

Model Ordinance to Require Recyclable and Compostable Foodware¹

AN ORDINANCE of the [insert name of jurisdiction]

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

Section 1. Findings and Purpose

The [insert relevant legislative body] finds that discarded packaging from foods and beverages prepared for immediate consumption constitutes a significant portion of the waste in [name of jurisdiction]'s waste stream. Regulation of food and beverage packaging, therefore, is a necessary part of any effort to encourage a recyclable and compostable waste stream, thereby reducing the disposal of solid waste and the economic and environmental costs of waste management for the citizens of [jurisdiction] and others working or doing business in [name of jurisdiction].

The [relevant legislative body] further finds that plastic packaging is rapidly replacing other packaging material, and that some plastic packaging used for foods and beverages is nonreusable, nonrecyclable, and noncompostable.

The [relevant legislative body] also finds that the two (2) main processes used to dispose of discarded nonreusable, and nonrecyclable and noncompostable plastic food and beverage packaging, are land filling and incineration, both of which should be minimized for environmental reasons.

The [relevant legislative body] therefore finds that the minimization of nonreusable, nonrecyclable, and noncompostable food and beverage packaging originating at retail food establishments and at events providing food and/or beverages within the [name of jurisdiction] is necessary and desirable in order to minimize the [jurisdiction's] waste stream, so as to reduce the volume of landfilled waste, to minimize toxic by-products of incineration, and to make our [jurisdiction] a more environmentally sound place to live.

Section 2. Definitions

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

- a) "Food service ware" means containers, plates, hinged containers or "clamshells," serving trays, meat and vegetable trays, hot and cold beverage cups, wrappers, straws, stirrers, and utensils.
- b) "Disposable" means food service ware that is intended only for one-time use, including so called biodegradable products where any portion is not compostable.
- c) "Reusable" means food service ware that will be used more than once in its same form by a food establishment. This definition includes, but is not limited to, cleanable durable containers, packages, or trays used on-premises or returnable containers brought back to the food establishment. This definition also includes, but is not limited to, water and soft drink bottles, growlers, milk containers and bulk product packaging that are designed to be refilled at a retail location or returned the distributor for reuse at least once as a container for the same food or beverage.
- d) "Recyclable" means food service ware made solely of materials that are capable of being sorted, cleansed, and reconstituted using the [name of jurisdiction] curbside municipal collection programs for the purpose of reuse or remanufacture into the same or other products.

¹ Based on ordinances in Minneapolis, MN; Seattle, WA; and San Francisco, CA. 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.**

“Recycling” does not include burning, incinerating, converting, or otherwise thermally destroying solid waste. Recyclable food service ware must have robust recycling markets. For the purposes of this ordinance, recyclable plastic food service ware includes the following plastic types:

- i) Polyethylene Terephthalate (#1 PET or PETE);
- ii) High Density Polyethylene (#2 HDPE); and
- iii) Polypropylene (#5 PP).

e) “Compostable”² means food service ware made solely of organic substances that break down into a stable product due to the action of bacteria in a controlled, aerobic commercial process that results in a material safe and desirable as a soil amendment. Compostable food service ware must be found to degrade satisfactorily at the composting facility receiving the material. Compostable food service ware must be separable from solid waste by the generator or during collection for the purpose of composting in [name of jurisdiction].³

f) “Food establishment” means full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts, business or institutional cafeterias, and other businesses, selling or providing food within the [name of jurisdiction] for consumption on or off the premises.

g) “Consumed on premises” means consumption of food or beverages in the public areas of a food establishment, common areas of a food court, outside seating areas and parking lots exclusively for customers of the food establishment, rather than taken out for consumption elsewhere.

h) “Food court” means an area of a retail mall, office building, sports facility or other premises where one or more food establishments are located and customer seating for dining and consumption of beverages is provided in a common area.

i) “Person” means an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.

Section 3. Regulated Conduct

a) No food establishment shall sell or provide food or beverages, for consumption on or off the premises, in or with disposable food service ware. Acceptable alternatives for prohibited disposable food service ware shall be reusable, compostable, or recyclable.

² If you want to allow compostable plastics, you must specify that these plastics “be certified compostable plastics that meet ASTM D6400 or ASTM D6868 for compostability, as adopted or subsequently amended by the American Society for Testing and Materials (ASTM)”.

³ The cities this ordinance is based on benefit from robust municipal compost collection programs. In much of the U.S., compost collection is not widely available. The stipulation “compostable food service ware must be separable from solid waste by the generator or during collection for the purpose of composting in [name of jurisdiction]” aims to address this situation. If a given product is not able to be separated and composted in your jurisdiction, the definition of compostable is not met. That product, therefore, would not meet the requirements of the ordinance. If compost collection is not widely available in your jurisdiction, you may also remove the sections of this model related to compostability and require instead that food service ware be made of non-plastic plant material that will biodegrade in the environment (including bagasse/sugarcane pulp, palm leaf, wheat straw fiber, bamboo, wood, rye wheat, silver grass (miscanthus fiber), or paper that is either unlined or lined with a non-plastic material such as wax or clay).

b) No person or organization providing free food or beverage products within the [insert name of jurisdiction] pursuant to a permit or license, or in a manner which would require a permit or license, shall sell or provide food or beverages, for consumption on or off the premises, in or with disposable food service ware. Acceptable alternatives for prohibited disposable food service ware shall be reusable, compostable, or recyclable.

c) Food establishments providing food for consumption on premises using compostable or recyclable food service ware must provide conveniently located and clearly marked containers where customers may discard compostable and recyclable food service ware and must provide for the collection and delivery of these materials to appropriate processing facilities.

d) On such commercially reasonable terms as determined by the landlord, landlords of food establishments subject to the requirements of this section shall make adequate space and/or services available to such food establishments for the collection and pick up of the compostable and recyclable materials generated by such food establishments.

e) Landlords operating food courts or similar settings that include food establishments and common areas set aside and maintained for the consumption of food and beverages shall provide in such common areas the services required in subsection b) of this section.

f) The [relevant department] is authorized to promulgate rules, in accordance with the provisions of the [insert reference to pertinent code], for purposes of interpreting and clarifying the requirements of this section. Such rules may provide temporary waivers or other relief that apply to use of certain food service ware products for an initial period of up to one year, with the option for an up to one year extension. Such waivers or relief shall be granted only for circumstances where commonly used recycling and composting technology cannot process the food service ware, or where suitable alternative products that meet performance and food health and safety standards are unavailable. In promulgating such rules, the [relevant department] shall consider the legislative purpose provided in section 1 of this ordinance, and shall consult with the operators of affected food service establishments.

Section 4. Enforcement

The [relevant department] shall have the duty and the authority to enforce the provisions of this ordinance. The license official shall also have authority to enforce the provisions of this ordinance.

The [relevant department] will issue a written warning notice to the food establishment for the initial violation. If an additional violation of this by-law has occurred within six (6) months after a warning notice has been issued for an initial violation, the [relevant department] shall issue a notice of violation and shall impose a penalty against the food establishment.

Any violation of this ordinance shall be punishable by a civil fine of \$500 for each offense. Payment of such fines may be enforced through civil action as provided in [insert reference to pertinent code]. No more than one (1) penalty shall be imposed upon a food establishment within a seven (7) calendar day period.

SECTION 5. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance. Such decision shall not affect the validity of the remaining portions of this ordinance, which shall remain in full force and effect.

SECTION 5. Effective Date

This ordinance shall take effect on [Month date, year].