

**TOWN OF TRUCKEE
California**

ORDINANCE 2022-09

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TRUCKEE
ADOPTING CHAPTER 6.04 OF THE TRUCKEE MUNICIPAL CODE
REGARDING FOODWARE AND FOOD PACKAGING**

WHEREAS, the Town of Truckee has the police power to protect the health, safety, and welfare of the community, including the ability to protect and enhance the natural environment; and

WHEREAS, Truckee's plastic bag ban enacted in 2014 was the Town's first waste reduction policy exemplifying a history of environmental stewardship; and

WHEREAS, Town of Truckee 2021-2023 Town Council priorities include "Reduce greenhouse gas emissions and become a leader in environmental sustainability"; and

WHEREAS, the production and disposal of single-use foodware has major environmental impacts, including street litter, water pollution, wildlife harm, depletion of resources, greenhouse gas emissions, and clean-up and end of life management costs; and

WHEREAS, food and beverage packaging comprise approximately one quarter of California's disposed waste stream annually, according to CalRecycle, and an estimated 67% of street litter, according to the Clean Water Fund; and

WHEREAS, expanded polystyrene products are of distinctive concern because they can break into small pieces and may easily be picked up by the wind even when they have been disposed of properly, making it extremely difficult to recover as litter, polluting the environment and waterways; and

WHEREAS, regulating the use of disposable foodware products will minimize greenhouse gas emissions from production, transportation, and packaging of those disposable products, maximize the operating life of landfills, and reduce impacts to the environment and wildlife; and

WHEREAS, reusable foodware products are more environmentally sound because their multiple uses reduce the upstream impacts per item, and can save businesses money; and

WHEREAS, single-use foodware accessories, including napkins, straws, condiments, forks, spoons, sporks, knives and other disposable flatware create waste and environmental hazards, and California Public Resources Code Section 42270 et seq. requires that such accessory items shall only be made available upon request;

The Town Council of the Town of Truckee Does Ordain as Follows:

Section 1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated herein by reference as findings adopted by the Town Council in connection with the adoption of this ordinance.

Section 2. Adoption of Chapter 6.04. A new Chapter 6.04 of the Truckee Municipal Code, entitled "Foodware and Food Packaging", is hereby adopted to read as set forth in Exhibit "A", attached hereto and incorporated herein by reference.

Section 3. CEQA. The Town Council hereby finds that under Section 15061(b)(3) of the California Environmental Quality Act ("CEQA") Guidelines, the adoption of this ordinance is exempt from review under CEQA because it can be seen with certainty that the provisions of this ordinance do not have the potential for causing a significant effect on the environment. The Town Council further finds that the adoption of this ordinance is additionally exempt from review under CEQA pursuant to CEQA Guidelines Sections 15307 and 15308, as an action taken by a regulatory agency to protect natural resources and the environment.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The Town Council of the Town of Truckee hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

Section 5. Effective Date. This ordinance shall be published pursuant to law and shall become effective 30 days from the date of passage and adoption.

Section 6. Posting and Publication. The Town Clerk is hereby directed to publish this ordinance in accordance with the law.

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The foregoing ordinance was introduced at a regular meeting of the Truckee Town Council held on the ___ day of _____ 2022, and adopted at a regular meeting of the Truckee Town Council, on the ___ day of _____; 2022; _____ moved for the adoption, the motion was seconded by _____ and was carried by the following vote:

AYES:

NOES:

ABSENT:

Courtney Henderson, Mayor

ATTEST:

APPROVED AS TO FORM:

Judy Price, MMC, Town Clerk

Andrew Morris, Town Attorney

EXHIBIT “A”

CHAPTER 6.04

CHAPTER 6.04 FOODWARE AND FOOD PACKAGING

6.04.010 - PURPOSES

The Council of the Town of Truckee finds and declares as follows:

- A. The production and disposal of disposable food and beverage packaging has significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable fossil fuels, and greenhouse gas emissions.
- B. Food and beverage packaging makes up 25% of all waste produced in California and comprises the majority of street litter.
- C. Disposable expanded polystyrene products and packaging are a distinctive concern because this type of litter is lightweight and can easily break down and spread into the natural environment.
- D. It is in the interest of the health, safety, and welfare of all who live, work, and recreate in the Town of Truckee that the amount of litter on public streets, parks, outdoor recreation areas, and other public spaces be reduced.
- E. Most disposable foodware is not recyclable after use because it becomes contaminated with food and grease.
- F. Many types of disposable foodware are not accepted in commercial compost facilities because they cause contamination and lower the quality and value of compost.
- G. Eliminating solid waste and litter at its source meets the Town of Truckee’s Draft 2040 Climate Action Plan goal to “Minimize embedded carbon emissions and reduce overall consumption.”
- H. Reducing disposable packaging by eliminating unnecessary items and transitioning to reusable products provides greater environmental benefits than managing the products that become waste, even when recycled or composted.

6.04.020 – DEFINITIONS

As used in this chapter, the terms set forth below shall have the following meanings:

“Disposable takeout container” means a container meant to package and store food from a restaurant or other prepared food vendor, which is designed for a single use

rather than designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, including without limitation any container, bowl, plate, tray, carton, or box provided to the customer which does not meet the definition of “reusable foodware” set forth herein.

"Disposable cup" means a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks and alcoholic beverages provided to the customer which does not meet the definition of “reusable foodware” set forth herein.

“Expanded polystyrene” means blown polystyrene and expanded and extruded foams (including without limitation the form of expanded polystyrene insulation which is known as ‘Styrofoam’, a trademark of Dow Chemical Co.) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by various techniques, including without limitation fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion blow molding (extruded foam polystyrene). Expanded polystyrene does not include clear or solid polystyrene (oriented polystyrene).

“Pre-packaged food” means food that arrives at the premises of the restaurant or other food vendor in a container or wrapper and is not removed from the container or wrapper before its sale or distribution.

"Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. Prepared Food does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, or raw uncooked meat products.

"Prepared Food Vendor" means any establishment located within the Town of Truckee, including a bakery, cafeteria, drive in, food products store, food service establishment (carry out, quick service, full service), drugstore, theater, bar and other similar establishment, selling prepared food to be consumed on and/or off its premises.

“Reusable foodware” means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.

“Single-use foodware accessory” means single-use items provided along with ready-to-eat food, including without limitation napkins, forks, knives, spoons, sporks, chopsticks,

condiment cups and packets, straws, stirrers, splash sticks, cocktail sticks, cup sleeves, and cup lids.

“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, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes.

6.04.030 – PROHIBITED FOOD PACKAGING AND CONTAINERS

A. Effective April 1, 2023, except as set forth herein, no restaurant, retail store, food vendor, or other business or person shall sell, distribute, or provide to customers expanded polystyrene, including without limitation by selling food which is packaged partially or entirely in expanded polystyrene, nor shall any business purchase, obtain, keep, or otherwise use in its business any expanded polystyrene product.

B. The prohibition set forth in subsection A of this section shall not apply to: (i) expanded polystyrene products which are wholly encapsulated or encased within a more durable material, such as coolers or ice chests which encase expanded polystyrene in rigid plastic; or (ii) the sale of food packaged outside Truckee, provided that this exception shall not apply to egg cartons and trays for meat, fish, and fruit or vegetables sold in grocery stores.

C. For a period of one year from the effective date of this section, a restaurant, retail store, food vendor, or other business or person may apply to the Town of Truckee for a one-year hardship exemption to be permitted to continue using one or more specific expanded polystyrene items for which the requirements of this section present an undue hardship or practical difficulty because there are no available non-polystyrene alternatives or such alternatives are not affordable to the restaurant, retail store, food vendor, or other business or person.

6.04.040 – REUSABLE FOODWARE FOR ON-PREMISES DINING

A. Effective January 1, 2024, except as set forth herein, prepared food served for consumption on the premises of a prepared food vendor shall only be served using reusable foodware.

B. The requirement of subsection A of this section shall not apply to disposable paper food wrappers; aluminum foil food wrappers; paper napkins; straws; paper tray or plate liners; non-plastic stirrers, cocktail sticks, and toothpicks; or pre-packaged food packaged outside the premises of the prepared food vendor.

C. The requirements of subsection A of this section shall not apply to Mobile Food Facilities or Temporary Food Facilities as defined by CA Health and Safety Code Sections 113831 and 113930 and as amended.

D. A restaurant or other food vendor may apply to the Town of Truckee for a one-year hardship exemption to be permitted to continue using foodware which is not reusable foodware. Each application for a hardship exemption shall provide evidence of the conditions which make it impossible for the restaurant or other food vendor to comply with the reusable foodware requirement, such as insurmountable space constraints, undue financial hardship and/or other extraordinary, insurmountable circumstances.

E. Prior to the Town of Truckee issuing a land use permit or building permit for new construction or conversions, any restaurant or other prepared food vendor shall submit to the Town a plan demonstrating ability to comply with this section. Installation and/or maintenance of appropriate dishwashing capacity to allow compliance with this section shall be included as a specific condition of approval for such permits.

6.04.050 – CHARGE FOR DISPOSABLE TAKEOUT CONTAINERS AND CUPS

A. Effective January 1, 2024, except as set forth herein, all restaurants or other prepared food vendors shall charge customers twenty-five cents (\$0.25) for each disposable cup and disposable takeout container provided. All income from this charge shall be retained by the restaurant or other prepared food vendor collecting the charge. Such charges shall be identified separately and clearly on any receipt provided to the customer, and shall be identified for customers on menus, ordering platforms, and/or menu boards, and verbally disclosed to customers ordering by phone.

B. The charge set forth in subsection A of this section shall not apply to pizza boxes and shall not apply to containers for leftover food provided to customers following the purchase of food for dining on the premises of the restaurant or other prepared food vendor.

C. The requirements of subsection A of this section shall not apply to Mobile Food Facilities or Temporary Food Facilities as defined by CA Health and Safety Code Sections 113831 and 113930 and as amended.

D. The charge set forth in subsection A shall not be imposed on customers demonstrating, at the point of sale: (i) 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; (ii) an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, as amended; or (iii) a card reflecting enrollment in Medi-Cal, pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the California Welfare and Institutions Code, as amended.

6.04.060 – REUSABLE CUSTOMER FOODWARE

Customers may provide their own reusable foodware for beverage and food service in accordance with the California Health and Safety Code. Food Vendors shall keep all customer provided reusable foodware separated from the food facility's foodware to prevent any cross-contamination. Food Vendor staff filling customer provided foodware shall prevent cross-contamination of food contact surfaces or utensils used for food dispensing (e.g. customer foodware should be placed upon surfaces that are not used for food preparation and on surfaces that can be sanitized immediately). Food vendors may refuse, at their sole discretion, any customer-provided reusable foodware that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage or food item, or that appears to be excessively soiled or unsanitary. If the customer provided reusable foodware is rejected, the food vendor may instead require use of reusable foodware for consumption on the premises of the food service establishment, or use of a disposable foodware item for a beverage or food item to be consumed off the premises of the food service establishment, together with the charge required pursuant to Section 6.04.050.

6.04.070 – SINGLE-USE FOODWARE ACCESSORIES

- A. Effective January 1, 2024 except as set forth herein, a restaurant or other food vendor, shall not provide any single-use foodware accessory or standard condiment packaged for single use to a customer unless the single-use foodware accessory or standard condiment is requested by the customer.
- B. Single-use foodware accessories and standard condiments packaged for single use provided by restaurants or other food vendors for use by customers shall not be bundled or packaged in a manner that prevents a customer from taking only the type of single-use foodware accessory or standard condiment desired without also having to take a different type of single-use foodware accessory or standard condiment.
- C. A restaurant or other food vendor may ask a drive-through consumer if the consumer wants a single-use foodware accessory if the single-use foodware accessory is necessary for the customer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

D. A third-party food delivery platform shall provide customers with the option to request single-use foodware accessories or standard condiments from a restaurant or other food vendor serving ready-to-eat food.

E. If a restaurant or other food vendor uses any third-party delivery platform for ready-to-eat food, the restaurant or other food vendor shall customize its menu with a list of available single-use foodware accessories and standard condiments, and only those single-use foodware accessories or standard condiments selected by the customer shall be provided by the food facility. If a customer does not select any single-use foodware accessories or standard condiments, no single-use foodware accessory or standard condiment shall be provided by the restaurant or other food vendor for delivery of ready-to-eat food.

F. Nothing in this section shall prohibit a restaurant or other food vendor from making unwrapped single-use foodware accessories available to a customer using refillable self-service dispensers that dispense one item at a time to allow for single-use foodware accessories to be obtained.

G. Nothing in this section shall prohibit a food facility from making standard condiments available to a consumer using refillable self-service dispensers to allow for standard condiments to be obtained. A food facility that offers standard condiments is encouraged to use bulk dispensers for the condiments rather than condiments packaged for single use.