

ORDINANCE NO. 838

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADDING
CHAPTER 8.72 TO TITLE 8 OF THE FAIRFAX MUNICIPAL CODE,
REGULATING SINGLE-USE FOODWARE**

WHEREAS, the Town of Fairfax ("Town") has a desire and duty to protect its natural environment and the health of its citizens and economy. A "throw-away" culture has led to a proliferation of single-use disposable foodware, packaging and plastics, which has significantly contributed to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions; and

WHEREAS, the Town is committed to reducing waste and greenhouse emissions in furtherance of the Town's zero-waste and other environmental goals; and

WHEREAS, single-use disposable foodware threatens public health because many types contain fluorinated chemical additives that are known or suspected carcinogens or endocrine disruptors. These additives are known to leach from foodware into the food and beverages they contain and into soil and water; and

WHEREAS, single-use disposable foodware made from plastic is lightweight and is often picked up by wind and carried from land to waterways, where the plastic breaks down into smaller pieces of plastic debris, which is often mistaken for food by birds and other marine wildlife. When ingested, such debris can cause those animals to suffer health problems and sometimes die; and

WHEREAS, plastic debris from single-use disposable foodware attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption; and

WHEREAS, eliminating the use of polystyrene (EPS) and polypropylene products and other non-compostable foodware, including plastic utensils and straws, maximizes the operating life of landfills and lessens the economic and environmental costs to the Town of managing waste, helping to protect the Town's environment from contamination and degradation and making it a cleaner, healthier town for all citizens and visitors. Businesses may benefit from this cost-savings while also boosting customer satisfaction; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

SECTION 1. The recitals set forth above are incorporated as if fully restated herein.

SECTION 2. Chapter 8.72 entitled "Single-Use Foodware Reduction" is hereby added to Title 8 "Health and Safety" of the Fairfax Municipal Code, as contained in the attached Exhibit A of this Ordinance.

SECTION 3. Compliance with CEQA. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the Town. The Town Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein

would not have the potential for causing a significant effect on the environment. The Town Council also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The Town Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Effective Date and Posting. This Ordinance shall be effective July 1, 2020 following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club Building, located at 46 Park.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 4th day of September, 2019, and duly adopted at the next regular meeting of the Town Council on the 2nd day of October, 2019, by the following vote, to wit:

AYES: ACKERMAN, COLER, GODDARD, LACQUES, REED
NOES: None
ABSENT: None
ABSTAIN: None



Barbara Coler, Mayor

Attest:




Hannah Politzer, Deputy Town Clerk

10-3-19
Date

Exhibits

A – Proposed Ordinance (attached)

ORDINANCE NO. 838

EXHIBIT A

Proposed Addition of Chapter 8.72 to Title 8 of the Fairfax Municipal Code

CHAPTER 8.72 - SINGLE-USE FOODWARE REDUCTION

Sections

- 8.72.010 Findings and Purpose.
- 8.72.020 Definitions.
- 8.72.030 Dine-In Foodware Regulations.
- 8.72.040 Takeout Foodware Regulations.
- 8.72.050 Foodware Accessory Regulations.
- 8.72.060 Town Purchases and Town-Sponsored Events.
- 8.72.070 Disposable Cup Charge.
- 8.72.080 Polystyrene (EPS) Prohibited.
- 8.72.090 Separate Disposable Foodware Waste Receptacles.
- 8.72.100 Exemptions.
- 8.72.110 Enforcement.

8.72.010 FINDINGS AND PURPOSE.

The Fairfax Town Council finds as follows:

- A. The Town of Fairfax has a desire and duty to protect its natural environment and the health of its citizens and economy. A “throw-away” culture has led to a proliferation of single-use disposable foodware, packaging and plastics, which has significantly contributed to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.
- B. The Town of Fairfax is committed to reducing waste and greenhouse emissions in furtherance of the Town’s zero-waste and other environmental goals.
- C. Single-use disposable foodware threatens public health because many types contain fluorinated chemical additives that are known or suspected carcinogens or endocrine disruptors. These additives are known to leach from foodware into the food and beverages they contain and into soil and water.
- D. Single-use disposable foodware made from plastic is lightweight and is often picked up by wind and carried from land to waterways, where the plastic breaks down into smaller pieces of plastic debris, which is often mistaken for food by birds and other marine wildlife. When ingested, such debris can cause those animals to suffer health problems and sometimes die.

- E. Plastic debris from single-use disposable foodware attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption.
- F. Eliminating the use of polystyrene (EPS) and polypropylene products and other non-compostable foodware, including plastic utensils and straws, maximizes the operating life of landfills and lessens the economic and environmental costs to the Town of managing waste, helping to protect the Town's environment from contamination and degradation and making it a cleaner, healthier town for all citizens and visitors. Businesses may benefit from this cost-savings while also boosting customer satisfaction.

8.72.020 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMPOSTABLE. All best available disposable products that are certified as compostable by BPI (Biodegradable Products Institute - A third party organization that reviews and certifies compostable products that meet ASTM D6400 and ASTM 6868 conditions for compostability) or Fluorinated Free and accepted by the Town's Municipal Compost Facility.

DISPOSABLE CUP. A beverage cup designed for single-use to serve beverages such as water, hot and cold drinks, and alcoholic beverages.

DISPOSABLE FOODWARE. All containers, bowls, plates, trays, cups, lids, straws, forks, spoons, knives, napkins, boxes and other like items that are designed for single-use for Prepared Foods, including without limitation, foodware for takeout foods and/or leftovers from partially consumed meals prepared by Food Vendors.

DISPOSABLE FOODWARE ACCESSORIES. All types of single-use items usually provided alongside Prepared Food in plates and cups, including but not limited to utensils, chopsticks, napkins, cup lids, cup sleeves, food or beverage trays, condiment containers and saucers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks.

FLUORINATED CHEMICAL. A class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as perfluoroalkyl and polyfluoroalkyl substances, or PFAS chemicals. California Prop 65 lists as reproductive toxicants PFOA and PFOS (two types of PFAS Chemicals).

FOOD VENDOR. Any restaurant, Private School, bar, grocery store, delicatessen, bakery, food service establishment (carry out, quick service, full-service), food truck, itinerant restaurants, pushcart, farmers market or other similar establishments, selling Prepared Food to be consumed on or off the premises located or operating within the Town of Fairfax.

FULL-SERVICE RESTAURANT. Restaurants where 90% or more of the food or beverages are served on the premises and meals are typically paid for after they are eaten, with limited food being taken out of the establishment.

MUNICIPAL COMPOST FACILITY. Compost Facility at WM Earthcare at Redwood Landfill, or the facility used by the Town's current waste hauler for composting organic material.

POLYSTYRENE & POLYSTYRENE FOAM. Polystyrene and polystyrene foam means thermoplastic petrochemical materials in the form of blown polystyrene, expanded and extruded foams (EPS).

PREPARED FOOD. Food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption and includes Takeout Food. For the purpose of this section, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance.

PRIVATE SCHOOLS. Private schools in the Town of Fairfax including all preschools, grade schools, high schools, colleges and graduate schools.

REUSABLE FOODWARE. All foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that are manufactured of durable materials and specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and are safe for washing and sanitizing according to applicable regulations. Disposable Foodware that is composed entirely of aluminum is considered Reusable Foodware under this chapter.

TAKEOUT FOOD. Prepared Food which is purchased to be consumed off the Food Vendor's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Food Vendor or by a Takeout Food Delivery Service.

TAKEOUT FOOD DELIVERY SERVICE. A third-party delivery service which picks up Takeout Food from a Food Vendor and delivers it to the customer for consumption off the premises.

8.72.030 DINE-IN FOODWARE REGULATIONS.

The following regulations apply to Prepared Food served by Food Vendors on their premises within the Town of Fairfax:

- A. Food Vendors shall only sell or provide food and beverages for consumption on the premises using Reusable Foodware except as otherwise provided in this section.
- B. Food Vendors may provide Compostable disposable paper food wrappers, sleeves, bags, napkins, straws, trays and plate-liners; and/or foil wrappers.

8.72.040 TAKEOUT FOODWARE REGULATIONS.

The following regulations apply to Takeout Food served by Food Vendors for consumption off the Food Vendor's premises:

- A. Food Vendors shall only provide Takeout Food in Reusable Foodware or Compostable Disposable Foodware, or items composed entirely of aluminum.
- B. Takeout food bags shall be paper or comply with Title 8, Chapters 8.18 and 8.19 (regulations for single-use carryout bags).
- C. All Disposable Foodware, including Disposable Accessory items, must be either 1) fluorinated chemical-free or 2) Compostable.
- D. If a Compostable Disposable Foodware item is not available, an alternative Foodware item made of other materials, except Polystyrene foam and Polystyrene foodware, may be substituted.

8.72.050 FOODWARE ACCESSORY REGULATIONS.

The following regulations apply to Food Vendors' Foodware Accessories:

- A. When reusable Foodware Accessories cannot be used, Food Vendors shall provide Compostable Disposable Foodware Accessories only upon customer request or at self-serve stations. Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.
- B. Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Compostable Disposable Foodware Accessories separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smartphone and other digital platforms, telephone and in-person. A Food Vendor or a Takeout Food Delivery Service may include compostable lids, spill plugs and sleeves without request for Disposable Cups for delivery.
- C. All Food Vendors shall provide only upon request or have a small supply at a self-serve station, single use "plastic" straws, to accommodate any person's access needs. There must be clear signage displaying "plastic straws are available upon request."
- D. If a Compostable Foodware Accessory item is not available, an alternative Accessory item made of other materials, except Polystyrene, may be substituted.

8.72.060 TOWN PURCHASES AND TOWN-SPONSORED EVENTS.

The following regulations apply to Town of Fairfax purchases and Town-sponsored events:

- A. The Town of Fairfax shall not purchase any Disposable Foodware or Disposable Foodware Accessories that are not Compostable, unless such items are not available or an emergency situation exists that does not allow the Town to comply with this section.

- B. Food service at Town-sponsored events shall comply with the Takeout Foodware Regulations set forth in section 8.72.040.

8.72.070 DISPOSABLE CUP CHARGE.

The following regulations apply to all Food Vendors except for Full-Service Restaurants:

- A. Food Vendors shall charge customers twenty-five cents (\$.25) for every non-Compostable Disposable Cup provided unless they are exempt under this section.
- B. Income from the Disposable Cup charge may be retained by the Food Vendor.
- C. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, and individuals with disabilities shall be exempt from the Disposable Cup charge.
- D. Charges for the Disposable Cups shall be identified separately on any post-sale receipt provided and, pre-sale, be clearly identified to the customer on media such as menus, electronic ordering platforms, and/or menu boards. Customers placing orders by phone shall be informed verbally of Disposable Cup charges. All food vendors shall prominently display signage which notices the disposable cup charge at the point of sale and on all menus.
- E. Private Schools are exempt from this section.

8.72.080 POLYSTYRENE (EPS) PROHIBITED.

- A. For public health and safety purposes, the sale of Polystyrene (EPS) foam coolers and ice chests is prohibited within the Town of Fairfax. Coolers and ice chests that do not have exposed Polystyrene foam and that are designed for reuse are exempt from the provisions of this chapter.
- B. For public health and safety purposes, Disposable Foodware and Disposable Accessories made from EPS are prohibited within the Town of Fairfax.

8.72.090 SEPARATE DISPOSABLE FOODWARE WASTE RECEPTACLES.

- A. All Food Vendors, except for Full-Service Restaurants, must provide separate easily accessed receptacles for discarded items to be composted, recycled, and, if needed, to be landfilled or otherwise wasted.
- B. To the extent possible given space constraints, the bin receptacles should be placed adjacent to one another.

- C. Signage must be posted on or above each receptacle following the Town waste hauler's guidelines.

8.72.100 EXEMPTIONS.

The following exemptions shall apply to this chapter:

- A. Entities packaging Prepared Foods outside the Town of Fairfax are exempt from the provisions of this chapter; provided, however, such persons are encouraged to follow the provisions of this chapter.
- B. Food Vendors may be exempt from the provisions of this chapter for no more than one year following the Effective Date of this Ordinance if the Town Manager or his or her designee finds that an undue hardship exists. The phrase "undue hardship" shall be construed to include, but not be limited to, situations where a Food Vendor can demonstrate to the satisfaction of the Town Manager or his or her designee that there is significant difficulty or significant expense incurred by satisfying the requirements of this chapter, which difficulty or expense directly impacts the Food Vendor's ability to conduct business. A Food Vendor may request an extension of the exemption for up to 12 months if the Food Vendor can demonstrate to the satisfaction of the Town Manager or his or her designee that good faith efforts were made to comply, but the undue hardship still exists.
 - 1. "Significant difficulty" will be established based on, but not limited to, the Food Vendor's documented list of suppliers contacted, reasons the Food Vendor has determined that no acceptable Reusable or Disposable Foodware is available at a commercially reasonable price, and/or reasons that the regulations are particularly burdensome to the Food Vendor.
 - 2. "Significant expense" will be based on, but not limited to, demonstrating that the Disposable Foodware is not available at a commercially reasonable price and the additional cost associated with providing the Reusable or Disposable Foodware is 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. In determining whether a significant expense has been established, the Town Manager or his or her designee shall consider the ability of the Food Vendor to recover the additional expense by increasing its prices, the availability of tax credits and deductions, and/or outside funding.
- C. Emergency Supply and Services Procurement. The Town Manager or his or her designee may exempt Food Vendors, persons operating Town facilities and agents, contractors, and vendors doing business with the Town, from the provisions of this chapter for the immediate preservation of the public peace or health or safety due to an emergency or natural disaster.

8.72.110 ENFORCEMENT.

- A. The Town Manager or his/her designee has primary responsibility for enforcement of this chapter.

- B. Food Vendors shall have until July 1, 2020, to bring their businesses into compliance with this chapter. After July 1, 2020, anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Title 1 or charged with an infraction.
- 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 under this chapter.
- D. Any violation of the provisions of this ordinance is hereby declared a public nuisance and shall be subject to abatement in the manner set forth in Title 1.
- E. The Town Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- F. The remedies and penalties provided in this section are cumulative and not exclusive. If the Town adopts additional Municipal Code enforcement mechanisms, the Town may use those mechanisms to enforce this ordinance.