

Chapter 7.25 – Reusable Foodware Ordinance

7.25.010 - Findings.

The Marin County Board of Supervisors finds as follows:

- (a) The County of Marin has a desire and responsibility to protect the health 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 this activity.
- (b) Using reusable dishware significantly reduces the generation of unnecessary waste, and in most applications saves money, reduces disposal costs, and improves customer experience.
- (c) 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 County's environment from contamination and degradation making it a cleaner, healthier region to all citizens and visitors.
- (d) The County of Marin restricted the use of EPS Foodware in 2009, and thus forged the path to reducing harmful, non-reusable foodware.
- (e) Non-reusable 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 food and beverage containers and into compost, soil, and water.
- (f) Numerous jurisdictions in the San Francisco Bay Area and the State of California have adopted ordinances 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.

7.25.020 - 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 Foodware"* means that an item or material is (1) accepted in (County or jurisdiction) composting collection program as Compostable; and is (2) either BPI Certified or other third party recognized by the County; and is (3) made entirely of Natural Fiber.
- (c) *"Compliant Foodware Accessory"* means that an item or material is (1) accepted in (County or jurisdiction) composting collection program as Compostable; (2) is listed, described, or referenced on the County's website as Compostable; and is (3) made entirely of Natural Fiber.

- (d) *“Compost Facility”* means compost facilities used by the County’s current waste haulers for composting organic material.
- (e) *“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.
- (f) *“County”* means the County of Marin.
- (g) *“County Facility”* means any building or structure owned, leased, or operated by the County of Marin.
- (h) *“Customer”* means any person obtaining Prepared Food from a Food Vendor.
- (i) *“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.
- (j) *“Effective Date”* means XX/XX/XXXX.
- (k) *“EPS”* means expanded polystyrene, also known as Polystyrene Foam.
- (l) *“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.
- (m) *“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.
- (n) *“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.
- (o) *“Food Vendor”* means all vendors as described in the California Retail Food Code section 113789. This includes but is not limited to a: restaurant, bar, grocery store, delicatessen, bakery, food service establishment (carry out, quick service, full-service), public and private schools, food truck, itinerant restaurants, pushcart, farmers market, caterer, microenterprise home kitchen operations, cottage food operations, selling Prepared Food to be consumed on and off the premises located or operating within the County.
- (p) *“Natural Fiber”* means a plant-based, non-synthetic fiber, including but not limited to paper, wood, or bamboo. Natural Fiber does not include plastic of any kind.
- (q) *“On Request”* means that only at the request of a customer shall the compliant product be provided.

- (r) *“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.
- (s) *“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.
- (t) *“Reusable or Durable”* Foodware and Foodware Accessories, including plates, bowls, cups, 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.
- (u) *“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.

7.25.030 - Dine-in Foodware regulations.

Food Vendors within the unincorporated areas as well as participating jurisdictions in the County:

- (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 7.25.030 (b);
- (b) Shall provide all other Compliant Foodware Accessories, which are made of Natural Fibers, including napkins, cup sleeves, food wrappers, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, toothpicks, tray-liners, and plate-liners.
- (c) Shall offer condiments in dispensers rather than pre-packaged single-use condiment packets; and
- (d) Food Vendors will have one (1) year following the Effective Date before enforcement of this regulation begins.

7.25.040 - Takeout Foodware regulations.

Food Vendors within the unincorporated areas as well as participating jurisdictions in the County 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 aluminum;

- (b) Shall provide 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 paper or comply with [Chapter 5.46](#) (regulations for single-use carry-out bags).
- (d) Food Vendors and Takeout Food delivery services must provide options for customers to affirmatively request Compliant 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 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.

7.25.050 - County purchasing and County sponsored events.

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

- (a) All County facilities shall use Reusable Foodware and Compliant Foodware Accessories.
- (b) County-managed concessions, County-sponsored events, and County-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 County department shall purchase or acquire Non-Reusable plastic foodware for use at any County facility. Organizations or individuals using County facilities shall use Reusable or Compliant Foodware and Compliant Foodware Accessories.
- (d) The County 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 County government center facilities, and County 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, the Department of Public Works, Cultural Services, Health and Human Services, and County Parks 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 County facilities that are sponsored or co-sponsored by the County 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 County, shall specifically prohibit the usage and distribution of EPS/Polystyrene Foam and Non-Reusable plastic foodware.

7.25.060 - Non-Reusable cup charge.

- (a) All Food Vendors shall charge customers twenty-five cents (\$0.25) 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.

7.25.070 - 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. *Jurisdiction shall provide color guidelines for receptacles as consistent with jurisdiction's waste hauler and state law. For example: These receptacles shall be colored black or grey for garbage, blue for recycling, and green for 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.

7.25.080 - Exemptions.

- (a) Entities packaging prepared foods outside the County are exempt from the provisions of this chapter; provided, however, such persons 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 the County, the County shall not enforce the

requirements in sections 7.25.040 (a) and 7.25.040 (b) on such items until they are made commercially available.

- (d) For the immediate preservation of the public peace, health, or safety due to an emergency or natural disaster, the Board of Supervisors, or designee, may exempt Food Vendors, persons operating County facilities and agents, contractors, and vendors doing business with the County, from the provisions of this chapter.

7.25.090 - Enforcement and penalties.

- (a) Compliance with this ordinance is required as of the Effective Date.
- (b) Enforcement of this chapter shall be pursuant to Marin County Code sections 7.24.030 through 7.24.070, inclusive.
- (c) Enforcement shall include written notice of non-compliance and a reasonable opportunity to correct.
- (d) Enforcement of this chapter for the County and jurisdictions that have adopted the Reusable Foodware Ordinance within six (6) months of the Effective Date, without modification, will begin one (1) year after the Effective Date. Enforcement will be the responsibility of 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, unless a jurisdiction elects to pursue its own foodware enforcement policy with its local jurisdiction staff.

7.25.100 - Legal remedies.

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 his or her designee is authorized to enforce the provisions of this ordinance by the issuance of Administrative Citations.

- (a) **Administrative Citations.**
At the discretion of the Director, administrative citations may be issued for violations of this Chapter. 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) **Administrative Citation Penalty Schedule.**
 - 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.
- (c) **Nonpayment of Citation for More than one Year Deemed Nuisance in and of Itself.**
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.

(d) Service of Citation.

1. The citation shall be mailed to the food facility operator.
2. The failure of any interested person to receive the citation shall not affect the validity of the proceedings.

DRAFT