

ORDINANCE NO. XXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA AMENDING CALISTOGA MUNICIPAL CODE TITLE 8, HEALTH AND SAFETY, ADDING A NEW CHAPTER 8.17 REGULATING REUSABLE FOODWARE AND WASTE REDUCTION WITHIN THE CITY OF CALISTOGA**

**WHEREAS**, the Calistoga Green Committee at its regular June 14, 2022 meeting discussed and recommended the proposed municipal code amendments to the Calistoga City Council; and

**WHEREAS**, greenhouse gas emissions from plastics exacerbate climate change, jeopardizing our ability to keep the global temperature rise below 1.5°C<sup>1</sup>; and

**WHEREAS**, according to the EPA, in 2018 only 8.7 percent of plastics in the United States were recycled, which contributes to approximately 8 million tons of plastic that end up in the oceans annually<sup>2</sup>, and

**WHEREAS**, without action, scientists estimate that by 2050 the mass of plastic pollution in the ocean will exceed the mass of fish<sup>3</sup>; and

**WHEREAS**, food and beverage packaging comprises approximately one-quarter of California's disposed waste stream annually<sup>4</sup>; and

**WHEREAS**, products made from lightweight plastic materials such as expanded polystyrene foam are not biodegradable, returnable, or recyclable, and easily break up into smaller pieces and, because it is lightweight, may be carried by the wind even when it has been disposed of properly; and

**WHEREAS**, eliminating the use of polystyrene foam and other non-compostable and non-recyclable items will extend the operating life of our landfills and will lessen the economic and environmental costs of waste management for both businesses and citizens; and

**WHEREAS**, disposable plastic bottles have significant environmental impacts including littering waterways and streets, generating greenhouse gasses, harming wildlife, increasing solid waste generation and water consumption during manufacturing; and

**WHEREAS**, the production, consumption, end-use, and disposal associated with disposable foodware, typically used for only a few minutes before being discarded, have significant environmental impacts, including environmental contamination, consumption of precious resources, emissions of greenhouse gases, air and water pollution, litter on streets, harm to wildlife, and plastic pollution in waterways and oceans; and

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<sup>1</sup> <https://www.ciel.org/reports/plastic-health-the-hidden-costs-of-a-plastic-planet-may-2019/>

<sup>2</sup> [http://www3.weforum.org/docs/WEF\\_The\\_New\\_Plastics\\_Economy.pdf](http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf)

<sup>3</sup> *Id.*

<sup>4</sup> <https://www2.calrecycle.ca.gov/PublicNotices/Documents/8345>

**WHEREAS**, the most effective ways to reduce the negative environmental impacts of disposable foodware include, in order of priority, using reusable foodware, and using natural fiber-based compostable materials; and

**WHEREAS**, compostable products use natural resources such as water, paper, and energy in their production, transportation, use and end of life, and offer superior alternatives to non-compostable and non-recyclable products currently used for disposable foodware; and

**WHEREAS**, the City of Calistoga is committed to combating climate change and to its duty to protect the natural environment, the local economy, and the health of its citizens; and

**WHEREAS**, the limitations proposed on the use of disposable foodware, specifically by food vendors and food providers, are in furtherance of the Goals of the Calistoga Climate Action Plan and the Calistoga General Plan; and

**WHEREAS**, the City of Calistoga has adopted a goal of net-zero carbon emissions by 2030 and this action would be in furtherance of that goal; and

**WHEREAS**, the proposed Ordinance would be in furtherance of Council Goal 6: Create an environmentally sustainable community; and

**WHEREAS**, in October 2021, the State of California passed Assembly Bill 1276 prohibiting a food facility from providing any single use foodware accessory or standard condiment, as defined, to a consumer unless requested by the consumer, and requiring cities to authorize enforcement of the requirements of the bill on or before June 1, 2022; and

**WHEREAS**, this ordinance would incorporate the language required under Assembly Bill 1276; and

**WHEREAS**, during its review, the City Council considered the public record, including the staff report, findings, and any written materials and testimony presented by the public during the hearing.

**NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION ONE**

Findings: The above recitals are incorporated herein as if set forth herein in full and each is relied upon independently by the City Council for its adoption of this Ordinance.

**SECTION TWO**

Code Amendment: Chapter 8.17 of Title 8, "Health and Safety" of the Calistoga Municipal Code is hereby added in its entirety as set forth in the attached Exhibit "A".

**SECTION THREE**

Environmental Review. The City Council has considered all of the evidence in the record, including the staff reports, public petition, and Green Committee advice, and hereby determines that this Ordinance is exempt from review under the California Environmental Quality Act (CEQA). Pursuant to Section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect on the environment. This Ordinance will not result in a significant foreseeable environmental impact.

**SECTION FOUR**

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

**SECTION FIVE**

Effective Date. This Ordinance shall take effect one (1) year from the date this Ordinance is adopted by the City Council, shall be published in accordance with the law, in a newspaper of general circulation published and circulated in the City of Calistoga.

**SECTION SIX**

Publication. The City Clerk is directed to cause this Ordinance to be published in the manner required by law.

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City Council meeting on the ## day of Month 2022, and was passed and adopted at a regular meeting of the Calistoga City Council on the ## day of Month 2022, by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Marni Rittburg, CMC, City Clerk**

\_\_\_\_\_  
**Chris Canning, Mayor**

**Dated:**\_\_\_\_\_

## Exhibit "A"

### Chapter 8.17 REUSABLE FOODWARE AND WASTE REDUCTION

#### 8.17.010 Purpose.

It is the intent of the City of Calistoga in enacting Chapter 8.17 to eliminate the use of Polystyrene Foodware and single use plastic Foodware items and to require the use of Reusable, or Compostable, food containers by Food Providers and Customers in Calistoga. Additionally, it is the intent of this Chapter to comply with the requirements of California Assembly Bill 1276 (2021) and to require single use Foodware Accessories and Condiments packaged for single use to be provided only if requested by a Consumer.

#### 8.17.020 Definitions.

For purposes of this chapter, the terms in this section shall have the following meaning:

A. "BPI Certified" means those Compostable fiber Foodware products that have been certified by the Biodegradable Products Institute (BPI) to safely and readily biodegrade in an industrial composting facility in the typical processing time. As of January 1, 2020, BPI ensures all certified products are fluorinated chemical free.

B. "City" means the City of Calistoga.

C. "City Facilities" means any building, structure, or vehicle owned or operated by the City, its agencies and departments, and the integrated waste franchisees that are located or operated within the City or by City contracted collection program(s).

D. "City Manager" means the City Manager of the City of Calistoga, or the City Manager's designee.

E. "Compostable" means that (1) all materials in a product, item, or packaging will break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner, as defined by City contracted collection program(s), (2) item is certified by either BPI Certified, or other third-party product certification recognized by the City, to ensure that the item is free of harmful chemicals, including but not limited to fluorinated chemicals that may have been used in Foodware manufacture, and (3) item is made entirely of Natural Fiber as defined in this chapter.

1. "Compostable" includes entirely Natural Fiber-based items except as otherwise specified in this chapter.
2. "Compostable" includes Disposable Foodware utensils made from bamboo,

birchwood, and other Natural Fiber material except as excluded in this chapter.

3. Currently “Compostable” shall not include Disposable Foodware utensils made from corn or potato.
4. “Compostable” shall not include items composed wholly or partially of plastic of any kind, including any form of Polylactic Acid (PLA), and/or plastic labeled “biodegradable” or “Compostable,” as these are not biodegradable by City contracted collection program(s).
5. “Compostable” shall not include lined or coated takeout coffee or other hot drink cups as they are currently not Compostable by City contracted collection program(s).

F. “Customer” means any Person obtaining Prepared Food from a Food Provider for on or off-site consumption.

G. “Disposable” means designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple reuse.

H. “Disposable Cup” or “Non-Reusable Cup” means a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks, and alcoholic beverages.

I. “Event Promoter” means an applicant for any special event permit issued by the City pursuant to Calistoga Municipal Code Chapter 5.18.

J. “Foodware” means all containers, coolers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, utensils (forks, spoons, sporks, knives, chopsticks, etc.) napkins, condiment cups and packets, cocktail picks, toothpicks (and the packaging that these individual items are wrapped in, if any), cup sleeves, tops, and spill plugs. The term “Foodware” includes Foodware Accessories”.

K. “Food Provider” means any Food Vendor or Food Service Establishment.

L. “Food Service Establishment” means any Store, shop, sales outlet, restaurant, or other establishments, other than a restaurant, including but not limited to a grocery store, delicatessen, bakery, vehicle or mobile unit-based Vendor, drive-in, coffee shop, cafeteria, short-order cafe, luncheonette, grill, sandwich shop, hotel, motel, movie house, theater, bed and breakfast inn, tavern, bar, cocktail lounge, tasting room, nightclub, roadside stand, Takeout Food place, industrial feeding establishment, catering kitchen, commissary, special event, food market, produce stand, food stand, or similar place in which food or drink is prepared for sale, or for

service on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served or provided to Customers and that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5, commencing with Section 7200, of Division 2 of the California Revenue and Taxation Code).

M. "Food Vendor" means any restaurant, Vendor, business, non-profit, organization, entity, group, or Person that provides Prepared Food for retail, including a Food Service Establishment. Food Vendor includes all operations that carry a food permit from the Napa County Department of Environmental Health.

N. "Foodware Accessory" means Disposable Foodware items often provided with Prepared Food, including but not limited to knives, forks, spoons, sporks, chopsticks, napkins, cup sleeves, food wrappers, beverage trays, food wrappers, condiment containers, straws, stirrers, splash sticks, cocktail sticks, toothpicks, tray-liners, and plate-liners.

O. "Natural Fiber" means plant or animal-based, non-synthetic fiber that is Compostable, including but not limited to products made from uncoated paper, sugarcane, bamboo, wheat stems/stalk, hay, wood, etc. Natural Fiber shall not include items composed wholly or partially of plastic of any kind.

P. "On-Premises" means Customers who consume food or beverages on the property of a Food Provider.

Q. "Off-Premises" means Customers who do not consume food or beverages on the property of a Food Provider but takes the food elsewhere to consume (e.g. take-out, carry-away, left-overs, etc.).

R. "On Request" means at the request of a Customer.

S. "Person" means and includes a natural Person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity.

T. "Plastic Bottle" means a plastic container that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure, and has a capacity of sixteen fluid ounces or more, but less than five gallons, intended primarily as a single-service container.

U. "Polystyrene" means a thermoplastic petrochemical material utilizing a styrene monomer and processed by various techniques such as fusion of polymer spheres ("expandable bead Polystyrene"), injection molding, form molding, and extrusion blow molding ("extruded foam Polystyrene"), blown Polystyrene and expanded and

extruded foams (sometimes incorrectly called Styrofoam, a Dow Chemical Company trademarked form of Polystyrene foam insulation). Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons, and coolers.

V. "Prepared Food" means food or beverages that undergo a cooking or food preparation technique for consumption On-Premises or Off-Premises of a Food Establishment. Prepared Food shall not include raw, butchered meats, fish, and/or poultry sold from a butcher case or similar retail appliance.

W. "Recyclable" means material that can be sorted, cleaned, and reconstituted by City contracted collection program(s) for the purpose of using the altered form in the manufacturing of a new product.

1. "Recyclable" shall include glass bottles and jars, aluminum/tin/bimetal cans, bottles and trays, unlined paper products that are free of oils and/or food, and cardboard that is not coated.
2. Currently "Recyclable" includes plastic items with a Recycling code of 1 and/or 2 only.
3. "Recyclable" and/or "Recycling" shall not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
4. "Recyclable" shall not include items that are composed wholly or partially of Polylactic Acid (PLA).
5. "Recyclable" shall not include lined or coated takeout coffee or other hot drink cups as they are currently not Recyclable by City contracted collection program(s).

X. "Reusable Foodware" means all Foodware specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time and is safe for washing and sanitizing according to applicable regulations.

EE. "Store" means any of the following retail establishments located within the geographical limits of the City that meets the following requirements:

1. "Supermarket" means a full-line, self-service Retail Store with gross annual sales of two million dollars (\$2,000,000) or more, and which sells a line of dry grocery, canned goods, or nonfood items, and some perishable items.

2. "Retail Store" means a Store with retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5, commencing with Section 7200, of Division 2 of the Revenue and Taxation Code).

3. "Convenience Food Store" means any entity engaged in the retail sale of a limited line of goods that includes milk, bread, sodas, and snack foods including those Stores with a Type 20 or 21 licenses issued by the California Department of Alcoholic Beverage Control. (Ord. 1434, eff. 1/3/2014; Ord. 1440, eff. 6/19/2015. Formerly 5477).

FF. "Takeout Food" means food or beverages requiring no further preparation to be consumed and which generally are purchased to be consumed off the premises of the retail Food Vendor.

GG. "Vendor" means any Store or business which sells or offers for sale goods or merchandise, located or operating within the City, including "Food Providers."

#### 8.17.30 Foodware Standards.

##### A. On-Premises.

1. Food Providers, providing food and beverages consumed On-Premises shall provide only Reusable Foodware, except as exempted in this chapter.
2. Food Providers may provide Disposable Foodware Accessories which are made of Natural Fibers, including napkins, food wrappers, straws, stirrers, toothpicks, cocktail sticks, tray liners, and plate liners, for food and beverages consumed On-Premises, except as exempted in this chapter.
3. Food Providers shall offer condiments in reusable containers or dispensers rather than pre-packaged, single-use condiment packets for condiments consumed On-Premises and for self-serve stations, except as exempted in this chapter.

##### B. Off-Premises.

1. Food Providers shall provide Reusable Foodware or Disposable Foodware made of Natural Fibers for food and beverages consumed Off-Premises, except as exempted in this chapter.
2. Food Providers for delivery, Takeout, or curbside pickup shall provide Disposable Foodware Accessories, which are made from Natural Fibers, and single-use condiments only On Request or at self-serve stations for food and beverages consumed Off-Premises. A Food Provider for delivery service may



include lids, spill plugs, and sleeves without request for Disposable/Non-Reusable Cups as necessary for safe transport.

3. Food Providers shall provide convenient opportunities for Customers to affirmatively request Foodware Accessories across all ordering/point of sale platforms, including but not limited to web, smartphone, and other digital platforms, telephone, and in-person.
4. Food Providers shall only provide food bags that are customer-provided, paper, or Compostable.
5. Food Providers may use single-use plastic bags only for liquid food items, such as soup or other liquids, where there is a clear need to prevent leakage.
6. Food Providers shall provide plastic straws upon Customer request only as required to accommodate Persons with medical or other special or access needs.

C. Customer-provided reusable cups and other Foodware.

1. Customers are encouraged to use their own reusable cups for takeout drinks.
2. At their discretion, Food Providers may offer a discount to Customers who bring a reusable cup or other Foodware for Off-Premises consumption in accordance with the California Retail Food Code Section 114121 (a).

D. Polystyrene Disposable Foodware – Prohibited use and sale.

1. Food Providers are prohibited from providing Prepared Food to Customers in Polystyrene Foodware, except as exempted in this chapter.
2. Polystyrene Foodware shall not be sold, used, or provided by any Vendor or Event Promoter in the City, except containers that are wholly encapsulated or encased within a more durable material, such as Polystyrene-insulated reusable coolers, except as exempted in this chapter.

8.17.40 Record Keeping and Inspection.

- A. Food Providers shall keep complete and accurate record or documents of the below items.
  1. Commencing on the effective date of this Ordinance, Food Providers shall keep complete and accurate records or documents of the purchase of the acceptable Disposable Foodware evidencing compliance with this chapter

for a minimum period of three (3) years from the date of purchase.

2. The records shall be made available for inspection at no cost to the City Enforcement officials or representatives designated by the City during regular business hours. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be made available at the Food Providers address.
  3. The provision of false or incomplete information, records, or documents to the City Enforcement officials or representatives designated by the City shall be a violation of this chapter.
- B. City Enforcement officials or representatives designated by the City are authorized to conduct inspections and investigations of Foodware usage in any portion of the Food Provider's premises to confirm compliance with this chapter by Food Providers, subject to applicable laws. Such inspections and investigations may include confirmation of proper Foodware usage or other requirements of this chapter described herein.
1. Any records obtained by the City and/or its designee during its inspections and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

#### 8.17.50 Exemptions.

- A. The following items or activities are exempt from the Disposable Foodware provisions set forth in this chapter:
1. Disposable Foodware composed entirely of aluminum or glass and is Recyclable.
  2. Pre-packaged food that arrives at the premises of the Food Service Establishment in a container or wrapper and is not removed from the container or wrapper before its sale or distribution.
  3. Repackaging of bulk food items in plastic bags for preservation and delivery purposes by government or charitable food distribution centers, such as food banks.
  4. Where suitable Compostable Foodware products that comply with the provisions of this chapter are unavailable, as in the examples provided, Vendors shall use Recyclable products if available. This exemption shall apply, (1) when needed to comply with State or County health code

regulations, such as regulations requiring specified temperature be maintained for hot-table display, and (2) when no Compostable product is available that protects public health and safety such as the packaging of butchered meats, fish, and/or poultry sold from a butcher case or similar retail appliance as described in Section 8.17.020.BB, and (3) when the use of Composable products would be inappropriate for deli or grocery items such as sushi, salads, and cakes, requiring display packaging, Recyclable products shall be utilized unless no such product is available.

5. Bulk Disposable Foodware items sold by Vendors, excluding Bulk Disposable Foodware products made of Polystyrene.
- B. The following items or activities are exempt from the Polystyrene prohibitions set forth in this chapter:
1. Pre-packaged food that arrives at the premises of the Food Provider in a container or wrapper and is not removed from the container or wrapper before its sale or distribution (e.g., ramen noodles in a Polystyrene cup or pre-packaged dried fruit or vegetables sold at a grocery Store.)
  2. Polystyrene used at City Facilities, by City franchisees, contractors, and any Vendors doing business with the City in situations deemed by the City Manager or their designee to be an emergency and procuring and distributing emergency supplies and services for the immediate preservation of the public health, safety, and welfare.
  3. Medical supplies and services.
  4. Products made from Polystyrene that are wholly encapsulated or encased by more durable material. Examples include surfboards, boats, life preservers, craft supplies, coolers, and ice chests which are wholly encapsulated or encased by more durable material.
  5. Construction products made from Polystyrene if the products are used in compliance with the City Code concerned with stormwater management and used in a manner that prevents the Polystyrene from being released into the environment.
- C. The provisions set forth in this chapter shall not apply during periods of declared emergencies (i.e., fire, earthquake, flood, etc.).
- D. The provisions set forth in this chapter do not apply to a Special Event for which the Event Promotor submitted a complete application for review, or received approval, prior to the effective date of this Ordinance. Special Event

applications submitted after the effective date of this Ordinance however do require compliance with this chapter.

8.17.60 Administration, enforcement, and penalties.

- A. The City Manager or their designee shall have primary responsibility for the enforcement of this chapter. The City Manager or their designee is authorized to establish regulations and to take any and all action reasonable and necessary to obtain compliance including, but not limited to, inspecting the premises of any Food Provider to verify compliance.
- B. Any Person who violates any provision of this chapter shall be considered guilty of an infraction for each offense and subject to those penalties as established by Resolution of the City Council.
- C. In addition to any other remedy available, any violation of this chapter by any Person is subject to the following administrative fines pursuant to California Government Code Section 53069.4, and Chapter 1.08 (a) of this code in the amount not exceeding \$100.00 for a first violation; a fine not exceeding \$200.00 for a second violation of the same code section within one year; or a fine not exceeding \$500.00 for each additional violation of the same code section within one year.
- D. The City of Calistoga may seek legal, injunctive, or other equitable relief to enforce this chapter.
- E. The remedies and penalties provided in this chapter are cumulative and not exhaustive, and nothing set forth in this chapter shall preclude the City from pursuing any other remedy provided by law.