

CITY OF ALAMEDA ORDINANCE NO. ____
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE SECTION 4-4
(DISPOSABLE FOOD SERVICE WARE) TO PROHIBIT CERTAIN
SINGLE-USE PLASTICS SUCH AS STRAWS AND CLARIFYING
COMPOSTABLE FOOD SERVICE WARE REQUIREMENTS

WHEREAS, single-use plastics such as straws are commonly littered or blown out of trash receptacles and migrate to the storm drain system and eventually to the ocean and Alameda's beaches; and

WHEREAS, reusable or compostable food service ware is better for the environment, reduces greenhouse gas emissions, and reduces the need for landfills; and

WHEREAS, reduction of single-use plastics in the environment will advance compliance with federal, state and city clean water mandates; and

WHEREAS, the use of single use plastics will be reduced by making straws only available upon request; and

WHEREAS, if requested, the provision of a compostable (paper) straw serves the needs of the customer and produces a material that can be readily composted and achieve the City's zero waste goals.

BE IT ORDAINED by the City Council of the City of Alameda:

SECTION 1. CEQA Finding. This Ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for the protection of the environment because it will strengthen the City's regulations regarding the distribution and sale of polystyrene products. Thus, this Ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

Section 2. The title of Section 4-4 of the Alameda Municipal Code is hereby amended to read "DISPOSABLE FOOD SERVICE WARE".

Section 3. The City Council hereby amends Section 4-4 of the Alameda Municipal Code to read as follows:

4-4 - ~~POLYSTYRENE FOAM DISPOSABLE~~ FOOD SERVICE WARE.

4-4.1 - Title.

This section shall be known as the Alameda ~~Polystyrene Foam Disposable~~ Food Service Ware Reduction Law.

4-4.2 - Purpose and Findings.

The City Council finds that ~~polystyrene foam~~ food service ware that is not reusable or readily compostable or recyclable constitutes a significant adverse environmental impact. Solid waste that is ~~nondegradable-not reusable or readily compostable~~ or ~~non~~recyclable poses an acute problem for any program of integrated waste management. Such waste covers the City's streets, parks, public places, and open spaces. It clogs storm drains, arch culverts, and catch basins thereby significantly increasing time and expense to public works maintenance crews during a storm event. It enters the marine and natural environment and is damaging to the environment and marine wildlife.

~~Products which are degradable-Compostable~~ or recyclable products offer environmentally sound alternatives to noncompostable ~~degradable~~ and nonrecyclable products currently used ~~in disposable, single-use food ware. By decaying into their constituent substances, degradable products, compared to their nondegradable equivalents, Compostable and recyclable products~~ are less of a danger to the natural environment, less likely to be a permanent blight on the urban landscape, less likely to ~~engender cause~~ storm drainage system maintenance expenses, and less likely to cause flooding due to clogged storm drains, arch culverts, and catch basins. ~~Compostable products can be processed into valuable material to support agriculture and landscaping, consequently reducing the need for water and pesticides on those applications. The r~~Recycling of products reduces costly waste of natural resources and energy used in production of new products, ~~the costs as well as costly of disposing material in landfills, and landfills' emissionsal of waste in landfills.~~

Food service ware made of polystyrene, plastic utensils, and single-use straws are particularly challenging to the City of Alameda as each is slow to degrade, prevalent as litter in City's urban landscape and beaches, and substitutes for disposable food service ware are currently available and affordable.

4-4.3 - Definitions.

As used in this section:

~~Affordable means purchasable by the food vendor of a nonpolystyrene form container for the same or less purchase cost than the nonbiodegradable, noncompostable 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 and is consistent with the materials accepted at the composting facility used by the City's franchisee for integrated waste management.

City facilities means any building, structure or vehicle owned or operated by the City of Alameda, its agencies, departments and the integrated waste franchisee that are located within the City of Alameda.

City Manager means the City Manager of the City of Alameda or the City Manager's designee.

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. ~~Regulations issued by the Public Works Director will determine the specific products or product types considered compostable for purposes of this ordinance. consistent with the composting facility used by the City's franchisee for integrated waste management. Compostable disposable food service ware must meet ASTM standards for compostability and must be clearly labeled.~~

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

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, food service ware for takeout foods and/or leftovers from partially consumed meals prepared ~~at restaurants or retail~~ by food vendors.

Food vendor means any restaurant, bar, ~~or~~ retail food vendor, or food truck located or operating within the City of Alameda.

Polystyrene foam means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Company 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-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make items such as cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.

Prepared food means food or beverages, ~~which that~~ are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption and includes takeout food. For the purposes of this section, 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.~~

Public Works Director means the Public Works Director of the City of Alameda or the Public Works Director's designee.

Restaurant, for the purposes of this section, means any establishment located within the City of Alameda that sells prepared food for consumption on, near, or off its premises by a customer. Restaurant, for purposes of this section, includes itinerant restaurants, pushcarts and vehicular food vendors.

Retail food vendor means any store, shop, sales outlet, food truck, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the City of Alameda that sells prepared food.

Single-use straw means a tube for transferring a beverage from its container to the mouth of the drinker that is intended for a single use.

Takeout food means prepared food that may be consumed either on or off the premises from which it is sold.

4-4.4 -- Non-disposable ~~Prohibited~~ Food Service Ware ~~Prohibited~~.

a. Food vendors are prohibited from providing prepared food to customers in disposable food service ware that uses polystyrene foam.

b. All persons in charge of City facilities are prohibited from using polystyrene foam disposable food service ware that uses polystyrene foam and all City departments and agencies will not purchase or acquire ~~polystyrene foam~~ disposable food service ware that uses polystyrene foam for use at City facilities.

c. Except as provided in Section 4-4.6 of this article, agents, contractors and vendors doing business with the City shall be prohibited from using ~~polystyrene foam~~ disposable food service ware that uses polystyrene foam in City facilities or on City projects ~~within the City of Alameda~~.

4-4.4.1 Single Use Straws

On and after January 1, 2018, no food vendor shall provide a single-use straw to a customer except on the customer's specific request. A food vendor may have single-use straws available for use by customers at locations within the restaurant, bar or food vendor.

4-4.5 - ~~Required Biodegradable and~~ Compostable Disposable 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~~ the food vendor can show demonstrate an ~~affordable biodegradable or compostable product is not available for a specific application~~ undue hardship as provided in to subsection (b) of Section 4-4.6.

b. Food vendors are strongly encouraged to provide reusable food service ware in place of disposable food service ware.

c. In instances where food vendors decide to use ~~a biodegradable or~~ compostable disposable food service ware ~~product~~ that is higher priced than their current ware ~~not affordable~~, a food vendor may charge a "take out fee" to customers to cover the cost difference.

~~db. All~~ All persons in charge of City facilities will use ~~biodegradable or compostable~~ disposable food service ware unless ~~they can show an affordable biodegradable or compostable product is not available for a specific applicationsuch use is an undue hardship~~. Agents, ~~e. City~~ contractors, and vendors doing business with the City will use ~~biodegradable compostable~~ food service ware in City facilities or on City projects ~~within the City of Alameda~~, unless the City Manager or his or her designee ~~they can show an affordable biodegradable or compostable product is not available for a specific application~~ finds an undue hardship.

4-4.6 - Exemptions.

a. ~~Persons packaging p~~Prepared foods ~~packaged~~ outside the City of Alameda are exempt from the provisions of this section; provided, however, ~~,-Purveyors of food prepared or packaged outside the City of Alameda such persons~~ are encouraged to follow the provisions of this section.

b. Food vendors ~~shall be that are currently existing or are established in the City by July 1, 2008, will be~~ exempted from the provisions of this section for no more than one year ~~prohibiting the use of polystyrene foam food service ware~~ if the City Manager or his or her designee finds that an undue hardship exists. ~~Exemptions may be granted for up to a one-year period from the effective date of the ordinance codified in this section.~~

For purposes of this section 4-4.6, ~~T~~the phrase "undue hardship" shall be construed to include, but not be limited to, ~~situations where~~ a food vendor ~~can demonstrateing~~ to the satisfaction of the City Manager or his or her designee that there is significant difficulty or expense incurred by meeting the ~~prohibition requirements of this section~~ which ~~difficulty or expenses~~ directly impacts the food vendor's ability to conduct business or ~~deprive~~ the food vendor ~~has been deprived of~~ a legally protected right.

"Significant difficulty" will be established based on, but not ~~necessarily~~ limited to, the food vendor's documenting the list of suppliers contacted and explaining how ~~it the food vendor~~ has determined that no acceptable ~~alternative disposable food service ware~~ is available at a commercially reasonable price, ~~for and~~ reasons which are ~~uniquely particularly~~ burdensome to the food vendor and its type of operation(s) or the food ~~being~~ served.

"Significant ~~cost expense~~" will be established ~~by~~based on, but not ~~necessarily~~ limited to, demonstrating that the ~~acceptable alternative disposable food service ware~~ is not available at a commercially reasonable price and the additional cost associated with providing the ~~acceptable alternative disposable food service ware~~ is ~~uniquely particularly~~ burdensome to the food vendor based on the type of operation(s) affected, the overall size of the business, the number, type and location of its facilities and the impact on the overall financial resources of the food vendor. ~~It~~In determining whether a significant expense has been established, the City Manager or his or her designee shall also consider the ability ~~of the food vendor~~ to recover the additional ~~costs expense by increasing its prices, through existing expenses and resources,~~ the availability of tax credits and deductions, and/or outside funding.

c. Polystyrene foam coolers and ice chests that are intended for reuse are exempt from the provision of this section.

d. Disposable food service ware composed entirely of aluminum is exempt from the provisions of this section.

e. *Emergency Supply and Services Procurement* ~~In a situation deemed by the City Manager to be an emergency~~ For the immediate preservation of the public peace or, health or safety due to an emergency or natural disaster, the City Manager or his or her designee may, exempt City facilities, food vendors, persons operating City facilities and agents, contractors, and vendors doing business with the City, ~~shall be exempt~~ from the provisions of this section.

4-4.7 - ~~Liability and~~ Enforcement.

a. The Public Works Director ~~or his or her designee shall will~~ have primary responsibility for enforcement of this section. The Public Works Director ~~or his or her designee~~ is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this section, including, but not limited to, entering the premises of any food vendor during regular business hours to verify compliance.

b. ~~Enforcement of Section 4-4.4.1 shall not commence until after June 30, 2018~~ Anyone violating or failing to comply with any of the requirements of this section will be subject to an administrative citation pursuant to Section 1.7 et seq. of the Alameda Municipal Code.

c. ~~The City Attorney may seek legal, injunctive, or other equitable relief to enforce this section.~~

4-4.8 - Violations—Penalties.

a. ~~Penalties for violations~~ Enforcement of the provisions of this section shall be as provided in Section 1-5 and/or pursuant to the provisions adopted for the imposition of administrative citations and the hearing procedures related to those citations adopted under Section 1-7 et seq. of the Alameda Municipal Code.

Section 4. Severability Clause. It is the declared intent of the City Council of Alameda that if any section, subsection, sentence, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provision of this ordinance.

Section 5. This ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ___ day of _____, 2017, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ___ day of _____, 2017.

Lara Weisiger, City
Clerk City of Alameda

Approved as to form:

Janet C. Kern, City Attorney
City of Alameda