

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

July 31, 2019

File No. 190811

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On July 23, 2019, Supervisor Peskin submitted the proposed legislation:

File No. 190811

Ordinance amending the Environment Code to require food vendors to charge customers \$0.25 for each non-reusable beverage cup and \$0.25 for each non-reusable food container, provide reusable food service ware for on-premises dining, and provide customer-accessible self-bussing stations; and affirming the Planning Department's determination under the California Environmental Quality Act.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

1 [Environment Code - Promotion of Reusable Food Service Ware]

2
3 **Ordinance amending the Environment Code to require food vendors to charge**
4 **customers \$0.25 for each non-reusable beverage cup and \$0.25 for each non-reusable**
5 **food container, provide reusable food service ware for on-premises dining, and provide**
6 **customer-accessible self-bussing stations; and affirming the Planning Department's**
7 **determination under the California Environmental Quality Act.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in ~~*Times New Roman font*~~.
11 **Board amendment additions** are in Arial font.
12 **Board amendment deletions** are in ~~Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. The Planning Department has determined that the actions contemplated in
17 this ordinance comply with the California Environmental Quality Act (California Public
18 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
19 Board of Supervisors in File No. ____ and is incorporated herein by reference. The Board
20 affirms this determination.

21 Section 2. Findings.

22 (a) San Francisco has long recognized the environmental imperative to reduce the
23 amount of solid waste sent to landfill. In pursuit of its vision to become a zero-waste city, San
24 Francisco has championed numerous policies designed to reduce, reuse, recycle, compost,
25 and otherwise divert solid waste from landfill. These policies have heightened local

1 awareness and support for the City's zero-waste vision, driven measurable and lasting shifts
2 in behavior, and served as models for other jurisdictions around California and the nation.

3 (b) In September 2018, as part of the "Sustainable Communities" policy platform of
4 the Global Climate Action Summit, Mayor Breed strengthened San Francisco's zero-waste
5 commitment even further, by pledging that the City will achieve both a 15% reduction in
6 municipal solid waste generation, and a 50% reduction of disposal to landfill and incineration,
7 by 2030.

8 (c) The plastics industry is estimated to be worth more than \$4 trillion. It generates
9 more than 300 million tons of plastic per year—half of which is made up of non-reusable
10 items. Of the 8.3 billion metric tons of plastic produced to date, nearly 80% has ended up in
11 landfills. Less than 1% of the tens of billions of plastic bags used in the United States each
12 year are recycled. In 2015, the United States recycled just 9% of its plastic waste.

13 (d) Non-reusable disposable food and beverage service ware is a leading
14 contributor to environmental waste, particularly along the California coastline. According to
15 California Coastal Cleanup data collected over the past 30 years, non-reusable food and
16 beverage packaging items account for 7 out of the top 10 items collected, and for 34% of total
17 trash. A 2011 Bay Area study of street litter in areas that contribute to urban runoff to the Bay
18 found that 67% of the 12,000 items collected were non-reusable food and beverage service
19 ware, 50% of which came from fast food service. The study further concluded that replacing
20 non-reusable beverage cups with reusable alternatives would reduce all litter by 13%, and
21 that switching to reusable food containers would reduce all litter by 27%.

22 (e) Aside from the sheer volume of solid waste added to landfill, the production,
23 management, and disposal of non-reusable disposable food and beverage service ware also
24 contributes to other environmental problems, including emission of greenhouse gases,
25 increased air and water pollution, combustion of non-renewable fossil fuels, and increased

1 litter on streets and in waterways. Non-reusable disposable food and beverage service ware
2 also contain additives, known or suspected carcinogens, and endocrine disruptors, that pose
3 threats to public health and safety.

4 (f) Charging customers for non-reusable items has proven highly effective in
5 stemming their consumption, and shifting customers towards reusables. A 2016 study
6 discovered that in California, local jurisdictions with bans on non-reusable plastic bags saw a
7 two-thirds' reduction in their use. The San Francisco Department of the Environment has
8 reported that in light of the City's requirement that customers be charged for grocery bags,
9 over 60% of customers bring their own grocery bags. The City of Santa Cruz reports that its
10 checkout bag charge of \$0.25 has resulted in 90% of customers changing behavior to bring
11 reusable alternatives. In Los Angeles County, the plastic bag ban and paper bag charge of
12 \$0.10 reduced overall non-reusable bag usage by 95%.

13 (g) California's Retail Food Code, including recently enacted amendments in
14 Assembly Bill 619 under which, beginning in January 2020, qualified temporary food facilities
15 may serve food in reusable service ware, and food vendors may fill customers' own clean
16 reusable containers as long as written procedures to prevent contamination are in place and
17 properly implemented, will enable more food vendors in San Francisco to reduce waste and
18 promote reuse.

19 (h) By requiring reusable food ware for on-site dining, imposing a charge of \$0.25
20 on non-reusable beverage cups and food containers, and requiring food vendors, including
21 those providing food via third-party mobile applications and delivery services, to provide food
22 service ware accessories upon affirmative request only, San Francisco will take another
23 crucial step towards achieving zero waste.

1 Section 3. Chapter 16 of the Environment Code is hereby amended by revising
2 Sections 1602, 1603, and 1604; adding new Sections 1606, 1607, and 1608; revising existing
3 Sections 1606 and 1607, and renumbering them as new Sections 1610 and 1611
4 respectively; and renumbering existing Sections 1608, 1609, 1610, and 1611, as new
5 Sections 1612, 1613, 1614, and 1609 respectively, to read as follows:

6 **SEC. 1602. DEFINITIONS.**

7 * * * *

8 “Food Container” means a container, bowl, plate, tray, or other vessel used to hold Prepared
9 Food.

10 “Food Service Ware” means all containers, bowls, plates, trays, cups, lids, straws,
11 forks, spoons, knives, napkins, and other like items ~~that are designed for a single use~~ used for
12 consuming Prepared Foods, including without limitation, service ware for takeout foods and/or
13 leftovers from partially consumed meals prepared by Food Vendors. The term “Food Service
14 Ware” includes Food Containers and Food Service Ware Accessories and does not include
15 items composed entirely of aluminum, or polystyrene foam coolers and ice chests.

16 “Food Service Ware Accessory” means all types of ~~single use~~ items usually provided
17 alongside Prepared Food in ~~single use~~ plates, containers, bowls, or cups, including but not
18 limited to utensils, chopsticks, napkins, cup lids, cup sleeves, food or beverage trays,
19 condiment packets and saucers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks
20 ~~designed for a single use for Prepared Foods.~~

21 * * * *

22 “Non-Reusable” means not meeting the definition of Reusable in this Chapter 16.

23 “Packing Material” means material used to hold, cushion, or protect items packed in a
24 container for shipping, transport, or storage.

25 * * * *

1 "Prepared Food" means food or beverages, which are serviced, packaged, cooked,
2 chopped, sliced, mixed, brewed, frozen, squeezed, poured, or otherwise prepared (collectively
3 "prepared") for individual customers or consumers. Prepared Food does not include raw eggs
4 or raw, butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or
5 similar retail appliance.

6 * * * *

7 ~~"Reusable Beverage Cup" means any vessel or container for a Prepared Food beverage that is~~
8 ~~specifically designed and manufactured for repeated cleaning, disinfecting, and reuse at least 100~~
9 ~~times, and is dishwasher safe.~~

10 ~~"Single-Use" means designed to be used once and discarded, and not designed for repeated use~~
11 ~~and sanitizing.~~

12 "Reusable" means designed and manufactured to maintain its shape and structure, and to be
13 materially durable for repeated (at least 1,000 times each) sanitizing in water at 171 degrees Fahrenheit
14 for at least 30 continuous seconds, washing via commercial dishwashing machine, and reuse.

15
16 **SEC. 1603. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE**
17 **WARE PROHIBITED.**

18 (a) No person may sell, offer for sale, or otherwise Distribute within the City (1) any
19 Non-Reusable Food Service Ware that is not either Compostable or Recyclable, (2) any Non-
20 Reusable Food Service Ware made, in whole or in part, from Polystyrene Foam, (3) any ~~single-~~
21 ~~use~~ Non-Reusable stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic,
22 including compostable, bio- or plant-based plastic, or (4) beginning January 1, 2020, any Non-
23 Reusable Food Service Ware that is Compostable and not Fluorinated Chemical Free.

24 (b) The Director may adopt a list of suitable alternative Compostable or Recyclable
25 Non-Reusable Food Service Ware products. ~~"Suitable alternative Compostable or Recyclable Food~~

1 *Service Ware products*”, which means Non-Reusable Food Service Ware products that the
2 Director determines serve the same intended purpose as non-compliant products, meet the
3 standards for what is Compostable and/or Recyclable ~~set~~ under this Chapter 16, and are
4 reasonably affordable. The Director shall regularly update the list.

5 (c) Beginning January 1, 2020, no person may sell, offer for sale, or otherwise
6 Distribute within the City Non-Reusable Food Service Ware that does not contain a minimum
7 post-consumer recycled content that may be specified by the Director in regulations according
8 to the Director’s assessment of market availability and costs.

9 * * * *

10 **SEC. 1604. USE OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED.**

11 (a) Food Vendors may not sell, offer for sale, or otherwise Distribute Prepared Food
12 (1) in Non-Reusable Food Service Ware made, in whole or in part, from Polystyrene Foam, (2)
13 in Non-Reusable Food Service Ware that is not Compostable or Recyclable, or (3) beginning
14 January 1, 2020, in Non-Reusable Food Service Ware that is Compostable and not Fluorinated
15 Chemical Free.

16 (b) City Facility Food Providers may not provide Prepared Food to City Facilities (1)
17 in Non-Reusable Food Service Ware made, in whole or in part, from Polystyrene Foam, (2) in
18 Non-Reusable Food Service Ware that is not Compostable or Recyclable, or (3) beginning
19 January 1, 2020, in Non-Reusable Food Service Ware that is Compostable and not Fluorinated
20 Chemical Free.

21 (c) City Departments may not purchase, acquire, or use Non-Reusable Food Service
22 Ware for Prepared Food (1) where the Non-Reusable Food Service Ware is made, in whole or
23 in part, from Polystyrene Foam, (2) where the Non-Reusable Food Service Ware is not
24 Compostable or Recyclable, or (3) beginning January 1, 2020, where the Non-Reusable Food
25 Service Ware is Compostable and not Fluorinated Chemical Free.

1 (d) City contractors and lessees may not use Non-Reusable Food Service Ware for
2 Prepared Food in City Facilities and while performing under a City contract or lease (1) where
3 the Non-Reusable Food Service Ware is made, in whole or in part, from Polystyrene Foam, (2)
4 where the Non-Reusable Food Service Ware is not Compostable or Recyclable, or (3)
5 beginning January 1, 2020, where the Non-Reusable Food Service Ware is Compostable and
6 not Fluorinated Chemical Free. All new leases and permits authorizing the sale of food and
7 beverages at the San Francisco International Airport, and all renewals, extensions, or material
8 amendments thereto, must incorporate terms requiring the lessee or permittee to comply with
9 the terms of this Chapter 16. ~~This requirement shall also apply to any such lease or permit renewed,~~
10 ~~extended, or materially amended after July 1, 2019.~~

11 (e) The Director may adopt a list of suitable alternative Compostable or Recyclable
12 Non-Reusable Food Service Ware products. ~~“Suitable alternative Compostable or Recyclable Food~~
13 ~~Service Ware products, which~~ means Non-Reusable Food Service Ware products that the Director
14 determines serve the same intended purpose as non-compliant products, meet the standards
15 for what is Compostable and/or Recyclable ~~set~~ under this Chapter 16, and are reasonably
16 affordable. The Director shall regularly update the list.

17 If a product is included on the Director’s list, it will be deemed to comply with this
18 Section 1604. If a product is not included on the Director’s list, the person using the product
19 as Non-Reusable Food Service Ware will have the burden of establishing to the Director’s
20 satisfaction that the product complies with this Section.

21 (f) It shall not be a violation of this Section 1604 to sell, provide, or purchase
22 Prepared Food packaged in Non-Reusable Food Service Ware otherwise prohibited by
23 subsections (a) through (c), or to use Non-Reusable Food Service Ware otherwise prohibited
24 by subsection (d), if the Prepared Food is packaged outside the City and is sold or otherwise
25 provided to the consumer in the same Non-Reusable Food Service Ware in which it originally

1 was packaged. Businesses packaging Prepared Food outside the City are encouraged to use
2 Non-Reusable Food Service Ware that is Compostable or Recyclable, is Compostable and
3 Fluorinated Chemical Free, and is not made, in whole or in part, from Polystyrene Foam.

4 (g) Food Vendors, City Facility Food Providers, and City contractors and lessees
5 acting pursuant to a City contract or lease at a City Facility shall not provide, sell, use, or
6 otherwise Distribute, and City Departments shall not purchase or acquire, any ~~single-use~~Non-
7 Reusable straws, stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic,
8 including compostable, bio- or plant-based plastic, except as expressly provided in this
9 Chapter 16 and/or as required by applicable State or Federal laws, regulations, or guidelines.

10 (h) Food Vendors, City Facility Food Providers, City Departments, and City contractors
11 and lessees acting pursuant to a City contract or lease at a City Facility shall ~~only~~ provide, sell,
12 use, or otherwise Distribute only those Food Service Ware Accessories that comply with this
13 Chapter 16, and only ~~either~~ (1) upon a consumer's specific request for such items, ~~or~~ (2) in a
14 self-service area or dispenser, except for ~~single-use~~Non-Reusable straws, which shall be made
15 available by request only, or (3) when Prepared Food is assembled for delivery, to accommodate for
16 safety and prevent spills.

17 (i) Beginning January 1, 2020, Food Vendors, City Facility Food Providers, and City
18 contractors and lessees acting pursuant to a City contract or lease at a City Facility shall not
19 provide, sell, use, or otherwise Distribute, and City Departments shall not purchase or acquire,
20 Non-Reusable Food Service Ware that does not contain a minimum post-consumer recycled
21 content, that may be specified by the Director in regulations according to the Director's
22 assessment of market availability and costs.

23 (j) Food Vendors that deliver Prepared Food in San Francisco, and third-party businesses that
24 accept, process, and/or facilitate orders for takeout or delivery of Prepared Food in San Francisco,
25 shall provide options in each of their ordering/point-of-sale platforms or protocols, including by phone.

1 web, or mobile phone application, for customers ordering Prepared Food to be delivered in San
2 Francisco to affirmatively request Non-Reusable Food Service Ware Accessories. The default selected
3 option shall be that no Non-Reusable Food Service Ware Accessories are requested. Each Non-
4 Reusable Food Service Ware Accessory (e.g., each fork, knife, or napkin) provided with Prepared Food
5 must be specifically requested by the customer in order for a Food Vendor to provide it.

6 **SEC. 1606. PROMOTING USE OF REUSABLE BEVERAGE CUPS AND FOOD**
7 **CONTAINERS.**

8 (a) Imposing a Non-Reusable Cup Charge. Beginning January 1, 2021, no Food Vendor
9 shall provide a Non-Reusable Beverage Cup to a customer who is paying for a beverage, unless the
10 Food Vendor charges the customer a Non-Reusable Cup Charge of at least \$0.25 per cup. A Food
11 Vendor shall provide notice of this charge to each customer prior to completing the customer's order.

12 (b) Imposing a Non-Reusable Food Container Charge. Subject to the following operative
13 dates, no Food Vendor shall provide a Non-Reusable Food Container to a customer paying for
14 Prepared Food unless the Food Vendor charges the customer a Non-Reusable Food Container Charge
15 of at least \$0.25 per Non-Reusable Food Container. A Food Vendor shall provide notice of this charge
16 to each customer prior completing the customer's order.

17 (1) Food Vendors engaged in a Formula Retail use, as defined in Section
18 303.1(b) of the Planning Code, shall assess this charge beginning January 1, 2022.

19 (2) Food Vendors not engaged in a Formula Retail use, as defined in Section
20 303.1(b) of the Planning Code, shall assess this charge beginning January 1, 2023, but only if the
21 Director of the Department of the Environment has determined that feasible Reusable Food Container
22 options exist for such Food Vendors; otherwise, such Food Vendors shall not assess this charge until
23 the Director has so determined.

24 (c) Charge Retained by Food Vendor. A \$0.25 charge imposed under subsections (a)
25 and/or (b) of this Section 1606 shall be retained by the Food Vendor. Third-party food delivery

1 services that process and/or deliver orders on behalf of Food Vendors and collect payment on behalf of
2 Food Vendors shall remit the \$0.25 charge to the Food Vendor.

3 (d) **Controller's Report.** No earlier than 18 months, and no later than 24 months, after
4 implementation each of subsections (a) and/or (b) of this Section 1606, the Controller shall perform a
5 separate assessment and review of the economic impact on Food Vendors, both large and small, of the
6 Non-Reusable Cup Charge and/or the Non-Reusable Food Container Charge. Based on such
7 assessment and review, the Controller shall submit an analysis to the Board of Supervisors of each
8 charge type. Each analysis shall be based on criteria deemed relevant by the Controller, but shall
9 include a survey of whether and how the charge specifically has impacted Food Vendors' profits and
10 losses.

11 (e) **Charges to be Separately Stated on Receipt.** The amount(s) charged pursuant to
12 subsections (a) and (b) shall each be separately stated on any receipt provided to the customer at the
13 time of sale and shall be identified respectively as the Non-Reusable Cup Charge and/or the Non-
14 Reusable Food Container Charge.

15 (f) **Exemption.** Subsections (a) and (b) do not apply to Food Vendors when they are
16 providing Prepared Food to a customer as part of a transaction paid for in whole or in part through
17 the Special Supplemental Food Program for Women, Infants, and Children (Article 2 (commencing
18 with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code),
19 or the California Department of Social Services Food Stamp Program.

20 (g) **Waivers.** Any owner or operator of a Food Vendor may petition the Director of the
21 Department of the Environment for a full or partial waiver of the requirements of this Section 1606,
22 except those set forth in subsections (a) and (b), for a period of up to one year at a time, if the owner or
23 operator can demonstrate that application of the specified provisions of this Section would create
24 undue hardship or practical difficulty for the Food Vendor not generally applicable to other Food
25 Vendors in similar circumstances.

1 **SEC. 1607. REUSABLE FOOD SERVICE WARE FOR DINING ON PREMISES.**

2 (a) Food Vendors, except for temporary food facilities as defined in California Health and
3 Safety Code Section 113930, as amended from time to time, that serve Prepared Food for consumption
4 on the Food Vendor's premises shall provide only Reusable Food Service Ware, except that disposable
5 paper food wrappers, sleeves, and bags; foil wrappers; paper napkins; paper tray and plate liners; and
6 straws shall be permitted, so long as they meet the requirements set forth elsewhere in this Chapter 16.
7 Condiments, such as sauces, ketchup, or mustard, provided for on-site consumption, shall not be served
8 in disposable, individual-serving packets. Consumption is considered on-premises if it takes place at
9 tables and/or seating provided by the Food Vendor, either on its own or in conjunction with another
10 Food Vendor(s). This requirement does not prohibit a Food Vendor from providing, upon a customer's
11 request, Non-Reusable Food Service Ware compliant with this Chapter for the customer to take away
12 leftover Prepared Food after dining on the premises.

13 (b) Waivers. Food Vendors subject to the requirements of subsection (a) that do not have
14 onsite or off-site dishwashing capacity, or are unable to contract for services to wash, rinse, and
15 sanitize Reusable Food Service Ware, in order to comply with applicable provisions of the California
16 Health and Safety Code, may petition the Director for a full or partial waiver. To obtain a waiver, the
17 Food Vendor must demonstrate inability to comply due to insurmountable space constraints, undue
18 financial hardship, and/or other extraordinary circumstances. Non-Reusable Food Service Ware used
19 pursuant to a waiver obtained under this Section 1607 must comply with all requirements set forth
20 elsewhere in this Chapter.

21 **SEC. 1608. CUSTOMER-ACCESSIBLE BUSSING STATION FOR FOOD SERVICE**
22 **WARE.**

23 Food Vendors, except those with full bussing service or those that do not customarily serve
24 Prepared Food using Non-Reusable Food Service Ware, must provide at least one customer self-
25 bussing station.

1 **SEC. 16~~109~~**. PROVIDING REUSABLE BEVERAGE CUPS AT EVENTS.

2 * * * *

3 **SEC. 16~~06~~10**. IMPLEMENTATION.

4 (a) The Director may create, maintain, and regularly update the product lists
5 referenced in Sections 1603(b) and 1604(e).

6 (b) The Director is authorized to promulgate regulations, guidelines, and forms and
7 to take any and all other actions reasonable and necessary to implement and enforce this
8 Chapter 16. The Director may require maintenance of records and provision of such records upon the
9 Director's request as a condition of a full or partial waiver provided for in this Chapter.

10 (c) Nothing in this Chapter 16 shall conflict, or be construed to conflict, with the
11 Americans with Disabilities Act, the Unruh Act, the Disabled Persons Act, or other applicable
12 laws concerning the rights of individuals with disabilities. In particular, nothing in this Chapter
13 shall restrict, or be construed to restrict, the availability of ~~single-use~~Non-Reusable plastic straws
14 to individuals who may require and request the use of plastic straws.

15 (~~#1~~) It shall not be a violation of this Chapter for any place of public
16 accommodation to provide ~~single-use~~Non-Reusable plastic straws to individuals who
17 request such plastic straws.

18 (~~#2~~) Nothing in this Chapter shall restrict, or be construed to restrict, the ability
19 of places of public accommodation to purchase or otherwise acquire ~~single-use~~Non-
20 Reusable plastic straws in sufficient numbers to meet the needs of individuals who
21 request such plastic straws.

22 (d) In addition, nothing in this Chapter 16 shall restrict, or be construed to restrict, the
23 availability of ~~single-use~~Non-Reusable plastic straws to individuals who may require use of
24 plastic straws in relation to medical circumstances.

1 (e) The Department shall conduct multi-lingual public outreach and education,
2 including providing information to educate affected Food Vendors, businesses, and
3 customers, about the provisions of this Chapter 16.

4 **SEC. ~~160711~~. ENFORCEMENT AND PENALTIES.**

5 (a) The Director shall issue a written warning to any person he or she determines is
6 violating Sections 1603(a) or (c), 1604(a), (b), (d), (g), (h), ~~or (i), or (j)~~, ~~or~~ 1605(a), (b), or (c),
7 1606(a), (b), or (c), 1607(a), 1608(a), (b), or (c), or ~~161109(a)~~ of this Chapter 16. If after issuing a
8 written warning of violation from the Director, the Director finds that person continues to
9 violate the aforementioned provisions ~~of 1603(a) or (c), 1604(a), (b), (d), (g), (h), or (i), or 1605(a),~~
10 ~~(b), or (c), or 1611(a)~~, the Director may apply for or impose the various sanctions provided in
11 this Section 1611.

12 (b) Any person who violates ~~the provisions~~ Sections 1603(a) or (c), 1604(a), (b), (d),
13 (g), (h), ~~or (i), or (j)~~, ~~or~~ 1605(a), (b), or (c), 1606(a), (b), or (c), 1607(a), 1608(a), (b), or (c), or
14 ~~161109(a)~~ of this Chapter 16 shall be guilty of an infraction. If charged as an infraction, upon
15 conviction thereof, said person shall be punished for the first offense by a fine of not more
16 than \$100.~~00~~ for a first violation; not more than \$200.~~00~~ for a second violation in the same
17 year and not more than \$500.~~00~~ for each subsequent violation in the same 12-month period.

18 (c) The Director may issue an administrative fine to any person violating Sections
19 1603(a) or (c), 1604(a), (b), (d), (g), (h), ~~or (i), or (j)~~, ~~or~~ 1605(a), (b), or (c), 1606(a), (b), or (c),
20 1607(a), 1608(a), (b), or (c), or ~~161109(a)~~ in accordance with Administrative Code Chapter 100,
21 which is hereby incorporated by reference.

22 (d) The City Attorney may seek legal, injunctive, or other equitable relief to enforce
23 this Chapter 16, including without limitation, civil penalties in an amount not exceeding
24 \$100.~~00~~ for the first violation, \$200.~~00~~ for the second violation, and \$500.~~00~~ for each
25 subsequent violation in any given 12-month period.

1 (e) The City may not recover both administrative and civil penalties pursuant to
2 subsections (c) and (d) for the same violation. Penalties collected under subsections (c) and
3 (d), which may include recovery of enforcement costs, shall be used to fund implementation
4 and enforcement of this Chapter 16.

5 **SEC. ~~1608~~12. SEVERABILITY.**

6 * * * *

7 **SEC. ~~1609~~13. NO CONFLICT WITH FEDERAL OR STATE LAW.**

8 * * * *

9 **SEC. ~~1610~~14. UNDERTAKING FOR THE GENERAL WELFARE.**

10 * * * *

11 Section 4. Effective and Operative Dates.

12 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
13 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
14 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
15 Mayor's veto of the ordinance.

16 (b) Unless otherwise specifically noted, this ordinance shall become operative on July
17 1, 2020.

1 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

7
8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By:



12 NEHA GUPTA
13 Deputy City Attorney

14 n:\leganalas2019\1900469\01378368.docx

LEGISLATIVE DIGEST

[Environment Code - Promotion of Reusable Food Service Ware]

Ordinance amending the Environment Code to require food vendors to charge customers \$0.25 for each non-reusable beverage cup and \$0.25 for each non-reusable food container, provide reusable food service ware for on-premises dining, and provide customer-accessible self-bussing stations; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Chapter 16 of the Environment Code presently prohibits sale, use, and distribution within the City of non-reusable food service ware items that are not compostable or recyclable, are made with fluorinated chemicals, or are made with polystyrene foam. It also prohibits sale, use, and distribution of other specified types of polystyrene foam products, specifically packing materials, coolers, pool or beach toys, and dock floats or navigation markers, that are not encased with a more durable material, and egg cartons and meat and fish trays for raw meat or fish made with polystyrene foam. Chapter 16 in addition provides for use of reusable beverage cups at certain events inside City facilities or subject to City permits, and further requires that non-reusable food ware accessories, such as forks and napkins, be provided only on request or at self-service stations. In addition, notwithstanding any other provisions in the ordinance, plastic straws may be made available to customers upon request.

The California Health and Safety Code sets forth uniform statewide health and sanitation standards for retail food facilities. Several provisions regulate use and sanitation of reusable food service ware, and specify circumstances under which food businesses may use non-reusable and/or reusable food ware. Assembly Bill 619 enacted in July 2019 will, beginning in January 2020, permit temporary food facilities that meet certain qualifications to serve in reusable food ware, and allow qualified food vendors with written contamination prevention procedures in place to fill customers' own clean reusable food ware.

Amendments to Current Law

Beginning July 1, 2020, this ordinance would require certain food vendors to provide reusable food service ware for on-premises dining and to provide customer-accessible self-bussing stations. Food vendors, and third-party platforms or services processing delivery orders, would be required to offer options for customers to request non-reusable food service ware accessories, and provide each accessory only upon the customer's specific affirmative request for that accessory item (i.e. each fork, knife, or napkin).

Beginning January 1, 2021, food vendors would be required to charge 25 cents for each non-reusable cup provided with a purchased beverage. And beginning January 1, 2022, formula

retail food vendors would be required to charge 25 cents for each non-reusable food ware container provided with prepared food. Non-formula retail food vendors would be required to impose such a 25-cent non-reusable food container charge not earlier than January 1, 2023, and only upon a determination from the Director of the Department of Environment that feasible reusable container options exist. The ordinance would require all such charges to be separately on customers' receipts, and for food vendors to notify customers of an applicable charge prior to completing their orders. Third-party mobile application platforms and delivery companies that process and/or deliver prepared food would be required to remit all such charges collected back to the food vendor.

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