

# Model Municipal Ban on Packaged Drinking Water<sup>1</sup>

## AN ORDINANCE of the [insert name of jurisdiction]

### AMENDING [if ordinance is amended prior legislation, insert reference]

#### Section 1. Definitions

For the purposes of this ordinance, the following words shall have the following meanings:

"Bottled Water" means drinking water in a sealed Rigid Plastic Bottle having a capacity of 21 fluid ounces or less.

"Person" means an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

"[Jurisdiction] Property" means real property, including any buildings thereon, owned or leased by the [jurisdiction name] ("[jurisdiction]"), and in the [jurisdiction]'s possession or in the possession of a public or private entity under contract with the [jurisdiction] to perform a public purpose, including but not limited to the following property: recreational and park property, plazas, community centers, and [other properties]. "[Jurisdiction] Property" includes a "[jurisdiction] Street."

"[Jurisdiction] Funds" means all monies or other assets received and managed by, or which are otherwise under the control of, the Treasurer, and any notes, bonds, securities, certificates of indebtedness or other fiscal obligations issued by the [jurisdiction].

"[Jurisdiction] Street" means the public right-of-way owned by the [jurisdiction], including any area across, along, on, over, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, streets, and ways within the [jurisdiction].

"Event" means any gathering held on [jurisdiction] Property, including a [jurisdiction] Street, and subject to a [jurisdiction] permit, where more than 100 people attend or participate.

"Mineral water" means drinking water containing more than 500 milligrams per liter of total dissolved solids and/or one or more chemical constituents in excess of the concentrations listed in the Federal Bottled Water Quality Standards (Title 21, Code of Federal Regs., Sec. 165.110).

"Packaged Water" means drinking water in a sealed box, bag, can, glass bottle, Rigid Plastic Bottle or other container intended primarily for single service use and having a capacity of one liter or less.

"Participant Athletic Event" means an athletic event in which a group of people collectively walk, jog, run, or bicycle or otherwise participate in a sport on [jurisdiction] Property, including a [jurisdiction] Street.

"Rigid Plastic Bottle" means any formed or molded container comprised predominantly of plastic resin, having a relatively inflexible fixed shape or form, having a neck that is smaller than the container body, and intended primarily as a single service container. "Rigid Plastic Bottle" includes a compostable plastic bottle meeting these criteria.

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<sup>1</sup> Based on ordinance in the City and County of San Francisco regulating bottled drinking water. PSI developed this potential model based on actual legislation. **The specific language used may not necessarily reflect the views of PSI, and no official endorsement should be inferred.**

"Water" includes: natural spring or well water; water taken from municipal or private utility systems or other sources; distilled, deionized, filtered, or other purified water; or any of the foregoing to which chemicals may be added. "Water" does not include: mineral water; carbonated or sparkling water; soda, seltzer, or tonic water; or flavored water, also marketed as fitness water, vitamin water, enhanced water, energy water, or other similar products. "Water" does not include those food ingredients that are listed in ingredient labeling as "water," "carbonated water," "disinfected water," or "filtered water."

## Section 2. Sale or Distribution of Packaged Water on [Jurisdiction] Property Restricted

- a) Starting [Month date, year], no person may sell or distribute Bottled Water at an Event held indoors on [jurisdiction] Property.
- b) Starting [Month date, year], no person may sell or distribute Bottled Water at an Event held outdoors on [jurisdiction] Property, including a [jurisdiction] Street, where the permitting officer, department, or agency (collectively, "department") allows the Event sponsor access to reliable on-site potable water connections adequate to meet the hydration needs of the Event participants or attendees. By [Month date, year], departments that issue permits for Events on their properties and in their facilities shall , in consultation with [relevant department], determine which properties that are frequently used for Events have a reliable on-site supply of drinking water that could be used by Event sponsors.
- c) Starting [Month date, year], no person may sell or distribute Bottled Water at an Event held outdoors on [jurisdiction] Property, including a [jurisdiction] Street.
- d) Starting [Month date, year], the above subsections a), b), and c) of this Section shall apply to restrict the sale and distribution of Packaged Water.
- e) The provisions of this Section shall not apply to the sale or distribution of Packaged Water to participants in a Participant Athletic Event. The provisions of this Section shall not apply where the [jurisdiction] grants the general public access to enter or use [jurisdiction] Property in question, including a [jurisdiction] Street, without requiring issuance of a permit.
- f) This Section shall not apply to an event held prior to [Month date, year], that is sponsored by a not-for-profit entity and that has over 250,000 attendees or participants.

## Section 3. New Leases, Permits, and Agreements; Mobile Food Facilities

- a) Starting [Month date, year], all new leases, permits, management agreements or other agreements awarded by the [jurisdiction] allowing any person to use [jurisdiction] Property, including a [jurisdiction] Street, for purposes that contemplate or would allow the sale or distribution of beverages (collectively, "permits") shall specifically require that the permittee comply with this ordinance. This requirement shall also apply to any such permit renewed, extended, or materially amended after [Month date, year].
- b) Starting [Month date, year], no [jurisdiction] officer or department shall issue a bid proposal or solicitation, request for bid or proposal, or contract for vendors or concessions to be operated on [jurisdiction] Property that would require or permit the sale or distribution of Bottled Water on such property.
- c) Starting [Month date, year], the above subsections (a) and (b) of this Section shall apply to restrict the sale and distribution of Packaged Water.
- d) No person shall sell, provide, or otherwise distribute Packaged Water as part of its performance of a [jurisdiction] contract or grant unless specifically exempted from or allowed to do so under this ordinance.

e) This Section does not apply to concessions/vendors at [list exemption(s), if any]. This Section does not apply to permits for the use of [jurisdiction] Property, including a [jurisdiction] Street, for a Participant Athletic Event, if the permit provides that the Event sponsor may only sell or distribute Packaged Water, or allow the sale or distribution of Packaged Water, to participants in the Participant Athletic Event and not to any other persons.

f) Starting [Month date, year], all Mobile Food Facility permits issued or renewed under [insert reference to pertinent code] shall specifically provide that the permittee shall not sell or distribute or allow the sale or distribution of Packaged Water as part of the operation of the Facility.

#### Section 4. Barring Use of [Jurisdiction] Funds for Purchase of Packaged Water

a) No [jurisdiction] officer, department, or agency (collectively, “department”) shall use [jurisdiction] Funds to purchase Packaged Water for its own general use. A department may use [jurisdiction] Funds to purchase Packaged Water for uses specifically exempted from or allowed under this ordinance.

b) It shall be [jurisdiction] policy not to have drinking water systems in [jurisdiction] offices or facilities that use plastic water bottles of any size where satisfactory alternatives exist and are feasible at the location under consideration. It shall further be [jurisdiction] policy to conform drinking water systems in [jurisdiction] offices or facilities to this goal where reasonable by the end of [year].

#### Section 5. Waivers and Exclusions

a) A [jurisdiction] officer, department, or agency (collectively, “department”) responsible for permitting an Event on or issuing a lease for [jurisdiction] Property may seek from the Department of the Environment (“DOE”) a waiver of the requirements of Sections 2 and 3 in full or in part if the Event sponsor or lessee demonstrates to the satisfaction of the DOE that strict application of the requirement would not be feasible, would create an undue hardship or practical difficulty, or that circumstances otherwise warrant granting of the waiver. The DOE’s decision to grant a waiver shall be in writing and shall be final. If no response is received from the DOE within 60 days of a waiver request, the request shall be deemed approved.

b) The provisions of Sections 2 and 3 shall not apply where the department finds that the inclusion or application of such provisions would violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the [State] or the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract.

c) The provisions of Sections 2, 3, and 4(a) shall not apply where the department finds that relying on Packaged Water is necessary in a given situation to protect the public health, safety and welfare, and no reasonable alternative to Packaged Water will serve the same purpose.

#### Section 6. Implementation

a) This ordinance shall not apply to an Event held on [jurisdiction] Property, including a [jurisdiction] Street, where the sponsor applied for or received the permit prior to [Month date, year]. Nothing in this ordinance shall be construed to impair a contract, lease, management agreement or other legally-binding agreement to which the [jurisdiction] is a party on [Month date, year]. In addition, none of the amendments to this ordinance restricting the sale or distribution of Packaged Water enacted as part of the ordinance shall be construed to impair a contract, lease, management agreement or other legally-binding agreement to which the [jurisdiction] is a party on the effective date of that ordinance.

b) The Department of the Environment and the Public Utilities Commission shall take appropriate steps to educate and inform [jurisdiction] departments about the requirements of this ordinance.

c) The Director of the Department of the Environment shall submit an annual report to the [relevant official] and the [relevant body] on the implementation of this ordinance. The report shall include the number of waivers granted under Section 5(a) and determinations of non-applicability made under Section 5(b) and (c), and a brief explanation of the justifications for the same. The report shall also summarize efforts taken to educate and inform [jurisdiction] departments about the requirements of this ordinance, and include plans to continue doing so over the coming year.

## Section 7. Enforcement and Penalties

a) Any person who violates any provision of Section 2 or of an administrative regulation adopted under this Article to implement that Section may be punished by administrative fines imposed by the Director of the Department of the Environment in the amount of:

- 1) Up to \$500 for the first violation;
- 2) Up to \$750 for a second violation within a twelve-month period; and,
- 3) Up to \$1,000 for a third and subsequent violations within a twelve-month period.

b) Except as provided in subsection a), setting forth the amount of administrative fines, [insert reference to pertinent code], as may be amended from time to time, is hereby incorporated in its entirety and shall govern the imposition, enforcement, collection, and review of administrative citations issued by the Director to enforce this Article or any administrative regulation adopted under this Article.

## Section 8. Increasing the [jurisdiction]'s Commitment to Providing Public Water

a) It shall be [jurisdiction] policy to increase the availability of clean, free drinking water in public areas. [Jurisdiction] departments shall take all reasonable and appropriate steps to promote and facilitate achievement of the goals and policies of this ordinance, including helping Event sponsors and other [jurisdiction] departments to meet the requirements of this ordinance.

b) The [relevant department], in consultation with the Department of Public Health and other appropriate [jurisdiction] departments, shall investigate standards and procedures for allowing Event sponsors to access additional [jurisdiction]-controlled or -operated water supplies. The [relevant department] shall report its findings and recommendations to the [relevant body] by [Month date, year].

c) The [relevant department], in consultation with appropriate [jurisdiction] departments, shall investigate installing backflow preventers and related plumbing equipment on existing potable water systems, to facilitate public access to such potable water in the park sites most frequently used for special events. The [relevant department] shall report its findings and recommendations to the [relevant body] by [Month date, year].

d) It shall be [jurisdiction] policy that any [jurisdiction] department undertaking a capital improvement in a park, plaza, playground, or other public space shall install bottle-filling stations, drinking fountains, and or potable water hook-ups for public use, if the department finds that the installation is proximate and feasible with the scale and scope of the capital improvement.

e) It shall be [jurisdiction] policy to encourage the inclusion of bottle-filling stations or drinking fountains for public use in Privately-Owned Public Open Spaces as defined in [insert reference to pertinent code], as amended.