

## CHAPTER 6.42 - REGULATIONS ON DISPOSABLE FOODWARE

### Section 6.42.010 Definitions.

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall have the meanings set forth below:

- A. "Aluminum foil-based" means any disposable foodware composed entirely of aluminum, including but not limited to aluminum tray liners, aluminum foil, and aluminum foil baskets.
- B. "Biodegradable Products Institute" or "BPI" is a multi-stakeholder association of key individuals and groups from government, industry, and academia, which promotes the use and recycling of biodegradable polymeric materials (via composting). BPI maintains and certifies a list of products that demonstrate that they meet the requirements of ASTM D6400 or D6868, based on testing in an approved laboratory.
- C. "Compostable" means an item or material is accepted in the City's available organics collection program as fully compostable, as determined by the City's Development Services Department, and is listed, described, or referenced on the Sustainability Division website as compostable. The City shall list only items or materials that are Fiber-based and will break down into, or otherwise become a part of, usable compost (e.g., soil conditioning material, mulch) in a safe and timely manner. Products or packages made with plastics, either petroleum or biological based, and made with fluorinated chemicals shall not be considered compostable. Only items and materials certified to meet these standards by the Biodegradable Products Institute, Compost Manufacturing Alliance, and/or other third party recognized by the City shall be considered compostable.
- D. "City" means the City of Los Altos.
- E. "Disposable" means designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple reuses.
- F. "Fiber/natural fiber-based" means a plant or animal-based, nonsynthetic fiber, including but not limited to products made from paper, sugarcane, bamboo, wheat stems/stalk, hay, wood, etc. Fiber-based items do not include or contain petroleum-based or biologically-based polymers of any kind.
- G. "Foodware" means food contact products used for serving, distributing, holding, packaging, and/or transporting prepared food including, but not limited to plates, cups, bowls, trays, clamshell containers, boxes, utensils, straws, lids, and food contact paper (e.g., wraps, bags, tray liners, etc.). The term "foodware" includes foodware accessories and standard condiment in disposable packaging.

- H. “Foodware accessories” includes different types of foodware such as straws, stirrers, cup spill plugs, cup sleeves, condiment cups and packets, utensils, cocktail sticks/picks, toothpicks, napkins, and other similar accessory or accompanying foodware used as part of food or beverage service or packaging.
- I. “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food to the public for human consumption, as defined by California Health and Safety Code Section 113789 or successor. "Food facility" includes, but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, pubs, coffee shops, convenience stores, liquor stores, supermarkets, delicatessens, fraternal clubs serving the public, itinerant restaurants, mobile food vendors, vehicles or carts, or roadside stands. It includes both permanent and temporary food facilities. Public schools are exempt from the provisions of this chapter.
- J. “Healthcare facilities” means places that provide healthcare to the public. Healthcare facilities include, but are not limited to, hospitals, clinics, outpatient care centers, nursing homes, psychiatric care centers, medical offices, hospice homes, mental health and addiction treatment centers, orthopedic and other rehabilitation centers, urgent care, birth centers, etc.
- K. “Non-compostable” means not meeting the definition of compostable set forth in this chapter.
- L. “Non-reusable” means an item that is designed to be used once and discarded and is not specifically designed and manufactured for repeated cleaning, disinfecting, and reuse over an extended period of time.
- M. “On-premises dining” means food prepared for consumption on the premises of the food facility either indoors or outdoors.
- N. “Off-premises dining” means food prepared for consumption off the premises of the food facility. It includes, but is not limited to, takeout food delivery service, drive-through and catering off site.
- O. “Perfluoroalkyl and Polyfluoroalkyl substances (PFAS)” means a class of fluorinated organic chemicals containing at least one (1) fully fluorinated carbon atom.
- P. “Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Free” means either of the following:
1. PFAS has not been intentionally added to a product or product component.
  2. The presence of PFAS in a product or product component is below one hundred (100) parts per million, as measured in total organic fluorine.

- Q. “Polystyrene-based” means and includes expanded polystyrene, which is a thermoplastic petrochemical material 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, form molding, and extrusion-blow molding (extruded foam polystyrene). The term “polystyrene” also includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene (EPS)) and clear or solid polystyrene known as oriented polystyrene.
- R. “Prepackaged food” means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer and prepared at an approved source.
- S. "Prepared Food" means food or beverages that undergo a cooking or food preparation technique on the food facility's premises for consumption by the public. Cooking or food preparation technique includes but is not limited to the following:
1. Cooking methods, utilizing the application of heat, such as steaming, microwaving, simmering, boiling, broiling, grilling, frying, or roasting.
  2. Beverage preparation, such as blending, brewing, steeping, juicing, diluting, or pouring.
  3. Food preparation techniques, such as defrosting, rinsing, washing, diluting, cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing, decorating, or icing.
- Prepared Food does not include raw eggs or raw butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance.
- T. “Reusable” means foodware and foodware accessories 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. “Standard condiment” means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, and includes different types such as ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, and sugar/sugar substitutes.
- V. “Takeout food” means prepared food that is purchased to be consumed off a food facility’s premises. Takeout food includes prepared food delivered by a food facility or by a third-party takeout food delivery service.

- W. “Takeout food delivery service” is a service for online food ordering and delivery of prepared food from a food facility to a customer. This service can be provided directly by the food facility or by a third party.
- X. “Utensils” include different types of instruments used to assist the consumption of food, specifically, forks, knives, spoons, sporks, chopsticks, and tongs.
- Y. “Vendor” means any store or business which sells or offers goods or merchandise, located or operating within the city of Los Altos.

#### **6.42.020 Disposable Foodware Accessories and Condiments**

Effective as of June 1, 2022:

- A. Disposable Foodware Accessories and Standard Condiments shall be provided only upon request.
1. Food Facilities shall provide Disposable Foodware Accessories or Standard Condiments to customers for takeout and delivery orders only when specifically requested by the customer. Takeout and delivery orders include orders made directly with the Food Facility and orders made using digital ordering/point of sale platforms.
  2. Disposable Foodware Accessories and Standard Condiments shall not be bundled or packaged in a manner that prohibits a take-out customer from taking only the specific Disposable Foodware Accessory and/or Standard Condiment desired without also having to take a different Disposable Foodware Accessories and/or Standard Condiment.
  3. Disposable Foodware Accessories shall not be individually wrapped and may be provided to customers using refillable dispensers that dispense items one at a time.
  4. Takeout Food Delivery Services that utilize digital ordering/point of sale platforms, including but not limited to the internet and smart phone, shall only offer Disposable Foodware Accessories by providing clear options for customers to affirmatively request these items separate from orders for food and beverages. The default option on the digital ordering/point of sale platforms shall be that no Disposable Foodware Accessories are requested. Each individual Disposable Foodware Accessory (e.g., each fork, knife, condiment packet, napkin, etc.) provided with Prepared Food must be specifically requested by the customer in order for a Food Facility to provide it.
  5. A Food Facility may ask a drive-through consumer if the consumer wants a Disposable Foodware Accessory if the Disposable Foodware Accessory

is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

6. For delivery orders, Food Facilities may choose to include specific accessories, such as cup lids, spill plugs, and trays, in order to prevent spills and deliver food and beverages safely.

#### **Section 6.42.030 Compliant Disposable Foodware for Off-premises Dining.**

Effective 6-months after ordinance adoption:

- A. Food Facilities may provide Prepared Food in Disposable Foodware for Off-premises Dining (e.g., takeout food, grocery delicatessen/hot bar, catering off site, take away leftover food, etc.) provided that:
  1. On or after July 4, 2014, Food Facilities shall not use Polystyrene-based Disposable Foodware.
  2. Disposable Foodware and Accessories shall be Compostable, recyclable glass, or Aluminum Foil-based and PFAS Free.
  3. Disposable Foodware Accessories shall be provided only upon request as outlined in section 6.42.020 of this ordinance.

#### **Section 6.42.040 Reusable Foodware Required for On-premises Dining.**

Effective 12-months after ordinance adoption:

- A. Food Facilities shall only serve Prepared Food for On-premises Dining with Reusable Foodware except as otherwise provided in subsection B of this section.
- B. Food Facilities may provide the following Non-reusable Foodware Accessories: straws, stirrers, cocktail sticks/picks, toothpicks, napkins, wrappers, and liners so long as they are compostable.
- C. Standard Condiments provided for on-site consumption shall not be served in disposable, individual-serving packets.
- D. Nothing in this section shall prohibit a food facility from offering, upon a customer's request, Non-reusable Foodware for takeout food or to take away leftover food after dining on the premises.
- E. New building permits and new or renewed business licenses for Food Facilities applied for, and/or deemed complete after ordinance effective date shall only be granted to Food Facilities that can demonstrate adequate capacity to comply with this the regulations provided in this chapter.

- F. Food Facilities subject to the requirements of subsection A that do not have onsite or off-site dishwashing capacity and are unable to contract for services to wash, rinse, and sanitize Reusable Foodware, in order to comply with applicable provisions of the California Health and Safety Code, may petition the City Manager for an exemption or extension as outlined in this chapter.

#### **Section 6.42.050 Distribution of Polystyrene-based Disposable Foodware.**

- A. On or after July 4, 2014, Polystyrene-based Disposable Foodware shall not be sold or provided by any vendor in Los Altos.

#### **Section 6.42.060 Recordkeeping and inspection.**

- A. Food Facilities shall keep a complete and accurate record or documents of the purchase of the acceptable Disposable Food Service Ware evidencing compliance with this Chapter for a minimum period of three (3) years from the date of purchase.
- B. The records shall be made available for inspection at no cost to the City during regular business hours by City staff authorized to enforce this Chapter. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be made available at the Food Facility address.
  - 1. The provision of false or incomplete information, records, or documents to the City shall be a violation of this Chapter.

#### **Section 6.42.070 Exemptions.**

- A. Prepackaged Food is exempt from the provisions of this chapter.
- B. Nothing in this chapter shall conflict or be construed to conflict with the Americans with Disabilities Act or any other applicable law concerning the rights of individuals with disabilities. Nothing in this chapter shall restrict, or be construed to restrict, the provision by Food Facilities of Disposable Non-compostable straws to individuals who may request the use of Disposable Non-compostable straws to accommodate medical needs or disabilities. Healthcare facilities may distribute Disposable Non-compostable straws with or without request by a patient at the discretion of the healthcare facility staff based on the physical or medical needs of the patient.
- C. The Food Facility can request an exemption to Disposable Foodware and Accessories banned by Section 6.42.020 of this ordinance and may receive an exemption if the Food Facility demonstrates, in writing, to the satisfaction of the City Manager or their designee, that compliance with the provisions of this Chapter will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.

- i. An undue economic hardship could include but is not limited to: overstocked supplies that cannot be returned to the distributor or used at another store outside the city; or unique Foodware accessory needs for which no suitable alternative exists. The Food Facility must demonstrate that no reasonably feasible alternative exists for a specific and necessary prohibited Disposable Foodware item or Accessory.
- ii. The City Manager or their designees shall issue a written decision to grant or deny an exemption and may exempt the food provider for no more than one (1) year from the date of the demonstration. The City Manager's decision shall be final and is not subject to appeal.

**Section 6.42.080 Administrative Penalty.**

A penalty may be imposed upon findings made by a city's code enforcement officer that any Food Facility has provided "Non-reusable/Non-compostable Foodware" in violation of this chapter. The amount of penalty and the penalty procedures are contained in the Los Altos Municipal Code, Chapter 1.30, entitled "Administrative Citations and Orders."