

## ORDINANCE NO. 759

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA AMENDING CALISTOGA MUNICIPAL CODE ADDING A NEW CHAPTER 8.17 REGULATING REUSABLE FOODWARE AND WASTE REDUCTION WITHIN THE CITY OF CALISTOGA, AND REVISING CHAPTERS 8.16 GARBAGE AND REFUSE AND 19.12 SINGLE-USE CARRYOUT BAG REDUCTION

**WHEREAS**, the City Council at its regular January 17, 2023, meeting discussed the proposed municipal code amendments and directed staff to commence adoption proceedings; and

**WHEREAS**, the Calistoga Green Committee at its regular November 8, 2022, meeting discussed and recommended the proposed municipal code amendments to the Calistoga City Council; 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 Amendments: Chapters 8.16 and 8.17 of Title 8, "Health and Safety" and Chapter 19.12 of Title 19 "Environmental Protection" of the Calistoga Municipal Code are hereby amended 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 on March 20, 2024 (one 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 21<sup>st</sup> day of February 2023, and was passed and adopted at a regular meeting of the Calistoga City Council on the 21<sup>st</sup> day of March 2023, by the following vote:

**AYES:** Councilmembers Cooper, Eisenberg, and Gift, Vice Mayor Lopez-Ortega and Mayor Williams

**NOES:** None

**ABSTAIN:** None

**ABSENT:** None

**ATTEST:**

  
Marni Rittburg, CMC, City Clerk

**APPROVED:**

  
Donald Williams, Mayor

Dated: 3/24/23

## Exhibit "A"

### Amendments to Chapters 8.16 and 8.17 of Title 8, "Health and Safety" and Chapter 19.12 of Title 19, "Environmental Protection" of the Calistoga Municipal Code

#### CHAPTER 8.16 GARBAGE AND REFUSE

##### 8.16.010 Definitions.

- A. "City" means the City of Calistoga.
- B. "City Contracted Collection Program(s)" means person, business or entity contracted by City to collect, process, recycle, compost and/or dispose of waste.
- C. "Commercial and business establishments" shall mean and include all hotels, motor courts, restaurants, offices or office buildings, stores, warehouses, factories and all other premises used for other than dwelling purposes.
- D. "Compostable" means (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 the Contractor, (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. Currently "Compostable" shall not include products made from corn or potato.
  - 3. "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 the Contractor.
  - 4. "Compostable" shall not include lined or coated takeout coffee or other hot drink cups as they are currently not Compostable by the Contractor.
- E. "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.

- F. “Recyclable” means material that can be sorted, cleaned, and reconstituted by the Contractor for the purpose of using the altered form in the manufacturing of a new product.
1. “Recyclable” and/or “Recycling” shall not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
  2. Currently “Recyclable” includes plastic items with a Recycling code of 1 and/or 2 only.
  3. “Recyclable” shall not include items that are composed wholly or partially of Polylactic Acid (PLA).
  4. “Recyclable” shall not include lined or coated takeout coffee or other hot drink cups as they are currently not Recyclable by the Contractor.
  5. “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.

8.16.080 Provision for receptacles.

- A. All Commercial and business establishments who provide waste containers for customer use must provide separate receptacles for solid waste (non-recyclable or non-compostable/organic materials), Recyclables, and organic waste (Compostables). Receptacles shall be colored black or grey for non-recyclable or non-compostable/organic materials, blue for Recyclables, and green for Compostables/organics or Rubbish.
- B. To the extent possible given space restraints, solid waste, Recyclable, and compost receptacles should be placed adjacent to one another.
- C. Graphic-rich signage must be posted on or above each solid waste, recyclable, and compost receptacle following norms/guidelines of the City and/or City contracted collection program(s).

**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. "City Contracted Collection Program(s)" means person, business or entity contracted by City to collect, process, recycle, compost and/or dispose of waste.
- F. "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 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).
- G. "Customer" means any Person obtaining Prepared Food from a Food Provider for on or off-site consumption.
- H. "Disposable" means designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple reuse.
- I. "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.
- J. "Event Promoter" means an applicant for any special event permit issued by the City pursuant to Calistoga Municipal Code Chapter 5.18.
- K. "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".
- L. "Food Provider" means any Food Vendor or Food Service Establishment.
- M. "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, drive-thru, 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, farmers 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).

- N. "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.
- O. "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.
- P. "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.
- Q. "On-Premises" means Customers consume food or beverages on the property of a Food Provider, or are served at outdoor seating by Food Provider staff.
- R. "Off-Premises" means Customers do not consume food or beverages on the property of a Food Provider but are purchased to be consumed elsewhere (e.g., Takeout, carry-away, left-overs, etc.).
- S. "On Request" means at the request of a Customer.
- T. "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.
- U. "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.
- V. "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 trademarked form of Polystyrene foam insulation). Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons, and coolers.
- W. "Prepared Food" means food or beverages that undergo a cooking, assembly,

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 counter, a butcher case or similar retail appliance.

- X. "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).
- Y. "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.
- Z. "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).

AA. "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.

BB. "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 Compostable, 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 which are Compostable, 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 Compostable, 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/or other digital platforms, telephone, and in-person.

4. Food Providers shall only provide food bags that are paper or Compostable except as exempted in this chapter.
  5. Food Providers may use single-use plastic bags only for liquid food items, such as soup, drinks, foods with liquid sauces, etc. where there is a clear need to prevent leakage, or when leakage from melting/defrosting frozen item(s) is likely.
  6. Food Providers shall permit use of Customer-provided bags for takeout orders except as exempted in this chapter.
  7. For Takeout food orders, Food Providers may, at their sole discretion, deny use of any customer-provided bag or container that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended food item, or that appears to be excessively soiled or unsanitary.
  8. Food providers may deny use of Customer-provided bag(s), and instead provide compliant bags for Takeout food orders during high-traffic periods when waiting for customer to bring customer-provided bag would interfere with timely pre-packaging orders.
  9. 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 (e.g., styrofoam cups, styrofoam coolers, etc.).

#### 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.
  5. When needed to comply with State or County health code regulations, such as regulations requiring specified temperature be maintained for hot-table display; and 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 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.
  6. 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 meat in Polystyrene trays 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.

### **CHAPTER 19.12 SINGLE-USE PLASTIC BAG REDUCTION**

#### 19.12.010 Purposes.

The purposes of this chapter are to reduce waste and pollution and protect the environment by minimizing the distribution of single-use plastic bags.

#### 19.12.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

- A. "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 except as otherwise specified in this chapter.
1. "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).
  2. "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).
- B. "Designated business" means (1) any store, shop, sales outlet, tasting room, farmers market, and any other establishments that hold a Type 20 or Type 21 off-sale alcoholic beverage sales license; and (2) any restaurant, grocery store, coffee shop, hotel, motel, bed and breakfast inn, roadside stand, Takeout food vendor, caterer, theater, and any other establishment not mentioned above that serves or provides a product to customers and that generate 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) unless exempted in this chapter.
- C. "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.
- D. "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.
- E. "Pre-checkout bag" or "Produce bag" means a Recyclable or Compostable paper bag, or Compostable bag made from plant-based biodegradable polymers (e.g., BioBag) provided or sold to a customer to carry produce, bulk food, or other food items to the point of sale inside a store. Pre-checkout bag shall not include items composed wholly or partially of plastic of any kind, except as exempted in this chapter.

- F. "Post-consumer recycled material" means material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Post-consumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- G. "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.
- H. "Recyclable paper bag" means a paper bag that contains no old growth fiber and a minimum of 40 percent Post-consumer recycled material, is accepted for curbside recycling in Calistoga, and has printed on the outside of the bag the word "Recyclable," the name and location of the manufacturer, and the percentage of Post-consumer recycled content.
- I. "Reusable carry-out bag" means a bag that meets all of the following criteria and any additional requirements established by the State of California:
1. Is at least 2.25 mils (thousandths of an inch) thick.
  2. Has one or more handles.
  3. Has a minimum lifetime capability of 125 or more uses carrying 22 or more pounds over a distance of at least 175 feet.
  4. Is at least 15 liters in volume.
  5. Is machine washable or made from a material that can be cleaned and disinfected.
  6. Meets the standards of the California Toxics in Packaging Prevention Act, as amended, or any successor legislation.
  7. Is not made of plastic film, regardless of thickness.
- J. "Single-use carry-out bag" means a bag provided to a customer at a checkout stand, cash register, point of sale or other point of departure for the purpose of transporting merchandise out of the establishment; provided, that "Single-use carry-out bag" specifically excludes:
1. Reusable carry-out bags
  2. Recyclable paper bags

3. Compostable paper bags or Compostable bags made from plant-based biodegradable polymers (e.g., BioBag).
4. Customer-provided bags.
5. Pre-check-out or Produce bags.

19.12.030 Single-use carry-out bags prohibited.

- A. No Designated business shall provide a Single-use carry-out bag to a customer except as exempted in this chapter. Designated businesses are encouraged to voluntarily begin compliance with this chapter prior to the effective date of this ordinance.
- B. The following items or activities are exempted from the provisions set forth in this chapter:
  1. Government or charitable food distribution centers, such as food banks that repackaging bulk food items in plastic bags for preservation and delivery.
  2. When no compliant product is available that protects public health and safety such as the packaging of butchered meats, fish, and/or poultry sold from a butcher counter, butcher case or similar retail appliance.
  3. 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.
  4. Designated businesses may provide Single-use carry-out plastic bags for liquid food items, such as soup, drinks, foods with liquid sauces, etc. where there is a clear need to prevent leakage, or when leakage from melting/defrosting frozen item(s) is likely.
  5. Nothing in this chapter shall prevent Designated businesses from selling bulk plastic bags for food storage, trash, pet waste, etc.
  6. Nothing in this chapter shall prevent Designated businesses from selling compliant Reusable carry-out bags not provided as part of checkout.

19.12.040 Customer-provided carry-out bags.

- A. Nothing in this chapter shall prohibit customers from using their own bags or containers of any type for the transport of merchandise from a Designated business, including transport of Takeout food and restaurant leftovers except as exempted in this chapter.



- B. Designated businesses shall not require a customer to purchase or accept a carry-out bag of any kind, including compliant bags, as a condition of sale, with the following exceptions.
  - 1. Designated businesses may deny use of customer-provided bags or containers for Takeout food orders during high-traffic periods when doing so will interfere with timely provision of pre-packaging for pre-orders and curbside orders.
  - 2. Designated businesses may refuse, at their sole discretion, any customer-provided bag or container that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended food item, or that appears to be excessively soiled or unsanitary.

19.12.050 Recyclable and Compostable carry-out bag charge.

- A. Except as provided in subsection (C) below, no Designated business shall provide a Compostable or Recyclable paper bag to a customer for the purpose of transporting merchandise out of the establishment unless:
  - 1. The Designated business charges the customer a minimum amount of \$0.25 per bag or other amount set by Resolution of the City Council; and
  - 2. The amount of the charge for each Recycled paper bag is separately itemized on the sales receipt provided by the establishment to the customer.
- B. Designated businesses may not rebate or otherwise reimburse a customer any portion of the charge required for an allowable carry-out bag.
- C. Designated businesses may provide Reusable carry-out bags, Recyclable paper bags, or Compostable bags at no cost to a customer who is participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code, or a customer who is participating in the Supplemental Food Program pursuant to Chapter 10 of Part 3 of Division 9 of the Welfare and Institutions Code.

19.12.060 Recyclable/Compostable Pre-check-out/Produce bag.

- A. Pre-checkout/Produce bags provided by a Designated businesses shall be Composable or Recyclable as defined in this chapter.
- B. No Designated business shall provide non-compliant Pre-checkout bags to a customer except as exempted in this chapter. Designated businesses are encouraged to voluntarily begin compliance with this chapter prior to the effective date of this ordinance.

- C. The following items or activities are exempted from the provisions set forth in this chapter:
1. Government or charitable food distribution centers, such as food banks that repackaging bulk food items in plastic bags for preservation and delivery.
  2. When no compliant product is available that protects public health and safety such as the packaging of butchered meats, fish, and/or poultry sold from a butcher counter, butcher case or similar retail appliance.
  3. 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.
  4. Designated businesses may provide single-use plastic bags for liquid food items, such as soup, drinks, foods with liquid sauces, etc. where there is a clear need to prevent leakage, or when leakage from melting/defrosting frozen item(s) is likely.
  5. Nothing in this chapter shall prevent Designated businesses from selling bulk plastic bags for food storage, trash, pet waste, etc.

19.12.060 Administration, enforcement, and penalties.

- A. The City Manager or 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 Designated business 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.