

ORDINANCE NO. 878

AN ORDINANCE OF THE TOWN OF FAIRFAX TOWN COUNCIL REQUIRING ALL FOOD FACILITY VENDORS TO USE REUSABLE FOODWARE FOR DINE-IN OPERATIONS AND COMPLIANT COMPOSTABLE FOODWARE FOR TAKE-OUT SERVICES

SECTION I. FINDINGS

WHEREAS, the Town of Fairfax has a desire and responsibility to protect the health, welfare, and safety of its citizens and economy. The proliferation of non-reusable (or disposable) foodware, packaging, and plastics has contributed to street litter, ocean pollution, marine, and other wildlife harm along with the greenhouse gas emissions from the production of the disposable materials.

WHEREAS, using reusable dishware significantly reduces the generation of unnecessary waste, and in most applications saves money, reduces disposal costs, and improves customer experience.

WHEREAS, reducing the generation of non-reusable foodware including plastic utensils, plastic cups, plastic clamshells, and plastic straws maximizes the operating life of landfills, reduces litter, and helps to lessen the economic and environmental costs of managing waste. This will also help protect the Town's environment from contamination and degradation making it a cleaner, healthier region to all citizens and visitors.

WHEREAS, non-reusable foodware threatens public health because many types contain fluorinated chemical additives are known or suspected carcinogens or endocrine disruptors. These additives are known to leach from foodware into food and beverage containers and into compost, soil, and water.

WHEREAS, numerous jurisdictions in the San Francisco Bay Area and the State of California have adopted legislation reducing the use of non-reusable food packaging with local and national businesses successfully replacing single-use food packaging with affordable durable and reusable foodware or, when needed, compliant compostable fiber foodware products.

WHEREAS, on May 10, 2022, the County of Marin adopted a local Reusable Foodware Ordinance which includes language offering enforcement services via the Environmental Health Services Food Program for cities/towns adopting the same ordinance for the food vendors in their jurisdictions.

WHEREAS, Town wishes to utilize the enforcement services offered by the County of Marin through the County's Environmental Health Services Food Program.

NOW, THEREFORE, based on the foregoing, the Town Council of the Town of Fairfax ordains as follows:

Section II. Chapter 8.72 of the Town of Fairfax Town Code is hereby amended in its entirety as follows:

“Chapter 8.72 – Reusable Foodware Ordinance

8.72.010 - Definitions.

- (a) *“BPI Certified”* means those Compostable fiber Foodware products that have been certified by the Biodegradable Products Institute (BPI) to safely and readily biodegrade in an industrial composting facility in the typical processing time. As of January 1, 2020, BPI ensures all certified products are Fluorinated Chemical free.
- (b) *“Compliant Non-Reusable Foodware”* means that an item or product intended for disposal after one use and is: (1) accepted by the County through its composting collection program as Compostable as identified by the Deputy Director of Environmental Health Services or their designee; (2) is certified by either BPI Certified or other third party product certification recognized by the County through its Deputy Director of Environmental Health Services or their designee to ensure the item is free of harmful chemicals including but not limited to Fluorinated Chemicals, that may have been used in foodware manufacture, and is (3) made entirely of Natural Fiber, as defined that term is below, and including but not limited to paper, wood, or sugarcane fibers.
- (c) *“Compliant Foodware Accessory”* means that an item or material is (1) accepted in Marin County composting collection program as Compostable; and is (2) made entirely of Natural Fiber.
- (d) *“Compost Facility”* means compost facilities used by the Town’s current waste haulers for composting organic material.
- (e) *“Compostable”* means an item or material (1) will break down, or otherwise become part of usable compost in a safe and timely manner and (2) is Natural Fiber-based or made from other materials approved by the Deputy Director of Environmental Health Services or designee.
- (f) *“Compostable Plastics or Biodegradable Plastics”* means the disposable products developed from polylactic acid (PLA), which require a specific set of conditions to compost and/or biodegrade that do not exist in the County or the region. These products are considered non-compliant.
- (g) *“Town”* means the Town of Fairfax.
- (h) *“Town Facility”* means any building or structure owned, leased, or operated by the Town of Fairfax.

- (i) *“Customer”* means any person obtaining Prepared Food from a Food Vendor.
- (j) *“Director”* means the Deputy Director of Environmental Health Services or their designee.
- (k) *“Disposable (or Non-Reusable) Cup”* means a beverage cup designed for single-use to serve beverages such as water, hot and cold drinks, and alcoholic beverages.
- (l) *“Effective Date”* means thirty days from adoption of the Foodware Ordinance.
- (m) *“EPS”* means expanded polystyrene, also known as Polystyrene Foam.
- (n) *“Fluorinated Chemical”* means a class of fluorinated organic compounds containing at least one (1) fully fluorinated carbon atom, also known as perfluoroalkyl (PFOA) and polyfluoroalkyl (PFOS) substances, or PFAS chemicals. California Prop 65 lists PFOA and PFOS as reproductive toxicants.
- (o) *“Foodware”* means all containers, bowls, plates, food trays, cups, lids, boxes, and other like items that are used for Prepared Foods, including without limitation, Foodware for takeout foods and/or leftovers from partially consumed meals prepared by Food Vendors.
- (p) *“Foodware Accessories”* means types of items usually provided alongside Prepared Food including but not limited to forks, spoons, knives, chopsticks, napkins, cup sleeves, food wrappers, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, toothpicks, tray-liners, and plate-liners.
- (q) *“Food Vendor”* means a food facility as that term is defined in Health & Safety Code section 113789, or its successor, including but not limited to a restaurant, bar, grocery store, delicatessen, bakery, food service establishment (carry out, quick service, full-service), food truck, itinerant restaurant, pushcart, farmers market, caterer, microenterprise home kitchen operation, or cottage food operation, that sells Prepared Food to be consumed on and/or off the premises located or operating within the Town, except that for purposes of this ordinance the term “food vendor” shall not include a public or private school cafeteria.
- (r) *“Natural Fiber”* means a plant-based, non-synthetic fiber, including but not limited to paper, wood, bamboo, palm leaf, wheat straw, or sugarcane. Natural Fiber does not include plastic of any kind.
- (s) *“On Request”* means that only at the request of a customer shall the compliant product be provided.
- (t) *“Polystyrene Foam”* means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly 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, coolers, packing peanuts, and egg cartons.

- (u) *“Prepared Food”* means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of the Food Vendor and includes Takeout Food. For the purposes of this chapter, Prepared Food does not include raw, butchered meats, fish and/or poultry, which are sold from a butcher case or similar appliance.
- (v) *“Reusable or Durable”* Foodware and Foodware Accessories, including plates, bowls, cups, jars, trays, glasses, straws, stirrers, condiment cups, utensils, etc. 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.
- (w) *“Takeout Food”* means food or beverages requiring no further preparation to be consumed and which generally are purchased to be consumed off the premises of the Food Vendor.

8.72.020 - Dine-in Foodware regulations.

Food Vendors within the incorporated areas of Town:

- (a) Shall sell or provide food and beverages for consumption on the premises using Reusable Foodware and utensils (forks, spoons, knives, chopsticks) except as otherwise provided in section 8.72.030 (b);
- (b) May provide all other Compliant Foodware Accessories, which are made of Natural Fibers, including napkins, food wrappers, straws, stirrers, cocktail sticks, toothpicks, tray-liners, and plate-liners.
- (c) Shall offer condiments in reusable containers or dispensers rather than pre-packaged single-use condiment packets; and
- (d) Food Vendors will have until November 10, 2023, before enforcement of this regulation begins.

8.72.030 - Takeout Foodware regulations.

Food Vendors within the incorporated areas selling Takeout Food for consumption off premises:

- (a) Shall provide takeout food in Reusable Foodware, or compostable Natural Fiber Compliant Foodware, or items composed entirely of glass or aluminum;

- (b) Shall provide all other Compliant Foodware Accessories, which are made from Natural Fibers, including napkins, cup sleeves, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks only Upon Request or at self-serve stations; and
- (c) Takeout food bags shall be Reusable, paper, or comply with [Chapter 8.18](#) (regulations for single-use carry-out bags).
- (d) Takeout Food delivery services shall provide the option for Compliant Foodware Accessories (forks, spoons, knives, chopsticks) and single-use condiments only On Request. A Food Vendor or a Takeout Food delivery service may include lids, spill plugs, and sleeves without request for Non-Reusable Cups for delivery.
- (e) Food Vendors shall provide plastic straws only On Request, to accommodate any person's access needs.

8.72.040 - Town purchasing, facilities, and Town sponsored events.

The following regulations apply to Town purchases, facilities, and Town-sponsored events:

- (a) All Town facilities that involve food service shall use Reusable Foodware and Compliant Foodware Accessories.
- (b) Town-managed concessions, Town-sponsored events, and Town-permitted events shall use Reusable Foodware or Compliant Foodware and Compliant Foodware Accessories.
- (c) These entities are prohibited from using Non-Reusable plastic foodware, including EPS/Polystyrene Foam, and Compostable or Biodegradable Plastics. No Town department shall purchase or acquire Non-Reusable plastic foodware for use at any Town facility. Organizations or individuals using Town facilities shall use Reusable or Compliant Foodware and Compliant Foodware Accessories.
- (d) The Town shall prohibit the use of EPS/Polystyrene Foam and Non-Reusable plastic foodware by vendors, franchisees, lessees, contractors, or other commercial food and beverage purveyors at all Town government center facilities, and Town parks. Prohibited products include, but are not limited to, EPS/Polystyrene Foam and Non-Reusable plastic food containers, straws, bowls, plates, trays, utensils, clamshells, and cups which are not intended for reuse, on or in which any foods or beverages are placed or packaged.
- (e) As of the Effective Date, all Town departments that hold contracts, lease agreements, permits or other agreements that involve food service shall incorporate this prohibition into all new and renewed contracts, leases, permits, agreements, etc.

- (f) The use or distribution of EPS/Polystyrene Foam, and Non-Reusable plastic foodware at special events at Town facilities that are sponsored or co-sponsored by the Town shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event vendors, and any other party (including non-profit organizations) who have an agreement with one or more of the co-sponsors of the event to sell goods or beverages at the event or otherwise provide an event-related service.
- (g) Written agreements with any vendor, including non-profit organizations, to sell food or beverages at an event that is sponsored or co-sponsored by the Town, shall specifically prohibit the usage and distribution of EPS/Polystyrene Foam and Non-Reusable plastic foodware.

8.72.050 - Non-Reusable cup charge.

- (a) All Food Vendors shall charge customers twenty-five cents (\$0.25) at the point of sale for every Non-Reusable cup provided unless they are exempt under this chapter.
- (b) Income from the Non-Reusable cup charge shall be retained by the Food Vendor.
- (c) Charges for Non-Reusable cups shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms, and/or menu boards. Customers placing orders by telephone shall be informed verbally of Non-Reusable cup charges.
- (d) 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 Non-Reusable cup charge.

8.72.060 - Separate waste receptacles required.

- (a) All Food Vendors who provide solid waste containers for customer use, must provide separate receptacles for solid waste, recyclables, and organics. Receptacles shall be colored black or grey for garbage, blue for recycling, and green for compost/organics.
- (b) To the extent possible given space constraints, all receptacles for solid waste, recyclables, and organics should be placed adjacent to one another.
- (c) Graphic-rich signage must be posted on or above each receptacle following the waste hauler's guidelines.

8.72.070 - Exemptions.

- (a) Entities packaging Prepared Foods outside Marin County are exempt from the provisions of this chapter; provided, however, such entities are urged to follow the provisions of this chapter.
- (b) Non-Reusable Foodware and Foodware Accessories composed entirely of aluminum is exempt from the provisions of this chapter.
- (c) Should Foodware or Foodware Accessories made of Compliant compostable Natural Fiber not be commercially available, as determined by Director or their designee, the County may approve temporary exemption of specific nonreusable Foodware or Foodware Accessories items until they are made commercially available. The County shall maintain a list, updated annually, with Foodware or Foodware Accessories deemed not available commercially.
- (d) For the immediate preservation of the public peace, health, or safety due to an emergency or natural disaster, the City Council, or 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.

8.72.080 - Enforcement.

- (a) Compliance with this ordinance is required as of the Effective Date.
- (b) Enforcement of this chapter shall be pursuant to Town Code sections 8.72.020 through 8.72.070, inclusive.
- (c) Enforcement shall include written notice of non-compliance and a reasonable opportunity to correct, prior to issuance of any penalty.
- (d) It is found and determined to by the Town Council that the public interest, health, safety, and welfare of the residents of the city require that the Marin County Environmental Health Services Division be designated as the enforcement agency of and within Town and as such enforcement agency it is authorized with the enforcement of the provisions of this chapter and the Marin County Environmental Health Services division is vested, for the purposes of enforcing this chapter within Town, with all of the jurisdiction and powers vested in or available to said division by this Chapter and said health and safety code.
- (e) Enforcement of this chapter will begin on November 10, 2023. Enforcement will be delegated to the County's Environmental Health Services. Enforcement will progress on the regular inspection schedule of all covered Food Vendors in the County as described in this chapter.

8.72.090 - Violations

On behalf of the Town, the County may choose to undertake the following legal actions to correct and/or abate nuisances and violations of this ordinance. The Director of Environmental Health Services or their designee is authorized to promulgate regulations and take any and all other actions reasonable and necessary to enforce the provisions of this Article, including but not limited to, entering the premises of any food provider during regular business hours to verify compliance, and by the issuance of Administrative Citations. The remedies and penalties provided by this Article are cumulative and in addition to any other remedies available at law or in equity.

(a) Administrative Citations.

Administrative citations may be issued for violations of this Chapter at the discretion of the Director. The issuance of an administrative citation under this chapter shall not supersede or limit the remedies provided elsewhere in this Code or California law, including other administrative citation remedies. Issuance of an administrative citation may be exercised in place of, but shall not be considered a waiver of, the use of any other available enforcement remedy.

(b) Process and Service of Citation.

1. Prior to issuance of citation penalty, the County shall issue a violation warning letter to the facility operator and provide the facility operator thirty (30) days to correct the violation(s).
2. The violation warning letter and/or citation shall be mailed to the food facility operator named in the facility's permit.
3. The failure of any interested person to receive the violation warning letter and/or citation shall not affect the validity of the proceedings.

(c) Administrative Citation Penalty Schedule.

Following the violation warning letter described in Section 8.72.090(b)(1) above and thirty (30) day cure period, if the violations remains, the County may issue the following administrative penalties:

1. A fine not exceeding \$100.00 for the first violation;
2. A fine not exceeding \$200.00 for a second violation of the same Code provision within one year; and
3. A fine not exceeding \$500.00 for each additional violation in excess of two, of the same Code provision within one year.

(d) Response to Citation Penalty

Following receipt of citation penalty, food facility operator shall have thirty (30) days to pay the fine as indicated on the citation, or to request a waiver of payment of the penalty due to unique undue hardship. This waiver may be granted by the Director upon demonstration by a food facility operator to the satisfaction of the Director that strict application of the requirements would cause undue hardship. An "undue hardship" includes but is not limited to the following: 1. A situation unique to the food facility where

a suitable alternative that conforms with the requirements of this chapter does not exist for a specific application. 2. Imposing the provisions of this Chapter would cause significant economic hardship. "Significant economic hardship" may be based on, but not limited to, demonstrating that suitable Foodware or Foodware Accessories made of Compliant compostable Natural Fiber is not available at a commercially reasonable price and the additional cost associated with providing the Compliant Foodware or Foodware is particularly burdensome to the food facility based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the food facility, and other factors. Reasonable added cost for a suitable item as compared to a similar item that the food facility can no longer use shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the Director or designee shall consider the following information: ability of the food facility to recover the additional expense by increasing its prices; the availability of tax credits and deductions; outside funding; and other options.

(e) Nonpayment of Citation for More than One Year Deemed Nuisance.

Nonpayment of any assessed violation for longer than one year shall constitute a nuisance and be subject to the nuisance abatement procedures in Marin County Code Chapter 1.05, including payment of civil penalties of up to \$2,500 per violation per day and enforcement and other abatement costs incurred by the County."

SECTION III. 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. It 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 IV: SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases, and the remaining portions of this ordinance shall continue in full force and effect unless amended or modified by the Town.

SECTION V: EFFECTIVE DATE AND PUBLICATION

This Ordinance shall take effect thirty (30) days after its adoption. 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, 46 Park Road.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 1st day of March 2023, and duly adopted at the next regular meeting of the Town Council on the 5th day of April 2023, by the following vote, to wit:

AYES: Ackerman, Blash, Coler, Cutrano, Hellman
NOES: None
ABSENT: None
ABSTAIN: None

/s/

Chance Cutrano, Mayor

/s/

Attest: _____
Michele Gardner, Town Clerk

4-07-23
Date