

WMA Board & Energy Council

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Susan Wengraf, City of Berkeley, WMA, EC

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Melissa Hernandez, City of Dublin, WMA, EC

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Yang Shao, City of Fremont, WMA, EC

Dan Kalb, City of Oakland, WMA, EC

Shelia Young, Oro Loma Sanitary District, WMA

Jen Cavanaugh, City of Piedmont, WMA, EC

Fred Simon, City of San Leandro, WMA, EC

Jeff Wang, City of Union City, WMA, EC

Timothy Burroughs, Executive Director

AGENDA

**MEETING OF THE
ALAMEDA COUNTY WASTE MANAGEMENT
AUTHORITY (WMA) BOARD
AND
THE ENERGY COUNCIL (EC)**

Wednesday, March 22, 2023

3:00 P.M.

***IN PERSON MEETING LOCATION:*
STOPWASTE BOARD ROOM
1537 WEBSTER STREET, OAKLAND, CA**

This meeting will be conducted in a hybrid model with both in-person attendance and Teleconference participation:

Teleconference location #1 5056 Chicopee Ave., Encino, CA

Teleconference location #2 Pleasanton City Council Conference Room
200 Old Bernal Ave, Pleasanton, CA

Teleconference location #3 118 Glashaus Loop, Emeryville, CA

Teleconference location #4 Todos Santos Plaza, 2152 Salvio St., Concord, CA

Teleconference location #5 Scott Haggerty Heritage House, 4501 Pleasanton Ave, Pleasanton, CA

Members of the public may attend in person at the Board Room or the addresses listed above or by:

1. Calling US+1 669 900 6833 and using the webinar id 838 3099 7601
2. Using the [Zoom](#) website or App and entering meeting code 838 3099 7601

During the meeting the chair will explain the process for members of the public to be recognized to offer public comment. The process will be described on the StopWaste website at

<http://www.stopwaste.org/virtual-meetings> no later than noon, Wednesday, March 22, 2023.

The public may also comment by sending an e-mail to publiccomment@stopwaste.org. Written public comment will be accepted until 3:00 p.m. on the day prior to the scheduled meeting. Copies of all written comments submitted by the deadline above will be provided to each Board Member and will be added to the official record. Comments will not be read into the record.

In accordance with the Americans with Disabilities Act, if you need assistance to participate in this meeting due to a disability, please contact the Clerk of the Board at (510) 891-6517. Notification 24 hours prior to the meeting will enable the agency to make reasonable arrangements to ensure accessibility to this meeting.

AGENDA

I. CALL TO ORDER

II. ROLL CALL OF ATTENDANCE

III. ANNOUNCEMENTS BY PRESIDENTS - *(Members are asked to please advise the Board or the Council if you might need to leave before action items are completed.)*

IV. OPEN PUBLIC DISCUSSION FROM THE FLOOR

An opportunity is provided for any member of the public wishing to speak on any matter within the jurisdiction of the Boards or Council, but not listed on the agenda.

V. CONSENT CALENDAR - The Consent Calendar contains routine items of business. Items in this section will be acted on in one motion for both the WMA and EC, unless removed by a member of either Board. Members of the WMA who are not members of the EC will vote as part of the Consent Calendar vote, but their votes will not be considered in connection with any EC items.

Page

1 1. Approval of the Draft WMA & EC Minutes of February 22, 2023

VI. REGULAR CALENDAR

5 1. Disposable Food Service Ware Reduction and Reuse Model Ordinance (Justin Lehrer)

Staff recommend that the WMA review the model Disposable Food Service Ware Reduction and Reuse Ordinance and direct staff to share it, along with related resources, with Member Agencies and to provide interested Member Agencies with the support described above.

33 2. Legislative Positions for 2023 (Jennifer West)

Staff recommend that the Boards adopt the stated positions on the bills listed in the staff report.

39 3. Update on StopWaste Equity and Empowerment Initiatives (Candis Mary-Dauphin)

This item is for information only.

4. Interim appointment(s) to the Recycling Board for WMA appointee unable to attend future Board Meeting(s) (Arliss Dunn)

(The April 13 meeting of the Planning Committee & Recycling Board will not be held in lieu of the joint meeting of the WMA, EC, & RB on Wednesday, April 26, 2023 at 3:00 p.m. The meeting will be held at StopWaste, 1537 Webster St., Oakland, CA)

VII. MEMBER COMMENTS AND COMMUNICATIONS FROM THE EXECUTIVE DIRECTOR

VIII. ADJOURNMENT – TO JOINT WMA, EC, & RB MEETING APRIL 26, 2023 AT 3:00 P.M.

DRAFT

**MINUTES OF THE MEETING OF THE
ALAMEDA COUNTY WASTE MANAGEMENT
AUTHORITY (WMA) BOARD
AND
ENERGY COUNCIL (EC)**

Wednesday, February 22, 2023

3:00 P.M.

TELECONFERENCE MEETING

I. CALL TO ORDER

First Vice President Carling called the meeting to order at 3:00 p.m. Timothy Burroughs explained the process that would be utilized during the meeting. A link to the process is available here: [Virtual-Meetings- Instructions](#). Mr. Burroughs notified the Board that this would be the final meeting under AB 361 and that in-person/hybrid meetings will begin in March.

II. ROLL CALL OF ATTENDANCE

WMA & EC

County of Alameda	David Haubert, WMA, EC
City of Alameda	Tracy Jensen, WMA, EC
City of Albany	Jennifer Hansen-Romero, WMA, EC
City of Berkeley	Susan Wengraf, WMA, EC
Castro Valley Sanitary District	Dave Sadoff, WMA
City of Dublin	Melissa Hernandez, WMA, EC
City of Emeryville	David Mourra, WMA, EC
City of Fremont	Yang Shao, WMA, EC
City of Hayward	Francisco Zermeño, WMA, EC
City of Livermore	Bob Carling, WMA, EC, RB (WMA First Vice President)
City of Newark	Mike Hannon, WMA, EC
City of Oakland	Dan Kalb, WMA, EC, RB
Oro Loma Sanitary District	Shelia Young, WMA
City of Piedmont	Jen Cavanaugh, WMA, EC
City of Pleasanton	Jack Balch, WMA, EC (EC President)
City of San Leandro	Fred Simon, WMA, EC
City of Union City	Jeff Wang, WMA, EC

Staff Participating

Timothy Burroughs, Executive Director
Pat Cabrera, Administrative Services Director
Alma Freeman, Communications Manager
Justin Lehrer, Operations Manager
Robin Plutchok, Program Manager
Cassie Bartholomew, Program Manager
Jennifer West, Program Manager
Emily Alvarez, Program Manager
Arliss Dunn, Clerk of the Board
Adrienne Ramirez, Assistant Clerk of the Board
Richard Taylor, WMA Legal Counsel

III. ANNOUNCEMENTS BY PRESIDENTS

There were none.

IV. OPEN PUBLIC DISCUSSION FROM THE FLOOR

There were no public comments on the remote call and no public comments were received via the public comments email portal.

V. CONSENT CALENDAR

1. Approval of the Draft WMA & EC Minutes of January 25, 2023

2. WMA Resolution regarding meeting via teleconference to promote social distancing, pursuant to AB 361

Adopt Resolution WMA# 2023-03.

3. EC Resolution regarding meeting via teleconference to promote social distancing, pursuant to AB 361

Adopt Resolution RB# 2023-02.

There were no public comments for the Consent Calendar. Board member Shao abstained from the minutes.

Board member Zermeño moved approval of the Consent Calendar with the correction to the minutes, and Board member Wengraf seconded. (Correction to minutes: Remove members Sadoff and Young from the Energy Council vote for Election of First and Second Vice President. The vote tally remains the same.)

The Clerk called the roll:

WMA Vote: 17-0-1 for the minutes and 18-0 for items 2-3

EC Vote: 16-0-2 for the minutes and 18-0 for items 2-3

(Ayes: Balch, Carling, Cavanaugh, Hannon, Hansen-Romero, Hernandez, Jensen, Kalb, Mourra, Sadoff, Simon, Wang, Wengraf, Young, Zermeño. Nays: None. Abstained: Shao. Absent: Haubert)

VI. REGULAR CALENDAR

1. Stop Food Waste Campaign (Robin Plutchok)

This item is for information only.

Timothy Burroughs introduced the item and Robin Plutchok presented an overview of the Stop Food Waste Campaign and how it has evolved to serve a broader and more inclusive audience through input from community partners, translation of campaign messaging and outreach materials, and shifts in marketing strategies and distribution. A link to the staff report and the PowerPoint presentation is available here: [SFWCampaign-memo.pdf](#). Additional time was provided to the Board for discussion and for clarifying questions. An audio link of the discussion is available here: [SFWCampaign-Discussion](#)

There were two public comments on this item and staff addressed them. More information on our current grant solicitation and grant categories is located on StopWaste's website: <https://www.stopwaste.org/at-work/stopwaste-grants>. The Board thanked Ms. Plutchok for the presentation.

2. Interim appointment(s) to the Recycling Board for WMA appointee unable to attend future Board Meeting(s) (Arliss Dunn) (WMA only)

(The meeting of the Planning Committee & Recycling Board will be held on Thursday, March 9, 2023 at 4:00 p.m. The meeting will be held in-person in a hybrid format at StopWaste offices, 1537 Webster Street, Oakland, CA).

There were no requests for an interim appointment.

3. Bay Area Regional Energy Network Contract Amendment (Karen Kho & Emily Alvarez) (EC only)

Adopt the attached Resolution authorizing the Executive Director to enter into a contract amendment for Bay Area Regional Energy Network (BayREN) and other related actions.

EC President Balch chaired the item. Timothy Burroughs introduced the item and Emily Alvarez provided a brief overview of BayREN and StopWaste's role in the program. A link to the staff report and the presentation is available here: [BayREN-Contract-Amendment.pdf](#). Additional time was provided to the Board for discussion and for clarifying questions. An audio link of the discussion is available here: [BayREN-Contract-Amendment-Discussion](#)

There were no public comments on this item. Board member Zermeño moved to approve the staff recommendation. Board member Haubert seconded, and the motion carried 20-0. The Clerk called the roll. (Ayes: Balch, Carling, Cavanaugh, Hannon, Hansen-Romero, Haubert, Hernandez, Jensen, Kalb, Mourra, Shao, Simon, Wang, Wengraf, Zermeño. Nays: None. Abstain: None. Absent: None)

4. Decarbonization and Electrification update (Jennifer West)

This item is for information only.

Timothy Burroughs introduced the item and Jennifer West provided an overview of how electrification can create multiple benefits in communities, the role StopWaste plays in advancing this work, and some of the challenges and barriers associated with accelerating the transition from gas to electricity in our buildings. A link to the staff report and the presentation is available here: [Electrification-Memo.pdf](#). Additional time was provided to the Board for discussion and clarifying questions. An audio link to the discussion is available here: [Electrification-Update-Discussion](#)

Board members asked that staff, at a future Board meeting, provide an overview of the roles of the Energy Council and East Bay Community Energy (EBCE) with respect to how they interact/overlap. The Board thanked Ms. West for her presentation.

VII. MEMBER COMMENTS AND COMMUNICATIONS FROM THE EXECUTIVE DIRECTOR

Mr. Burroughs announced that the monthly topic brief highlights the Stop Food Waste Campaign. The topic brief is available [here](#).

Mr. Burroughs thanked the Board for helping to spread the word that StopWaste is currently offering \$1.1 million in grant funding to nonprofits, institutions, and businesses for projects focused on waste prevention and upstream infrastructure. Information on the grant opportunities is available here: [2023-Grant-Cycle](#)

Board member Kalb inquired about the timeline for reviewing the reusable foodware model ordinance. Mr. Burroughs stated that the model ordinance is scheduled for the March Board and Committee meetings.

VIII. ADJOURNMENT – TO WMA & EC MEETING MARCH 22, 2023 AT 3:00 P.M.

The meeting adjourned at 4:34 p.m.

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DATE: March 22, 2023

TO: Waste Management Authority

FROM: Justin Lehrer, Operations Manager

SUBJECT: Disposable Food Service Ware Reduction and Reuse Model Ordinance

SUMMARY

StopWaste’s Reusable Foodware project focuses on developing policy, infrastructure, and capacity for greater adoption of reusable foodware in Alameda County. At the March 2023 Programs and Administration Committee and Recycling Board meetings, staff provided an update and draft of a model Disposable Food Service Ware Reduction and Reuse Ordinance for use by Member Agencies that wish to consider adopting policies that promote the transition from single-use disposable foodware to reusable foodware. At the March 2023 WMA meeting, staff recommends that the WMA direct staff to provide the Model Ordinance to Member Agencies together with related resources and to support Member Agencies considering the Model as described in this staff report.

DISCUSSION

Single-use foodware items like plastic and paper cups, plates, and utensils are prevalent in daily life. They serve a very short useful life of just minutes, while their impact on human health and the environment is significant and long lasting. Replacing single-use foodware with durable reusable alternatives is essential to preventing the waste and litter that disposables create. Through a range of programs authorized by the Board over many years staff has worked to address and develop structural solutions to some of these issues through technical assistance to businesses and grant funding to develop more robust reuse infrastructure in Alameda County. As recently directed by the Board, staff has developed a model ordinance that interested member agencies can tailor to their local circumstances and adopt to further drive a transition to reusable foodware in the County. The primary objective of the model ordinance is to reduce the demand for and consumption of certain problematic single-use foodware items, such as plastic and paper cups, plates, and utensils, which all contaminate compost and recycling collection programs and contribute to litter and pollution of our oceans and waterways.

StopWaste’s model Disposable Food Service Ware Reduction and Reuse Ordinance incorporates concepts and lessons learned from policies enacted in Alameda County and beyond, and introduces some new approaches designed to advance progress and further incentivize reuse. Some key provisions include:

1. Reusable foodware required for all dine-in establishments
2. Requirement to accept customer-provided reusables
3. Charges to disincentivize disposable foodware combined with discounts for reusables
4. Defined criteria for compliant disposable foodware

Some additional provisions include:

1. Reusable cup requirement for large venues and events
2. Reusables requirements for city facilities
3. Restricting sale of certain items such as packaged water and polystyrene foam

The model ordinance offers comprehensive and vetted policy language while preserving maximum flexibility for member agencies to advance an approach that meets their needs; specific modules can be easily customized and included or removed. There are multiple options for defining key terminology used in the model ordinance (e.g., “compostable”). Implementation timelines for specific provisions are suggested and easily modified. Extensive supporting documentation is in development and will be available for use by jurisdictions adapting the ordinance language to their requirements.

StopWaste’s Role

In addition to developing the model ordinance language, StopWaste can play a supportive role to member agencies interested in implementing the ordinance in several ways:

- Assist member agency staff to customize elements based on local priorities
- Support stakeholder engagement and data gathering/analysis efforts
- Support City Council presentations for ordinance adoption
- Offer various levels of technical assistance, including incentive funding for businesses
- Develop general outreach materials (geared for countywide use, but customizable)
- Provide grant funding for development of a reuse infrastructure in the county
- Prepare periodic updates to the model as new information becomes available

Member agencies will be responsible for drafting the specific ordinance to be adopted in their jurisdiction, implementation, enforcement, and direct outreach to their affected communities.

Staff presented the model ordinance to the Programs & Administration Committee and the Recycling Board earlier this month, and now bring it to the full Waste Management Authority Board for acceptance.

RECOMMENDATION

Staff recommends that the WMA review the model Disposable Food Service Ware Reduction and Reuse Ordinance and direct staff to share it, along with related resources, with Member Agencies and to provide interested Member Agencies with the support described above.

Attachment: Draft Model Disposable Food Service Ware Reduction and Reuse Ordinance

CUSTOMIZATION CONSIDERATIONS

The Model Ordinance is designed to be customizable for a diverse range of jurisdictions, providing flexibility for each jurisdiction to reflect its needs. Each jurisdiction will want to develop an approach to managing food service ware and related items that addresses its priorities.

Guidance notes are integrated into the Model Ordinance to explain how specific sections and provisions of the Model can be customized for a jurisdiction's needs:

General guidance notes are highlighted green.

Notes highlighted in blue identify options or areas where specific information is to be inserted or selected.

The Model Ordinance addresses common variations and options; however, addressing all scenarios is not practical. As such, jurisdictions may choose to customize some sections of the Model to reflect their policy goals and local conditions. Additional tips for using the Model include:

- a) **Modify Language.** Adjust the Model language to fit the jurisdiction's specific needs. For example, a jurisdiction that already has a Polystyrene foam ordinance in place can remove sections related to Polystyrene foam or modify them to refer to the existing ordinance.
- b) **Change Jurisdiction Title.** The terms "City" and "City Council" are used throughout this Model Ordinance; however, the entity responsible for adopting this Ordinance will need to change "City" throughout the document to the appropriate term, which may be a City, County, or Special District that provides solid waste handling services, etc.
- c) **Blend Existing Code Provisions with Model Provisions.** When using the Model Ordinance, an entity may want to select provisions from both the Model Ordinance and its existing ordinance(s) to create an ordinance that best suits its needs.
- d) **Delete Guidance Notes and Unused Options.** Be sure to delete highlighted text that is not a part of the ordinance your entity will be adopting. As noted above, green highlighting identifies guidance notes presented in the Model for reference only, which the user should remove when preparing a final Ordinance. In cases where the Model offers multiple options, blue highlighting identifies these options and areas where customization is advised. Users should delete options and customization items that are not selected and modify section numbers accordingly.
- e) **Style and Design.** The final document style is at each jurisdiction's discretion. The use of colors and highlighting to differentiate content is not required in any final document produced, and the final document should be made consistent with the entity's standard document styles.

AN ORDINANCE OF THE CITY OF _____ ADDING CHAPTER _____ OF THE _____ CITY
CODE RELATED TO FOODWARE

The City Council of The City of _____ does hereby ordain as follows:

CHAPTER _____

DISPOSABLE FOOD SERVICE WARE REDUCTION AND REUSE

Guidance: It is not essential for the Ordinance to have a table of contents. One is included here to make it easier to use the model.

GENERAL PROVISIONS

1. Findings and Purpose.
2. Definitions.

FOOD SERVICE WARE REDUCTION AND REUSE

3. Reusable Food Service Ware Required for Dining on Premises.
4. Customer-Provided Reusable Beverage Cups and Food Containers for Take-Out.
5. Disposable Beverage Cup and Food Container Charge.
6. Accessories Only Upon Customer Request.
7. Reusable Beverage Cups at City Facilities.
8. Reusable Beverage Cups at Large Venues.
9. Reusable Beverage Cups at Events.

DISPOSABLE PACKAGED WATER REDUCTION AND REUSE

10. City Purchase, Sale, or Distribution of Packaged Water Prohibited.
11. Accessible Water Bottle Refill Stations.

COMPLIANT DISPOSABLE FOODWARE

12. Compliant Disposable Food Service Ware for Food Service.
13. Sale or Distribution of Non-Compliant Food Service Ware Prohibited.
14. Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products.

ENFORCEMENT

15. Process to Obtain Waivers.
16. Enforcement.

IMPLEMENTATION

17. Severability.
18. Chapter Supersedes Existing Laws and Regulations.
19. California Environmental Quality Act.

GENERAL PROVISIONS

Section 1. Findings and Purpose.

- a) The production, consumption and end of life management of Disposable Food Service Ware, typically used for only a few minutes before being discarded, have significant environmental impacts including substantial greenhouse gas emissions, litter, marine pollution, environmental contamination, harm to wildlife, the depletion of precious natural resources, decrease of biodiversity, and the generation of hard-to-manage waste.
- b) Prior to the COVID-19 pandemic, nearly 1 trillion individual pieces of Disposable Food Service Ware and packaging were used annually by U.S. food service operators: 21% for on-site dining and 79% for takeout and delivery. The use of Disposable Food Service Ware increased dramatically during the pandemic as takeout and delivery became the most common forms of prepared food service.
- c) Pre-pandemic, restaurants and foodservice businesses in the U.S. spent \$24 billion on disposables each year. Local businesses and city governments spend nearly \$6 billion per year on solid waste management costs attributable to disposable food packaging. Roughly 20 billion pieces of litter per year are from disposable food-service packaging.
- d) Disposable Food Service Ware substantially contributes to hard-to-recycle wastes. Packaging comprises 27% of California's disposed waste stream annually. The generation of municipal solid waste in 1960 was just 2.68 pounds per person per day in California and reached 4.9 pounds per person per day in 2018, the last time EPA reported generation rates. In 2018, 28% of municipal solid waste disposed of in the U.S. was packaging.
- e) Each year in California and globally, during International Coastal Cleanup Day, seven of the top ten littered items collected on beaches and shorelines are Disposable food and beverage packaging. Almost all of them are plastic.
- f) Plastic beverage bottles are number one of the top ten most commonly found plastic items on beaches when measured by weight. Every hour, Americans use 3 million plastic water bottles. Californians used more than 12 billion plastic beverage bottles in 2017, of which about 70% were not recycled. *Guidance: This finding applies to sections 10 (City Purchase, Sale, or Distribution of Packaged Water Prohibited) and 11 (Accessible Water Bottle Refill Stations). Remove this finding if the Sections are not included.*
- g) Every year, about 8 million tons of plastic waste escape into the oceans from coastal nations. That's the equivalent of dumping the contents of one garbage truck into the ocean every minute. Research indicates that as of 2015, there were over 150 million tons of plastics in the ocean. If plastic inputs are not significantly curtailed, the ocean will contain 3 times more plastic by weight than fish by 2025. Over 900 species of marine wildlife have been impacted by plastic ingestion and entanglement.

- h) Plastic may last for hundreds and even thousands of years, and has broad, long-lasting negative impacts. Plastics are persistent and accumulating dramatically in oceans worldwide. Scientists document a complex toxicology of plastic micro- and nano-particles in marine life that transfers up the food chain, including to people.
- i) Polystyrene is a petroleum-based, lightweight plastic material commonly used as Disposable Food service ware by retail food vendors. It is made from Styrene, a human carcinogen known to migrate from food service ware into food and beverages. Products made from expanded polystyrene foam are not biodegradable, returnable or readily recyclable. Polystyrene foam easily breaks up into smaller pieces and, because it is lightweight, is easily dispersed in the environment. It has been found to comprise 70% of the plastic debris in California rivers and on beaches. *Guidance: This finding applies to Sections 12 (Compliant Disposable Food Service Ware for Food Service) and 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this finding if the Sections are not included.*
- j) Packaging, including Food Service Ware, is a primary user of virgin materials and resources. 55% of paper produced each year is used for packaging. Paper production is responsible for 3 billion trees logged in the U.S. each year, which causes loss of habitat and biodiversity, results in sedimentation of streams, and reduces the availability of trees to capture CO₂ from the atmosphere.
- k) The growth of plastics production in the past 65 years has substantially outpaced any other manufactured material. 42% of non-fiber plastics produced are used for packaging and 60% of all plastics produced between 1950 and 2015 were landfilled or entered the environment. Half of all global plastic production is for single-use applications.
- l) Cheap fracked natural gas is driving a ramp-up in plastics production world-wide. The production capacity for plastic is poised to grow by 33% or more in less than a decade and is causing the plastics industry to identify or create new markets – primarily packaging – for an ever-growing flow of cheap plastic.
- m) Reducing the production and disposal of plastic is essential to reducing greenhouse gas emissions. It is estimated that in 2019 alone the global production and incineration of plastic produced more than 850 million metric tons of greenhouse gasses—equal to the emissions from 189 five-hundred-megawatt coal power plants.
- n) Disposable Food Service Ware poses numerous threats to human health. Over 12,000 chemicals are used in food packaging and other materials that contact food. Many are known to cause cancer, endocrine disruption, chronic diseases and other illnesses in people, and to harm aquatic and terrestrial ecosystems. Many of the most toxic chemicals used in Disposable Food Service Ware migrate into food and beverages.
- o) Disadvantaged and low-income communities are disproportionately impacted by the human health and environmental impacts of toxic chemicals in Disposable Food Service Ware, plastic pollution, and fossil fuel extraction.

- p) Micro- and nano- plastics are released from Disposable Food Service Ware, including polypropylene food containers and PET beverage bottles (Polyethylene terephthalate, commonly recognized in single-use water bottles and labeled with the #1 recycling code). People inhale microplastics through the air, consume them through food and water, and even absorb them through the skin. Microplastics have been found within human lungs, livers, spleens, and kidneys, in the placentas of newborn babies, and in breast milk.
- q) Prioritizing reduction and reuse of packaging can provide significant economic, environmental, and social benefits and is consistent with the Integrated Waste Management hierarchy that places “Reduce” and “Reuse” above “Recycling” and disposal.
- r) The availability of innovative services, systems, and businesses that deliver products in unpackaged or Reusable formats is increasingly creating new opportunities for local business entrepreneurship and economic development. Recycling and reusing create between 9 and 30 times more jobs than disposing of waste in landfills and incinerators.
- s) Requiring the use of 100% Reusable Food Service Ware for onsite dining and take-out food service in urban cities in the U.S. is estimated to achieve an 86% reduction in Disposable Food Service Ware, equal to 841 billion Food Service Ware items eliminated, 7.5 million tons of waste avoided, \$5 billion in net savings for the food service industry for food service operations, \$5.1 billion saved by business and local government in solid waste management costs, and 17 billion pieces of litter prevented. Meanwhile 193,000 local community-based jobs would be created.
- t) Public access to water refill stations supports personal efforts to avoid Disposable plastic bottles by using Reusable bottles, and helps people save money. A 20% increase in the use of Reusable bottles worldwide could reduce marine plastic pollution by 39%, keeping 8.1 to 13.5 billion PET bottles out of the ocean every year, based on 2018 data. Switching to Reusable bottles can save 8 billion metric tons of CO₂, 2% of the remaining carbon budget. Reusable glass beverage bottles are 85% more climate friendly than Disposable plastic beverage bottles. *Guidance: This finding applies to Sections 10 (City Purchase, Sale, or Distribution of Packaged Water Prohibited) and 11 (Accessible Water Bottle Refill Stations). Remove this finding if the Sections are not included.*
- u) Stainless steel and polypropylene cups for beverages at major events dramatically outperform disposable plastic and paper cups across all environmental metrics if they are washed and used more than six times. Reusable polypropylene cups can be washed hundreds of times and stainless-steel Reusable cups can be washed and reused thousands of times. *Guidance: This finding applies to Section 9 (Reusable Beverage Cups at Events). Remove this finding if the Section is not included.*
- v) In 2021, Governor Newsom signed into law California Assembly Bill (AB) 1276 (codified at Pub. Res. Code, Sections 42270 et seq.) which prohibits food facilities from providing any single-use Food Service Ware Accessories or condiment packages unless requested

by the customer. *Guidance: This finding applies to Section 6 (Accessories Only Upon Customer Request). Remove this finding if the Section is not included.*

- w) State law allows customers to provide their own Reusable Beverage Cups and Reusable Food Containers for service, and, consistent with the Centers for Disease Control and Prevention, the Alameda County Department of Environmental Health allows the use of Reusable Food Service Ware when properly washed, rinsed, and sanitized.
- x) *Guidance: This finding is a placeholder for the jurisdiction to add additional findings about local conditions, such as its progress toward its AB 939 goals, how Disposable Food Service Ware affects the jurisdiction's hauler (handling plastics and compostable Food Service Ware), and local data on plastic pollution in parks and waterways.*
- y) The City Council does, accordingly, find and declare that it should restrict the use of Disposable Food Service Ware and Accessories by Prepared Food Vendors promote customer-provided Reusable Beverage Cups and Food Service Ware for take-out, establish a Disposable Beverage Cup and Container charge, require that certain Foodware Accessories be provided only upon customer request, require use of Reusable Beverage Cups at City facilities and Returnable Reusable Beverage Cups at Large Venues and Events, prohibit the purchase, sale, or distribution of water in Disposable bottles by the City, require Accessible Water Bottle Refill Stations, set standards for Disposable Food Service Ware for food service and prohibit the sale or distribution of Polystyrene foam and certain non-recyclable non-compostable products.. The City has a substantial interest in protecting its residents and the environment from negative impacts of Disposable Food Service Ware, Packaged Water, Polystyrene Foam and certain non-recyclable non-compostable products and in realizing the benefits of alternative products. This Chapter is consistent with relevant City plans including [list]. *Guidance: Revise this finding as needed if not adopting all provisions of the Model Ordinance.*

Section 2. Definitions.

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

- a) "Accessible Water Bottle Refill Station" means a bottle filler that dispenses potable drinking water downward that complies with Section 116875 of the California Health and Safety Code standards and applicable standards under the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and accessibility requirements applicable to drinking fountains under the California Building Standards Code. *Guidance: This definition applies to Section 11 (Accessible Water Bottle Refill Stations). Remove this definition if the Section is not included.*
- b) "ASTM Standard Specification" means Standard Specification for Compostable Plastics D6400 or Standard Specification for Biodegradable Plastics D6868 as certified by the Biodegradable Products Institute (BPI), as adopted or subsequently amended by the

American Society for Testing and Materials (ASTM).

- c) “Beverage Cup” means any cup, vessel, glass, container, or any other items in which a beverage (including water) is placed or packaged at a Prepared Food Vendor’s premises.
- d) “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.
- e) “Bulk” means material that is stored as unpackaged liquid or dry goods capable of being conveyed to a Reusable container in methods conforming to the California Retail Food Code, Health and Safety Code, Sections 113700 et seq. or packaging for a large amount of product, thereby offsetting the need for multiple smaller packaging units for the same amount of product. *Guidance: This definition applies to Section 6 (Accessories Only Upon Customer Request). Remove this definition if the Section is not included.*
- f) “City” means the City of _____.
- g) “City Property” means any City-owned properties or facilities, including but not limited to, indoor and outdoor recreation fields, parks and golf courses, gardens, open space and boulevards, buildings and rooms. *Guidance: Consider whether to add any exclusions here for city property where this ordinance should not apply.*
- h) “Compost Manufacturing Alliance” is a national certifier of compostable products for compost facilities.
- i) *[Guidance: This subsection offers three definitions of compostable, while ensuring that local governments’ definitions align with the State’s definition. Entities should select the option that best achieves their policy goals.]*

“Compostable” means an item or material that the State deems to be compostable pursuant to Public Resources Code Chapter 5.7 (commencing with Section 42355) AND that satisfies the following:

OPTION A: “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 _____ Department, and is listed, described, or referenced on the Department’s 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. As used in this definition, “Fiber-based” means a plant- or animal-based, non-synthetic fiber, including

but not limited to paper, wood, or bamboo. Fiber-based items do not include or contain petroleum-based or biologically-based polymers of any kind. *Guidance: Select this option to disallow all plastics, including “compostable plastics” from the organics collection system.*

OPTION B: “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 _____ Department, and is listed, described, or referenced on the Department’s website as compostable. The City shall list only items or materials that are certified to be compostable by the Biodegradable Products Institute, Compost Manufacturing Alliance, and/or other third-party certification program recognized by the City. *Guidance: Select this option to limit acceptable products to those that have been certified as compostable by a third-party certification program.*

OPTION C: “Compostable” means an item or material is accepted in the City’s available organics collection program. *Guidance: Select this option to limit acceptable products to those that are accepted in the City’s organics collection system without reference to a third-party certification program.*

- j) “Convenient drop-off” means customers returning Reusable products in a Reuse System can return to the retail location where the product was originally obtained, in curbside kiosks near the original retail location, or at nearby grocery stores or other retail locations, or the Reuse System provides frequent home pick-up services.
- k) “Dishwashing Capacity” means adequate onsite or offsite services, including those provided to a Prepared Food Vendor through a contracted service, to wash, rinse, and sanitize, in compliance with the California Health and Safety Code Division 104-Environmental Health, Part 7, California Retail Code, the necessary quantity of Reusable Food Service Ware items for all food and beverages prepared on the premises of the Prepared Food Vendor.
- l) “Disposable” means an item or product that is not Reusable, including Food Service Ware and products that are intended for single or a limited number of uses, regardless of the method of disposal, including whether, after use, the item or product is landfilled, treated with heat by conversion technologies, incinerated, recycled, or composted.
- m) “Egg Carton” means a carton for raw eggs sold to customers from a refrigerator case or similar retail appliance. *Guidance: This definition applies to Section 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if the Section is not included.*
- n) “Event” means any indoor or outdoor event within the City that is subject to a City permit and expected to have more than 500 attendees or participants. *Guidance: This definition applies to Section 9 (Reusable Beverage Cups at Events). Remove this definition if the Section is not included. The number of attendees can be adjusted to a number that seems appropriate for the types of events in the City.*

- o) “Event Producer” means a person or entity, or their agent, who contracts with or obtains a permit from the City or a City agent, to hold an Event or Events within the City at a location other than a Large Venue. *Guidance: This definition applies to Section 9 (Reusable Beverage Cups at Events). Remove this definition if the Section is not included.*
- p) “Food Container” means any hinged or lidded container (clamshell, box, bowl), plate, tray or other vessel used to hold Prepared Food.
- q) “Food Service Ware” means any products used for serving, consuming, or packaging Prepared Food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrappers or liners, hinged or lidded containers (clamshells), Food Service Ware Accessories, and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Vendor’s premises.
- r) “Food Service Ware Accessory” means any Food Service Ware item such as straws, stirrers, splash sticks, cocktail sticks, napkins and utensils (forks, knives, spoons, and sporks); condiment cups and packets; cup sleeves, tops, lids and spill plugs; and other similar accessory or accompanying items used as part of Prepared Food or beverage service or packaging. *Guidance: This definition applies to Section 6 (Accessories Only Upon Customer Request). Remove this definition if the Section is not included. Local jurisdictions may regulate Food Service Ware Accessories that are not already covered in AB 1276 - Single-Use Food Service Ware Accessories and Condiments. Napkins (perhaps the most heavily used and wasted accessory item), cup sleeves, tops, lids and spill plugs are not covered in AB 1276 but have been included in this definition.*
- s) “High Priority Toxic Food Packaging Chemical” means any of the chemicals listed in California's Proposition 65 (Health & Safety Code § 25249.8; list set forth at 22 CCR § 69502.2(a)(1)(A)), the European Union's Substances of Very High Concern Candidate List (set forth at 22 CCR § 69502.2(a)(1)(C), (G)), Authorization List (set forth at ##), and Prioritization List (set forth at ##), and the International Agency for Research on Cancer lists Group 1 and Group 2a (set forth at 22 CCR § 69502.2(a)(1)(J)). *Guidance: These lists represent a prioritized subset of lists that inform the California Candidate Chemicals List for the California Safer Consumer Products Act. See 22 CCR § 69502.2(a)(1). Together, these lists address a wide array of food packaging chemicals that are listed by authoritative agencies as carcinogenic, mutagenic, endocrine disrupting, or cause developmental or reproductive toxicity.*
- t) “High Priority Toxic Material” means any kind of polyvinyl chloride (PVC), polystyrene, polycarbonate, or melamine material, or any bamboo material that uses resin or other form of binding agent containing PVC, polycarbonate, melamine or a High Priority Toxic Food Packaging Chemical.
- u) “Large Venue” means a permanent facility that seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation over a typical calendar year. For purposes of this definition, a “facility” includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall,

amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this Chapter, a site under common ownership or control that includes more than one Large Venue, where each Large Venue is contiguous with other Large Venue(s) in the site, is a single Large Venue. *Guidance: This definition applies to Section 9 (Reusable Beverage Cups at Events). Remove this definition if the Section is not included. The size of the venue can be adjusted to a number that seems appropriate for the types of venues and events in the City.*

- v) "Meat and Fish Tray" means a tray for raw meat, fish, or poultry sold to customers from a refrigerator case or from a similar retail appliance. *Guidance: This definition applies to Section 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if the Section is not included.*
- w) "Packaged Beverage" or "Packaged Water" means a drinking beverage, including water, in a sealed container, including a box, bag, can, glass bottle, Rigid Plastic #2 Bottle or other sealed container intended primarily for single-service use.
- x) "Packing Material" means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage. *Guidance: This definition applies to Section 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if the Section is not included.*
- y) "Person" means an individual, firm, limited liability company, association, partnership, corporation, or any other legal entity other than a governmental entity that is not specifically referenced in this ordinance.
- z) "Polystyrene Foam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding and extrusion-blow molding (extruded foam polystyrene). "Polystyrene Foam" does not include clear or solid polystyrene (oriented polystyrene). *Guidance: This definition applies to Sections 12 (Compliant Disposable Food Service Ware for Food Service) and 14 (Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products). Remove this definition if these Sections are not included.*
- aa) "Prepared Food" means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the premises of a Prepared Food Vendor for consumption, including, but not limited to, ready-to-eat, dine-in, take-out, or complimentary food or beverage. "Prepared Food" does not include: (1) raw eggs and raw, butchered meat, fish, or poultry that is sold from a refrigerator case or from a similar retail appliance; or (2) prepackaged food that is delivered to a Prepared Food Vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the Prepared Food Vendor to the customer in the same container or packaging.

- bb) “Prepared Food Vendor” means any Person that that sells Prepared Food to be consumed on or off a premises located or operated within the City including, but not limited to, a restaurant, café, bar, nightclub, grocery store, convenience store, delicatessen, bakery, food service establishment (including carry out, quick service, and full-service), cafeteria, food truck or mobile unit-based vendor, hotel, motel, bed and breakfast, inn, special event space, movie house, theater, itinerant restaurant, pushcart, farmers market, or other similar establishments, directly or indirectly under contract and including, but not limited to sales on City Property, Large Venues, and commercial office buildings. Notwithstanding the foregoing, the following are not considered Prepared Food Vendors: hospitals, public agencies other than the City, public and private schools, prisons and jails. *Guidance: Revise the list of exceptions to fit the circumstances of your city.*
- cc) “Produce Tray” means any tray or carton for raw vegetables or fruit sold to customers from a refrigerator case or from a similar retail appliance. *Guidance: This definition applies to Subsection 14(b). Remove this definition if the Subsection is not included.*
- dd) “Recyclable” means an item or material is accepted in the City’s recycling collection program as fully recyclable, as determined by the City’s _____ Department, and is listed, described, or referenced on the Department’s website as recyclable. The City shall not list items or materials that will be burned, incinerated, or converted through gasification, pyrolysis, enzymatic breakdown or a similar chemical conversion process used to transform materials into plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, energy, diesel, gasoline, or home heating oil. *Guidance: This definition applies if Option B of Section 12(b) is used - Compliant Disposable Food Service Ware for Food Service. Remove this definition if Option B is not included.*
- ee) “Reusable” means Food Service Ware that is manufactured of ceramic, porcelain, glass, or non-foil metal, or other durable materials that are specifically designed and manufactured to be washed and sanitized for at least 780 commercial wash cycles as warranted by the manufacturer, are safe for washing and sanitizing according to California Health & Safety Code, Sections 114101 and 114099.7, respectively and all other applicable regulations, and are used in a system that enables repeated collection, washing, and return of Food Service Ware, thereby ensuring that the product is actually used repeatedly over an extended period of time. Reusable products shall not be manufactured from a High Priority Toxic Material.
- ff) “Returnable” means an item for which a Reuse System is available.
- gg) “Reuse System” means a system in which (1) convenient drop-off of an item is available to the customer, and (2) there are suitable incentive systems to encourage customers to return the product, such as a deposit or charge for failure to return, or discounts, rewards, or other positive incentives.
- hh) “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.

- ii) "Take-Out Consumption" means consumption of food or beverages requiring no further preparation off the premises or away from the facilities of the Prepared Food Vendor.
- jj) "Take-Out Food Ordering Platform" means a Person engaged in the service of taking orders from customers for food or related items for pickup or delivery from a Prepared Food Vendor, and includes orders made by phone, on the Prepared Food Vendor website, or on a third-party site, any of which may also include delivery by a third-party. *Guidance: This definition applies to web-based and phone-based ordering systems on which customers order directly from a Prepared Food Vendor (like Square or Menufy) or indirectly from a third-party prepared food delivery company (like Doordash or GrubHub).*

FOOD SERVICE WARE WASTE REDUCTION AND REUSE

Guidance: Sections 3, 4, and 6 address top priorities to include in a Reusable Food Service Ware ordinance.

Section 3. Reusable Food Service Ware Required for Dining on Premises.

Beginning [specify date - 12 months after ordinance adoption suggested]:

- a) Prepared Food served for consumption on the premises of a Prepared Food Vendor shall be served using Reusable Food Service Ware, except that (1) Disposable paper food wrappers, sleeves, and bags; foil wrappers; and paper tray- and plate-liners shall be allowed provided they meet the requirements in Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service), and (2) Disposable Food Service Ware Accessories or Disposable Standard Condiments may be provided in accordance with Section 6 of this Chapter (Accessories Only Upon Customer Request).
- b) Standard Condiments provided for on-site consumption on the premises of a Prepared Food Vendor must be served from Reusable containers or a Bulk dispenser. A supply of single-use packets may be maintained and provided to customers upon request, based on medical necessity.
- c) Consumption is considered on-premises if it takes place at tables and/or dining areas, including non-seated picnic areas provided by the Prepared Food Vendor either on its own or in conjunction with one or more other Prepared Food Vendor(s) or pursuant to an agreement between the Prepared Food Vendor and a third party.
- d) This Section does not prohibit a Prepared Food Vendor from providing, upon a customer's request, Disposable Food Service Ware compliant with the requirements in Section 5 of this Chapter (Disposable Beverage Cup and Food Container Charge), and Section 12 of this Chapter (Disposable Food Service Ware for Food Service), to take away leftover Prepared Food after dining on the premises. *Guidance: If the City does not*

include a cup and container charge in the Ordinance, the reference to Section 5 (Disposable Beverage Cup and Food Container Charge) should be removed.

- e) Business licenses for Prepared Food Vendors, applied for or renewed after [specify date – at least 30 but not more than 180 days after adoption recommended] shall only be granted to Prepared Food Vendors that can demonstrate ability to comply with Subsection (a) by demonstrating that adequate Dishwashing Capacity will be provided on the premises or that dishwashing services will be provided by a third party.
Guidance: Along with encouraging reuse for existing businesses, future businesses should be designed to enable reuse. Including this Subsection will reduce future waiver requests and compliance issues. Consider adding a similar requirement to the City's building code and zoning code in a future update.
- f) The requirements of Subsection (a) of this section shall not apply to Mobile Food Facilities or Temporary Food Facilities as defined by California Health and Safety Code Sections 113831 and 113930.
- g) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this Section. All leases, contracts, funding agreements, and sponsorships entered by the City shall require compliance with this Section for all activities in the City. *Guidance: Sample language is included in the Model Ordinance Toolkit.*
- h) Prepared Food Vendors that do not have Dishwashing Capacity may request a waiver or partial waiver of Subsections (a) and (e) of this Section. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints, undue financial hardship, and/or other insurmountable circumstances. Any waiver shall expire automatically in the event of a significant remodel, renovation, or other alteration of the premises with a construction valuation that exceeds \$60,000, or if the Prepared Food Vendor ceases operations at the location for which the waiver has been granted. *Guidance: See Section 15 (Process to Obtain Waivers) for more information on the waiver process. The \$60,000 figure is based on existing ordinances (e.g., City of Berkeley). The City may wish to adjust this number to suit local conditions.*

Section 4. Customer-Provided Reusable Beverage Cups and Food Containers for Take-Out.

- a) Customers shall be allowed to provide their own empty Reusable Beverage Cups and Reusable Food Containers for service in accordance with California Retail Food Code, Health and Safety Code, Sections 113700 et seq.
- b) Prepared Food Vendors providing Prepared Food on-premises may refuse, at their sole discretion, any customer-provided Reusable Beverage Cup or Reusable Food Container that is cracked, chipped, or corroded, or appears inappropriate in size, material, or condition for the intended beverage or food, or that appears to be excessively soiled or

unsanitary.

- c) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this section for all activities in the City.

Section 5. Disposable Beverage Cup and Food Container Charge.

Guidance: Throughout this Section, the City may opt to focus on cups only, or to apply charges to food containers as well. If the City does not plan to include a charge for food containers, the term should be removed throughout the Section.

Beginning *[specify date – 12 months after ordinance adoption suggested]*:

- a) **OPTION A.** Prepared Food Vendors shall charge customers twenty-five cents (\$0.25) for each Disposable Beverage Cup and Disposable Food Container provided for Take-Out Consumption. The maximum charge per order for all Disposable Beverage Cups and Food Containers shall be one dollar (\$1.00). Customers who provide their own Reusable Beverage Cup(s) and/or Reusable Food Container(s) shall not be charged for additional Disposable Beverage Cups or Disposable Food Containers needed. *Guidance: Select this option to charge \$.25 per disposable cup/container, up to a maximum of \$1/meal.*

OPTION B. Prepared Food Vendors shall charge customers twenty-five cents (\$0.25) for each order in which Disposable Beverage Cup(s) and/or Disposable Food Container(s) are provided. Customers who provide their own Reusable Beverage Cup(s) and/or Reusable Food Container(s) shall not be charged for additional Disposable Beverage Cups or Disposable Food Containers needed. *Guidance: Select this option to charge \$.25 per order that includes disposables, regardless of the number of cups/containers used.*

- b) Prepared Food Vendors shall provide a minimum twenty-five cent (\$0.25) discount for customers who use their own Reusable Beverage Cup(s) or Reusable Food Container(s). Prepared Food Vendors may provide a larger discount at their own discretion. *Guidance: Include this option to require that Food Vendors offer a \$.25 discount to customers that bring their own cup or container. This discount provides an additional incentive for customers to bring their own reusables but should not be used in lieu of the charge in Subsection (a) because discounts alone are not sufficient to drive the desired behavior change. The discount reduces some of the income the business receives from the charges for disposables. The discount would not apply if customer-provided reusables are rejected for some reason under Subsection 4(b); if the jurisdiction wishes to have the discount apply even if the reusables are not used then change the word "use" to "bring."*
- c) Income from the Disposable Beverage Cup and Food Container charge shall be retained by the Prepared Food Vendor. *Guidance: It is the intent of the City that these charges help to offset the increased costs of compliant Disposable Beverage Cups or Food Containers and the costs to Prepared Food Vendors of offering Reusable Beverage Cups*

and Reusable Food Containers for Takeout Consumption, and that these charges also encourage customers to choose to use Reusable Beverage Cups and Reusable Food Containers to avoid the costs.

- d) Take-Out Food Ordering Platforms that collect payment on behalf of Prepared Food Vendors shall remit the Disposable Beverage Cup and Food Container charges to the Prepared Food Vendor.
- e) Prepared Food Vendors shall not waive or otherwise fail to collect the Disposable Beverage Cup and Food Container charge(s) except for:
 - 1. Customers who use their own Reusable Beverage Cup(s) and/or Reusable Food Container(s);
 - 2. Customers who provide their own Reusable Beverage Cup(s) and/or Reusable Food Container(s) but are not allowed to use them because they are rejected in accordance with Subsection 4(b); or *[Guidance: Omit this Subsection if the jurisdiction wishes to impose the charge on those who bring, but are not able to use, their own cups or containers.]*
 - 3. Customers demonstrating economic hardship by providing at the point of sale, 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, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, or a Medi-Cal benefits identification card (BIC) issued pursuant to Section 14017.7 of the California Welfare and Institutions Code.
- f) The Disposable Beverage Cup and Food Container charge(s) shall be identified to the customer before purchase separately as a stand-alone charge, on menus, menu boards, and prior to entering payment on Take-Out Food Ordering Platforms. Customers shall be informed of the charge(s) verbally by their server, at the cash register, and when placing orders by phone. Charges shall be reflected separately on any post-sale receipt whether provided in-person or online.
- g) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this Section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this Section for all activities in the City.

Section 6. Accessories Only Upon Customer Request.

Guidance: AB 1276 requires local ordinances to meet its requirements at a minimum and allows local jurisdictions to add additional requirements. Provisions that exceed the requirements of AB 1276 are noted below. Additionally, the definition of Food Service Ware Accessory in the ordinance includes

napkins, cup sleeves, tops, lids and spill plugs – none which are covered in AB 1276.

- a) Prepared Food Vendors shall only provide Disposable Food Service Ware Accessories or Disposable Standard Condiments to customers for on-premises dining or for takeout and delivery orders when specifically requested by the customer, except that no Disposable utensils or Beverage Cups shall be provided for dining on-premises. Take-out and delivery orders include orders made directly with the Prepared Food Vendor and orders made using Take-Out Food Ordering Platforms. *Guidance: AB 1276 only applies to on-premises dining and online orders. This is a blanket requirement that vendors only provide accessories or condiments on request. It applies to onsite dining, take-out, and delivery situations. The utensils exemption is included for consistency with Section 3, which requires reusable utensils for on-premises dining.*
- b) For on-premises dining, Prepared Food Vendors shall provide any Standard Condiments only in Reusable jars, bottles, or containers at the table, or in bulk dispensers at a self-service station. Accessories, such as utensils, straws, and napkins may also be provided in dispensers that dispense unwrapped items one at a time. A Prepared Food Vendor may make single-portion Standard Condiment packets available upon customer request. *Guidance: this is not required in AB 1276. It eliminates the need for individual portions of Standard Condiments for on-premises dining. But a business can still keep single-portion condiments on hand for when a customer specifically requests them.*
- c) Disposable Food Service Ware Accessories and Standard Condiments shall not be bundled or packaged in a manner that prohibits a take-out customer from taking only the type of Disposable Food Service Ware Accessories and/or Standard Condiments desired without also having to take a different type of Disposable Food Service Ware Accessory and/or Standard Condiment.
- d) Disposable Food Service Ware Accessories shall not be individually wrapped and may be provided to customers using refillable dispensers that dispense items one at a time. *Guidance: AB 1276 states that nothing shall prevent a food facility from providing unwrapped accessories in a refillable dispenser. This goes further in that it requires Disposable Foodware Accessories to be unwrapped.*
- e) (1) A Take-Out Food Ordering Platform shall provide Prepared Food Vendors with a method to customize their menus to include the specific Disposable Food Service Ware Accessories and Standard Condiments that they offer for take-out and delivery orders. The Prepared Food Ordering Platform shall provide customers with the option to request the specific Single-use Food Service Ware Accessories or Standard Condiments they want included in their order from a Prepared Food Vendor.

(2) If a Prepared Food Vendor uses a Take-Out Food Ordering Platform, the Prepared Food Vendor shall customize its menu with a list of available Disposable Food Service Ware Accessories and Standard Condiments they offer, and only those Disposable Food Service Ware Accessories or Standard Condiments selected by the customer shall be provided by the

Prepared Food Vendor. If a customer does not select any Single-use Food Service Ware Accessories or Standard Condiments, no Single-use Food Service Ware Accessory or Standard Condiment shall be provided by the Prepared Food Vendor. *Guidance: AB 1276 applies only to third party delivery platforms (like Doordash or Grub Hub) while this model ordinance applies to all ordering platforms, which means it extends also to web-based and phone-based ordering systems where customers order directly from a Prepared Food Vendor (like Square or Menufy). This language is more clear than AB 1276 about ordering platforms needing to provide the Prepared Food Vendor a way to customize its menu and about the platform making it possible for customers to order the specific accessory and condiment items they want.*

- f) Notwithstanding any other requirements of this Section, a Prepared Food Vendor that is (1) located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, or (2) a drive-through food service, may ask a customer if the customer wants a Disposable Food Service Ware Accessory if needed to consume or transport ready-to-eat food, or to prevent it from spilling. *Guidance: This is consistent with AB 1276.*
- g) Nothing in this Chapter shall restrict, or be construed to restrict, the ability of Prepared Food Vendors from providing Disposable plastic straws to individuals who may require and request them due to disability or other medical or physical conditions or circumstances. *Guidance: Straw exemptions are commonplace in many local ordinances.*
- h) Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors operating on City Property shall comply with this section. All leases, contracts, funding agreements, and sponsorships entered into by the City shall require compliance with this Section for all activities in the City. *Guidance: This is not included in AB 1276.*

Section 7. Reusable Beverage Cups at City Facilities.

Guidance: This Section has the City establish a reuse system for its facilities and bans the sale or use of Disposable Beverage Cups on City properties, including by concessionaires, lessees, and contractors. This includes the City's purchasing supplies for its own events. Food containers could optionally be added to this Section.

Beginning [specify effective date – 12 months after ordinance adoption suggested]:

- a) Notwithstanding any other provision of this Code, the City shall establish a Reusable Beverage Cup Reuse System and all beverages served in City offices, City-owned buildings, or indoor facilities on City Property shall be served in Returnable Reusable Beverage Cups or a user's personal Reusable Beverage Cup.
- b) No person may distribute (for sale or otherwise) beverages in Disposable Beverage Cups at or on City Property, including a City office, office building, or food concession located indoors or outdoors on City Property.
- c) All new leases, permits, management agreements, contracts, or other agreements

awarded by the City allowing any person to use indoor City Property, for purposes that contemplate or would allow the sale or distribution of non-packaged beverages (collectively, “use agreements”) shall specifically require that the user comply with Subsections (a) and (b) of this Section. This requirement shall also apply to any such use agreement renewed, extended, or materially amended after implementation of this provision.

Section 8. Reusable Beverage Cups at Large Venues.

Guidance: This Section requires the use of Reusable Cups at large venues, initially at a low threshold, with the potential to ramp up over time. Food containers could optionally be added to this Section.

Beginning [specify date – 18 months after ordinance adoption suggested]:

- a) Any person operating a Large Venue that allows the sale of Prepared Food on premises shall establish a Reusable Beverage Cup Reuse System and ensure that all non-packaged beverages, not including drinking water from drinking water fountains and Accessible Water Refill Stations, are available for purchase in Returnable Reusable Beverage Cups.
- b) To meet the requirements of this Section, Large Venue operators may provide, lend, or rent Reusable Beverage Cups to attendees and provide incentives to attendees to bring their own Reusable Beverage Cups.
- c) Large Venue operators’ contracts with Prepared Food Vendors for on-site services shall ensure compliance with this Section.
- d) Use, handling, and sanitation of Reusable Beverage Cups at Large Venues by venue staff and third-party contractors must comply with California Health & Safety Code, Sections 113700 et seq. and all other applicable health regulations.
- e) Attendees shall be allowed to provide their own empty Reusable Beverage Cups for service in Large Venues. Large Venue Operators and Prepared Food Vendors operating in Large Venues may refuse, at their sole discretion, any customer-provided Reusable Beverage Cup that is cracked, chipped or corroded, or appears inappropriate in size, material, or condition for the intended beverage or food, or that appears to be excessively soiled or unsanitary. *Guidance: Include this Section to allow customers to bring their own reusable cups to large venues.*
- f) All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing Large Venues to operate within the jurisdiction shall specifically require that the permittee or contractor comply with this Section. This requirement shall also apply to any such permit or agreement renewed, extended, or materially amended after implementation of this provision.
- g) Any Large Venue operator may petition for a full or partial waiver of the requirements of this Section if the operator can demonstrate that the application of this section would create undue hardship or practical difficulty for the Large Venue that is not generally

applicable to other Large Venues in similar circumstances. *Guidance: Include this Section if the City wants to allow waiver requests for this requirement.*

Section 9. Reusable Beverage Cups at Events.

Guidance: This Section requires the use of Returnable Reusable cups at events, initially at a low threshold, with the potential to ramp up over time. Events are often not closed venues and lack fixed infrastructure onsite, so requiring reusables can be more challenging. Food containers could optionally be added to this Section.

Beginning [specify date – 18 months after ordinance adoption suggested]

- a) Event Producers that allow the sale of Prepared Food at an Event must establish a Reuse System and make Returnable Reusable Cups available for the purchase of non-packaged beverages. Event producers must demonstrate that at least twenty-five percent (25%) of all non-packaged beverages served to attendees are in customer-provided Reusable Beverage Cups or Reusable Beverage Cups. This requirement shall increase to fifty percent (50%) beginning [select date – 36 months after ordinance adoption suggested], To meet this requirement, Event Producers may cause Returnable Reusable Beverage Cups to be provided, lent, or rented to Event attendees. *Guidance: The City may choose to amend the ordinance in the future in order to increase this threshold further.*
- b) The permit application for each Event must indicate how the requirements of this Section will be met and describe the tracking system that will be used to document the total number of beverages sold or otherwise provided and the number provided, lent, or rented in Reusable Beverage Cups. The Event Producer's selected method for meeting the requirements of this Section must be included in any contract, agreement or permit for the Event related to or otherwise including beverage service. Event Producers shall report the percentage of beverages sold in Reusable Beverage Cups to the City within 3 months of the Event to the City _____ Department and prior to the return of any deposit collected by the City in connection with the Event.
- c) Use, handling, and sanitation of Reusable Beverage Cups at Events by Persons serving non-packaged beverages must comply with California Health & Safety Code, Sections 113700 et seq. and all other applicable state and local laws, regulations, and guidelines.
- d) Customers shall be allowed to provide their own empty Reusable Beverage Cups for service at Events. Prepared Food Vendors providing beverages at such Events may refuse, at their sole discretion, any customer-provided Reusable Beverage Cup that is cracked, chipped or corroded, or appears inappropriate in size, material, or condition for the intended beverage or food, or that appears to be excessively soiled or unsanitary. *Guidance: Include this Section to allow customers to bring their own reusable cups to events.*
- e) Event Producers' contracts with Prepared Food Vendors for on-site services shall ensure

compliance with this Section.

- f) All new leases, permits, management agreements, contracts, or other agreements awarded by the City allowing Events to operate within the jurisdiction shall specifically require that the Event Producer comply with this Section. This requirement shall also apply to any such permit or agreement renewed, extended, or materially amended after implementation of this provision.
- g) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), any Event Producer may petition for a full or partial waiver of the requirements of this Section as they apply to a particular Event, if the Event Producer can demonstrate that the application of this Section would create undue hardship or practical difficulty for the Event Producer that is not generally applicable to other Event Producers in similar circumstances. *Guidance: Include this Section if the City wants to allow waiver requests for this requirement.*

DISPOSABLE PACKAGED WATER REDUCTION AND REUSE

Section 10 City Purchase, Sale, or Distribution of Disposable Packaged Water Prohibited.

Guidance: This Section prohibits the City from purchasing, selling, or otherwise distributing water in disposable packaging.

- a) No City funds shall be used to purchase Packaged Water.
- b) No person may distribute (for sale or otherwise) Packaged Water on City property or at any event or activity for which the City has issued a permit allowing the activity to be held on or in City property.

Section 11. Accessible Water Bottle Refill Stations.

Guidance: This Section requires the installation and maintenance of refill stations for reusable water bottles. This is critical infrastructure to support the use of reusable cup and water bottles.

Beginning [specify date- 18 months after ordinance adoption suggested]:

- a) All facilities used for Events, facilities on City Property other than office buildings, and Large Venues that have access to drinking water shall install and maintain at least one, or maintain at least one existing, Accessible Water Bottle Refill Station on-site per every 500 daily visitors, located to ensure maximum access by all visitors.
- b) An office building owned by the City or on City Property shall have at least one Accessible Water Bottle Refill Station per 500 occupants authorized under the building's maximum occupancy.

- c) All facilities used for Events, facilities on City Property, and Large Venues shall allow visitors to bring their own Reusable beverage bottle for use at an Accessible Water Bottle Refill Station.
- d) If any existing Water Bottle Refill Station in a facility used for Events, on City Property, or in a Large Venue, is not Accessible, the owner or operator of the facility or Large Venue shall upgrade the water bottle refill station to an Accessible Water Bottle Refill Station by January 1, 2025.
- e) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), any person subject to this section may petition for a full or partial waiver of the requirements of this Section, if the person can demonstrate that the application of this Section would create undue hardship or practical difficulty for the that is not generally applicable to others in similar circumstances. *Guidance: Include this Section if the City wants to allow waiver requests for this requirement.*

COMPLIANT DISPOSABLE FOOD SERVICE WARE

Section 12. Compliant Disposable Food Service Ware for Food Service.

Guidance: This section defines what disposable food service ware items are acceptable for use in the City.

Beginning [specify date – 12 months after ordinance adoption suggested]:

- a) When Disposable Food Service Ware is authorized for use by this Chapter, Prepared Food Vendors may provide Prepared Food in Disposable Food Service Ware only if that Disposable Food Service Ware is:
 - 1. Free of High Priority Toxic Food Packaging Chemicals as determined by a third-party certification program for Disposable Food Service Ware that requires full disclosure of intentionally added chemicals as a condition of certification. Certification of Disposable Food Service Ware is preferred for 6 months following this Section becoming effective and required thereafter. *Guidance: There are currently two certification programs for Disposable Food Service Ware that address the scope of chemicals covered in the definition of High Priority Food Packaging Chemicals- Green Screen(™) Certified and Cradle to Cradle. At this time, Green Screen(™) Certified has a more robust list of certified Food Service Ware products. The reason for the 18-month phase-in period before this requirement becomes mandatory is to give more manufacturers time to get their products certified. Jurisdictions may choose to eliminate the 6 month phase-in period and make it mandatory at the 12 months milestone when the rest of this Section becomes effective.*
 - 2. Not made of Polystyrene Foam. *Guidance: Include this Subsection if the City wants to prohibit the use of Polystyrene Foam Food Service Ware by Food*

Vendors and does not have an existing ordinance doing so.

3. **OPTION A.** Compostable, provided, however, that non-Compostable foil wrappers that are Recyclable may be used for burritos, wraps, and other items that require foil to contain and form the food item. *Guidance: Select this option to allow Disposable Food Service Ware and Food Service Ware Accessories that are accepted in the City's collection program. It does not allow recyclable food service ware other than foil wrappers.*

OPTION B. Compostable or Recyclable. *Guidance: Select this option to allow disposable food service ware and accessories that are accepted in the City's organics or recycling collection programs.*

- b) Neither the City nor its contractors or lessees shall purchase Disposable Food Service Ware for use in the City that is not compliant with the requirements of this Section.
- c) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), a Prepared Food Vendor may petition for a full or partial waiver of the requirements of this Section if the Prepared Food Vendor can demonstrate that compliance will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.
 1. Notwithstanding the foregoing, no waiver may be granted for (1) the use of Disposable Food Service Ware that contains any High Priority Toxic Food Packaging Chemicals or High Priority Toxic Materials, or (2) use of Polystyrene Foam Food Service Ware.

Section 13. Sale or Distribution of Non-Compliant Food Service Ware Prohibited.

Guidance: This Section applies to retailers selling food service ware, such as supermarkets, restaurant suppliers and big box stores. It prohibits the sale of food service ware or food service ware accessories that do not comply with the requirements of this ordinance.

Beginning [specify date – 12 months after ordinance adoption suggested]:

- a) Except as specifically authorized by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service) no Person may distribute (for sale or otherwise) within the City any Disposable Food Service Ware or Food Service Ware Accessories that are not compliant with Section 12 of this Chapter.
- b) It shall not be a violation of this Section to provide (for sale or otherwise) Prepared Food in Disposable Food Service Ware otherwise prohibited by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service) if the Prepared Food is packaged outside the City and is sold or otherwise provided to the customer in the same Disposable Food Service Ware in which it originally was packaged.
- c) In accordance with Section 15 of this Chapter (Process to Obtain Waivers), any Person

may petition for a full or partial waiver of the requirements of this Section if that Person can demonstrate that compliance will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.

1. Notwithstanding the foregoing, no waiver may be granted for (1) the distribution of Disposable Food Service Ware that contains any High Priority Toxic Food Packaging Chemicals or High Priority Toxic Materials or (2) the distribution of Polystyrene Foam Food Service Ware.

Section 14. Polystyrene Foam and Certain Non-Recyclable Non-Compostable Products.

Guidance: This Section restricts the sale of many types of Polystyrene Foam products and other packaging, especially if they are not wholly encapsulated in a more durable material.

Beginning [specify date – 12 months after ordinance adoption suggested]

- a) Except as specifically authorized by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service) no person shall sell, offer for sale, or otherwise distribute for compensation within the City any of the following items if made in whole or in part from Polystyrene Foam:
 - 1) Packing Materials, including shipping boxes and packing peanuts;
 - 2) Coolers, ice chests, or similar containers;
 - 3) Pool or beach toys made from Polystyrene foam that is not wholly encapsulated and encased within a more durable material; or
 - 4) Dock floats, mooring buoys, anchors or navigation markers made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a more durable material.
- b) Except as specifically authorized by Section 12 of this Chapter (Compliant Disposable Food Service Ware for Food Service), no person shall sell, offer for sale, or otherwise distribute for compensation within the City, Meat and Fish Trays, Produce Trays, and Egg Cartons that are not Compostable or Recyclable either as separate items or as part of the sale of raw meat, fish, poultry, vegetables, fruit, or eggs sold to customers from a refrigerator case or similar retail appliance. *Guidance: Specifies that meat, fish, produce trays, and egg cartons must be compostable or recyclable. Modify the language above to indicate whether only compostable packaging is accepted, or if recyclable packaging is also accepted. When considering whether to accept recyclable packaging, consider that the items listed in this Subsection may be more likely to include food residue and introduce contamination to the recycling.*
- c) No Person shall sell, offer for sale, or otherwise distribute (for compensation or otherwise) within the City any Packing Materials that are not Compostable or Recyclable.

- d) No Person shall use within the City any Packing Materials that are not Compostable or Recyclable. This includes using such materials to hold, cushion, or protect items to be packed in a container for shipping, transport, or storage, for compensation, where the packing takes place within the City. *Guidance: Void fill, packing peanuts, and other packing materials must be compostable or recyclable if packed in the City. See next Subsection for exceptions.*
- e) For purposes of this Section, distribution and use of Packing Materials shall not include:
 - 1) Receiving within the City shipments from outside the City that include Packing Material;
 - 2) Reusing Packing Materials within the City for shipping, transport, or storage within the same distribution system, where the Packing Materials are not sent to a customer or end user;
 - 3) Donating used Packing Materials within the City to another person, where the donor receives nothing of value in exchange for the donated Packing Materials; or
 - 4) Using Packing Materials donated under Subsection (e)(3) for shipping, transport, or storage, where the person using the Packing Materials receives nothing of value for the donated materials.

ENFORCEMENT

Section 15. Process to Obtain Waivers.

Guidance: Additional information on waivers is included in the Model Ordinance Toolkit.

- a) The City Manager or their designee shall prescribe and adopt rules, regulations, and forms to obtain full or partial waivers from any requirement of this Ordinance that is explicitly subject to waiver. Waivers may be granted based upon documentation provided by the applicant for the waiver and, at the City Manager's discretion, independent verification that may include site visits and documentation.
- b) To obtain a waiver, the applicant must demonstrate inability to comply due to factors specified in the provision authorizing the waiver.
- c) The City Manager or their designee shall issue a written decision to grant or deny a waiver for up to two years from the date of the decision. The written decision shall be final and is not subject to appeal. *Guidance: The City may choose to include an appeal process.*
- d) During the waiver term, the waiver recipient shall make diligent efforts to become compliant.
- e) In circumstances existing prior to *[specify date on or after adoption of this ordinance]*, where the waiver applicant demonstrates diligent efforts to comply but, due to insurmountable

space or economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a waiver for a longer specified term at the end of the initial waiver term, upon application from the waiver recipient for an additional waiver.

- f) Nothing in this Chapter shall be construed to limit the ability of the City Manager to suspend this ordinance in a state of emergency in accordance with applicable laws.

Section 16. Enforcement.

Guidance: The City may wish to adjust this provision to track its existing code enforcement process.

- a) Any Person may provide notice to the City of any observed lack of compliance with the requirements of this Chapter. The City shall provide a publicly available online option to provide such notice.
- b) Anyone violating or failing to comply with any requirement of this Chapter may be subject to an Administrative Citation pursuant to Chapter or charged with an infraction as set forth in Chapter of the City Municipal Code; however, no administrative citation may be issued, or infraction charged for violation of a requirement of this Chapter until one year after the effective date of such requirement. *Guidance: Note that this Section defers enforcement until one year after a particular requirement takes effect.*
- c) Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 15 of this Chapter (Process to Obtain Waivers).
- d) If, after issuing a written notice of noncompliance, the City finds that the person continues to violate the provisions of this Chapter, the City may impose a fine of not more than \$100 for a first violation; not more than \$200 for a second violation in the same 12-month period; and not more than \$500 for each subsequent violation in the same 12-month period.
- e) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- f) If continued violations occur, the City reserves the right to suspend the vendor's business license.
- g) The remedies and penalties provided in this Section are cumulative and not exclusive.

IMPLEMENTATION

Section 17. Severability.

If any provision of this Chapter is declared invalid or unconstitutional as applied by a court of competent jurisdiction, such decision shall not affect the remaining portions of the Chapter, which can be given effect without the invalid provisions or application. It is the intent of the City Council

that such invalid provision be severed from the remaining provisions of the ordinance.

Section 18. Chapter Supersedes Existing Laws and Regulations.

- a) The provisions of this Chapter shall supersede any conflicting law or regulations.
- b) This Chapter is intended to be a proper exercise of the City's police power and role as a market participant, to operate only upon its own officers, agents, employees, and facilities, and other persons acting within the City's boundaries. Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 19. California Environmental Quality Act.

This Chapter is exempt from the California Environmental Quality Act ("CEQA") pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(2) because it is exempt pursuant to a categorical exemption and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2. This Chapter is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources. In addition, this Chapter is subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the provisions of this Chapter would not have the potential for causing a significant effect on the environment. The foregoing determination is made by the City Council in its independent judgment.

1622709.1



DATE: March 22, 2023

TO: Waste Management Authority and Energy Council

FROM: Jennifer West, Program Manager

SUBJECT: Legislative Positions for 2023

SUMMARY:

On December 5, 2022, the California State Legislature convened and began the two-year 2023-24 legislative session. The Legislature introduced 2,634 bills for this session between both the Senate and Assembly. Legislative policy committees will begin to hear these new bills in late March and April. At the March 22, 2023, meeting, staff will present proposed bill positions for the WMA and Energy Council Boards to consider for adoption.

DISCUSSION:

At its January 2023 meeting, the Waste Management Authority adopted five legislative priorities for 2023:

1. Common sense adjustments to SB 1383 requirements
2. Decarbonization/electrification in the built environment to reduce reliance on carbon-intensive energy and materials in our communities
3. Circular economy solutions and plastic pollution prevention
4. Clear product information for consumers
5. Building healthy food systems

Working with Jason Schmelzer and Priscilla Quiroz of Shaw Yoder Antwih Schmelzer and Lange (our contract lobbyist in Sacramento), we are tracking and contributing input on priority bills throughout the legislative process.

Of the total 2,634 new bills introduced, hundreds are considered “spot bills,” containing no substantive change to an existing law or only expressing the “intent of the legislature” to enact legislation later. Spot bills must have amendments in the next month or they will not move through the legislative process until the following year.

Substantive bills will be referred to a policy committee(s) based on their subject matter. Policy committees hold bill hearings from late March until May 5, 2023. The bills with costs to the state must be heard by the appropriations committee, which could hold the bill if the state cost is deemed too significant, before heading to the floor for consideration by the full body. Bills must move out of their house of origin by June 2, and the bills that do, repeat the same process in the other house and must be passed to the Governor by September 14, 2023.

Costs to local governments are generally not known at this point in the session, as it is still early and financial analyses are completed later. Staff will address cost implications to local governments with more detail when we come back to the Board in May.

StopWaste bill positions:

Support	Support positions can range from signing joint support letters, submitting our own support letters, testifying in committees, and/or providing input on bill language
Watch, Support if Amended	Letters of support with recommended amendments; indicates that bill language and details are still evolving, and we will continue to watch and provide input and take a support/oppose position where appropriate
Oppose Unless Amended	Letters of opposition unless the measure includes recommended amendments to address concerns
Oppose	Opposition to bill

RELEVANT BILLS AND PROPOSED STOPWASTE BILL POSITIONS

Plastic Pollution Prevention:

[AB 1290 \(L. Rivas\) Product safety: plastic packaging: substances](#)

This bill eliminates several problematic forms of plastics that contaminate recycling or pose a risk to human health, by prohibiting the use of PVC, PVDC, PET-G, or pigmented PET packaging, as well as prohibiting the addition of PFAS, carbon black, and oxo-degradable additives in plastic packaging.

Agency position: Support

Support: Breast Cancer Prevention Partners, Californians Against Waste, Clean Water Action & Natural Resources Defense Council, National Stewardship Action Council

Opposition: None listed

Cost to local governments: Unknown at this time

[AB 1489 \(Wood\) Solid waste: plastic food service ware](#)

Exempts from the definition of “plastic” food service ware made from polyhydroxy butyrate (PHB) and naturally occurring polymers made by living organisms, including, but not limited to, alginate, beeswax, chitin, natural rubber, polysaccharides, polyhydroxy butyrate, and proteins.

Agency position: Watch

Support: Californians Against Waste

Opposition: None listed

Cost to local governments: Unknown at this time

[SB 414 \(Allen\) Drought-tolerant landscaping: local incentive programs: synthetic grass: artificial turf](#)

This bill would prohibit a city, including a charter city, county, city and county, or special district, from issuing a rebate, voucher, or other financial incentive for the use of synthetic grass or artificial turf that contains contaminants, including zinc, plastic, or perfluoroalkyl and polyfluoroalkyl substances (PFAS).

Agency position: Support

Support: National Stewardship Action Council, Environmental Working Group

Opposition: None listed

Cost to local governments: None

[SB 552 \(Newman\) Solid waste: single-use foodware accessory and single-use food packaging](#)

This bill requires food facilities to offer food and beverages on reusable foodware for those customers that dine in. This measure is intended to resemble the Berkeley ordinance and our model ordinance.

Agency position: Watch

Support: Californians Against Waste, Clean Seas Lobbying Coalition & Surfrider Foundation

Opposition: None listed

Cost to local governments: Unknown at this time

[SB 665 \(Allen\) Plastic Waste: single-use plastics alternatives: working group](#)

Establishes a working group to create a framework for evaluating new material types as they are developed to inform state policy decisions related to marketing, handling, and disposal of those products. The working group includes CalRecycle, Department of Toxic Substances Control, State Water Resources Control, and the Office of Environmental Health Hazard Assessment.

Agency position: Support if amended to include local government representatives in the working group.

Support: None listed

Opposition: None listed

Cost to local governments: None

Climate/Energy

[AB 43 \(Holden\) Greenhouse gas emissions: building materials: embodied carbon trading system](#)

This bill would require the State Air Resources Board to establish an embodied carbon trading system and would make it applicable to building materials providers, developers, architectural and engineering firms, and construction companies. The bill would require the state board to integrate the embodied carbon trading system into the framework on or before December 31, 2026, and to implement the system on and after January 1, 2029.

Agency position: Support

Support: None listed

Opposition: None listed

Cost to local governments: None

[AB 529 \(Gabriel\) Adaptive reuse projects](#)

This bill would add the expansion of adaptive reuse projects to the list of specified prohousing local policies. The measure would also require the California Building Standards Commission, in consultation with the Department of Housing and Community Development, to update, adopt, approve, codify, and publish building standards in the California Existing Building Code that revise and clarify fire, safety, health, structural, seismic, and environmental elements that apply to adaptive reuse projects.

Agency position: Support

Support: None listed

Opposition: None listed

Cost to local governments: Unknown at this time

[SB 511 \(Blakespear\) Greenhouse gas emissions inventories](#)

This bill would require the State Air Resources Board, before January 1, 2028, to develop and publish on its website a report on greenhouse gas emission inventories for the calendar year 2025 for each city, county, city and county, and special district. The bill would require the state board, consistent with the preparation of the updates to the scoping plan and before January 1, 2033, and every 5 years thereafter, to update the inventories for the subsequent calendar years. The bill would authorize the state board to solicit bids and enter into contracts for the development of the inventories.

Agency position: Support

Support: CivicWell (formerly Local Government Commission), Contra Costa County

Opposition: None listed

Cost to local governments: Unknown at this time

Extended Producer Responsibility (EPR)/Circular Economy

[AB 2 \(Ward\) Recycling: solar photovoltaic modules](#)

This bill states it is the intent of the Legislature to enact legislation that would create a convenient, safe, and environmentally sound system for the end-of-life management of photovoltaic modules, minimization of hazardous waste, and recovery of commercially valuable materials.

Agency position: Watch

Support: None listed

Opposition: None listed

Cost to local governments: Unknown at this time

[AB 863 \(Aguiar-Curry\) Carpet recycling: carpet stewardship organizations: fines: succession: procedure](#)

This bill provides additional accountability for carpet stewardship organizations that rely on consumer fees and increases civil penalties for violations of carpet stewardship. Further, this bill ensures that organizations that repeatedly violate carpet stewardships laws are ineligible to design, submit, or administer carpet stewardship plans.

Agency position: Support

Support: National Stewardship Action Council

Opposition: None listed

Cost to local governments: None

[SB 560 \(Laird\) Solid waste: extended producer responsibility](#)

States legislative intent to establish a framework for expended producer responsibility for the end-of-life management of covered gas cylinders.

Agency position: Support if amended for a more robust EPR program.

Support in Concept: California Product Stewardship Council

Opposition: None listed

Cost to local governments: None

[SB 707 \(Newman\) Responsible Textile Recovery Act of 2023](#)

Creates a Responsible Textile Recovery Act to require producers to establish a stewardship program for collection and recycling of apparel and textiles that are unsuitable for reuse by a consumer.

Agency position: Support

Support: California Product Stewardship Council, National Stewardship Action Council

Opposition: None listed

Cost to local governments: Unknown at this time

Organics/Composting

[AB 406 \(Connolly\) Agriculture: Healthy Soils Program: organic production](#)

This bill would authorize the Healthy Soils Program to include the funding of organic farming projects that further the goals of the program and require the department to establish the technical advisory committee if it elects to fund those projects. The bill would require the department to support and incentivize organic production by providing grants of up to 5 years to certified organic farmers and ranchers.

Agency position: Support

Support: None listed

Opposition: None listed

Cost to local governments: Unknown at this time

Other

[AB 57 \(Kalra\) California Pocket Forest Initiative](#)

This bill would establish the California Pocket Forest Initiative, a pilot program that would authorize CAL FIRE to provide demonstration grants for pocket forests to public and nonprofit entities. Pocket forests are small plots of urban land that have been densely planted with native plant species and offer communities access to healthy, self-sustaining natural green areas.

Agency position: Support

Support: ReLeaf, California Institute for Biodiversity

Opposition: None listed

Cost to local governments: None

[AB 660 \(Irwin\) Food labeling: quality dates, safety dates, and sell by dates](#)

This bill mandates streamlined expiration date labels on packaged foods. This measure also prohibits use of consumer-facing "Sell By" dates to reduce confusion stemming from labels intended for food retailers.

Agency position: Support

Support: Californians Against Waste, California Product Stewardship Council, National Stewardship Action Council

Opposition: None listed

Cost to local governments: Unknown at this time

[SB 244 \(Eggman\) Right to Repair Act](#)

Requires manufacturers of consumer electronics to provide replacement parts, diagnostic information, and service literature to consumers and third-party repair businesses.

Agency position: Support

Support: Californians Against Waste, CalPIRG, iFixit

Opposition: None listed

Cost to local governments: Unknown at this time

Next Steps/Key Dates

- April: Committee hearings.
- May: Board receives status update on bills and provides direction as appropriate. Governor's May revision of the budget is released.
- June: The state budget for 2023-24 must be passed.
- September: Deadline for bills to pass the Legislature.
- October: Deadline for Governor to sign or veto bills.
- November: Status update provided to Board after Governor takes action.

RECOMMENDATION

Staff recommend that the Boards adopt the stated positions on the bills listed above.



DATE: March 22, 2023

TO: Waste Management Authority and Energy Council

FROM: Candis Mary-Dauphin, Program Manager

SUBJECT: Update on StopWaste Equity and Empowerment Initiatives

SUMMARY

In 2020, the Board adopted a set of six long-term Aims that help guide the Agency’s direction and strategy, as well as its programmatic work and budget development. Among those aims is holding social and racial equity at the center of our work. To support staff in aligning with this Equity Aim, the Agency established an Equity and Empowerment team comprised of a diverse group of StopWaste staff working across a range of projects and focus areas. In February 2022, staff updated the Board on the efforts pursued and provided specific examples on how staff had applied an equity lens to project design and implementation in order to increase the reach and impact of the Agency’s work. Staff will present an update on how the aim is now being applied as well an introduction to an Agency Equity Plan currently underway.

For reference, a link to the Board-adopted Aims is available here:

<https://www.stopwaste.org/about-stopwaste/who-we-are/aims-and-guiding-principles>

DISCUSSION

Staff acknowledges that the foundation of equity work – establishing meaningful connections with previously under-engaged communities – is a long-term ongoing effort. To direct this ongoing work and develop consistency around the approach and the way the Agency measures progress, the Equity & Empowerment team is developing an Equity Plan. The purpose of this plan is to support the Agency in making the shifts needed to align our culture, structure and activities with the aim of, “hold(ing) social and racial equity at the center of our work.” The plan is intended to guide the Agency in continuously expanding its current field of vision in a way that authentically values and respects the wholeness of people and communities – both internally and externally, so that we can unlock previously unseen opportunities and increase the impact of our work.

At the March 22 meeting staff will provide an overview of the Equity Plan and discuss how it fits into the context of the Agency's vision of an Alameda County in which people thrive, are resilient, and are empowered to utilize materials and energy in ways that are good for the health of our communities, our local economy, and the planet. Staff will also provide an example of how the Agency's equity work led to the redesign of the Bay Area Regional Energy Network's Multifamily program incentive structure -which now allocates higher levels of funding for energy upgrades providing multiple benefits in communities experiencing high health, heat, and housing affordability burdens.

RECOMMENDATION

This item is for information only.

April 2023
Meetings Schedule

**Alameda County Waste Management Authority, the Energy Council, Source Reduction &
Recycling Board, and Programs and Administration Committee**
(Hybrid meetings are held at StopWaste Offices unless otherwise noted)

SUN	MON	TUES	WED	THURS	FRI	SAT
						1
2	3	4	5	6	7	8
9	10	11	12	13 9:00 A.M. Programs & Administration Committee Key Items: 1. Program evaluation – measuring and communicating StopWaste program impact <hr/> CANCELLED Planning Committee & Recycling Board (Joint Meeting w/WMA on 4/26)	14	15
16	17	18	19	20	21	22
23	24	25	26 3:00 P.M. Joint Meeting Waste Management Authority, Energy Council & Recycling Board Key Items: 1. FY 23-24 Budget presentation	27	28	29
30						

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Energy Council
TECHNICAL ADVISORY GROUP (TAG)
Tuesday, February 21, 2023 – 1:00 pm to 3:00 pm

Attendance:

County of Alameda: Emily Sadigh (phone), Ali Abbors (phone)
City of Albany: Lizzie Carrade, Michelle Plouse
City of Berkeley: Billi Romain, Sarah Moore (phone), Valerie Nguyen (Fellow)
City of Dublin: Shannan Young, Michelle Sung (phone), Anna Zamboanga (phone, Fellow)
City of Emeryville: Nancy Humphrey, Matt Anderson
City of Fremont: Rachel DiFranco (phone), Kranti Kapur (phone)
City of Hayward: Erik Pearson, Nicole Grucky, Hailey Meyer (phone, Fellow)
City of Newark: Jim Scanlin
City of Oakland: Shayna Hirshfield-Gold, Jeffrey Wong, Nick Kordesch
City of Piedmont: Alyssa Dykman, Sophie Roberts (Fellow)
City of Pleasanton: Megan Campbell (phone)
City of San Leandro: Hoi-Fei Mok
StopWaste: Jennifer West, Emily Alvarez, Chris Hunter, Miya Kitahara, Wes Sullens (phone), Heather Larson (phone), Robin Plutchok (phone), Angelina Vergara (phone), Kelly Schoonmaker (phone), Jeannie Pham (phone)
EBCE: Cait Cady, Alex DiGiorgio

Welcome and Intros

Funding Opportunities – Heather Larson, StopWaste

- Enabling federal legislation: IRA, Bipartisan Infrastructure Law, Consolidated Appropriations Act of 2023, and Justice 40 Initiative Executive Order (40% of funding, including energy & climate, go towards disadvantaged communities)
- Resources:
 - [CCEC EE Coordinator reference page](#)
 - LERN meetings bringing presenters on timely grants (also hosted by CCEC)
 - [DOE funding opportunity announcements](#)
 - Spreadsheet compiled by StopWaste which includes all funding opportunities
- StopWaste and BayREN participation:
 - [CERF grants](#): RMI led on submission for construction innovation cluster
 - DOE Resilient and Efficient Codes Implementation Grant Program: BayREN Codes partnering with CEC on 2 proposals, would like to find a few jurisdictions to test, if funded (maybe Berkeley, San Leandro, Oakland, Pleasanton)
 - Expansion of SolarAPP to also include HPWH, HP HVAC, EVs, and batteries
 - Expansion of Code Cycle to automate commercial lighting, mechanical systems, and other code pieces for non-residential applicants
 - IRA DOE Home Efficiency and Electrification Rebate Programs: RFI with comments due 3/3, BayREN and CCEC submitting comments, potential partner with 3C-REN
- IRA EPA Climate Pollution Reduction Grants
 - Planning (including CAP development or updates) has formula set-aside for states and municipalities, encourage coordination with state
 - Only \$67M nationally for all eligible municipalities (Councils of Governments, counties, cities), mostly for places where states won't do climate planning

- BAAQMD is reaching out to see if the state (CARB, OPR, or someone else) is the lead
- Guidelines will come out 3/1 with 30 days to submit NOI to apply, webinars on 3/2 and 3/7
- Have to receive a planning grant to be eligible for implementation funding, but if state has planning grant you can apply under that for implementation
 - Need to work with whoever leads in the region to make sure projects LGs want are included
- Angelina Vergara from SW Schools Team has partnered with TAG members over the years to implement CAPs by greening schoolyards and having climate integrated into curriculum
 - Planning grant due 4/14 from \$75k to \$3M and implementation \$500k to \$30M for cities, school districts, non-profits, and counties eligible for Green Schoolyards Grants
 - SW could offer technical support, including on compost procurement or tree planting
 - Urban Forestry Grants are no longer happening (federal funding may be available later)
 - Opportunity to coordinate on schools as resilience hubs

CALGreen Update – Wes Sullens & Miya Kitahara, StopWaste

- StopWaste has been advocating with the Building Standards Commission on upcoming changes to the building code
 - We are currently in an interim code cycle (which goes into effect July 2024), with draft language out for public comment
- Proposed code changes on residential EV charging, minor changes for non-residential charging
- Embodied Carbon proposal update:
 - Wanted to delay to next code cycle, but compromise was to apply it to larger buildings only where it is easier to implement and the market is ready (100k+ square feet for non-residential and 50k square feet for schools)
 - Allows for building reuse, whole building LCA, or prescriptive approach (environmental product declaration or EPDs)
 - StopWaste to provide letter template to cities, highlight sections in their CAPs, and this will need the approval of building department staff
 - Also will provide support for building department staff, including FAQ, and can do presentation and Q&A session
- Several jurisdictions would not be impacted with a 100k-square-foot threshold and may be interested in lowering the requirements to apply in their jurisdictions

Legislative Update – Jennifer West, StopWaste

- Legislative sessions runs from January (bills introduced) to October (deadline for Governor to sign)
- StopWaste Boards will weigh in on specific legislation, try to keep to 20 bills or so
 - Priorities: SB 1383 adjustments, decarbonization in the built environment, circular economy, clear product labeling/information, and food systems
- We work with many partners and coalitions, including ReScape, BDC, LGSEC, CA Product Stewardship Council, and more
- SB 54 - Plastics and Packaging (2022): all packaging must be compostable or recyclable by 2032
 - Will this take into consideration what compost producers will accept? SB 54 will establish a standard for what is compostable plastic, how it is labeled, and it must actually be composted – rates will be verified.
 - The law was passed in 2022, but the regulation and rulemaking will determine how it will be implemented, then manufacturers will have to adjust their products to comply

- Would be helpful to track how might this affect franchise agreements with haulers
- AB 2446 - Building Materials & Embodied Carbon (2022) measures and innovates on low-carbon construction materials
- AB 2 - Recycling solar panels is one bill we are tracking. For now it is an intent bill to create convenient and safe system for end-of-life management of solar panels

Announcements

- [Topic Brief](#) linked (induction cooking)
- BayREN dashboard is available on the SharePoint
- [CCEC Forum](#) in Santa Rosa 6/13-14 – let us know if there is interest in going or collaborating on a session
- There is a call on GHG inventories on 3/14