISPOSABLE FOODWARE ACCESSORIES UPON REQUEST, (4) REQUIRING REUSABLE BEVERAGE CUPS AT CITY FACILITIES, (5) REQUIRING REUSABLE BEVERAGE CUPS AT LARGE VENUES, (6) REQUIRING REUSABLE BEVERAGE CUPS AT LARGE EVENTS, (7) PROHIBITING THE CITY PURCHASE, SALE, OR DISTRIBUTION OF PACKAGED WATER, (8) ENCOURAGING THE INSTALATION OF ACCESSIBLE WATER BOTTLE REFILL STATIONS AT CITY FACILITIES, AND (9) REQUIRING COMPLIANT DISPOSABLE FOOD SERVICE WARE FOR FOOD SERVICE; AND MAKING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS