

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF NAPA COUNTY,  
STATE OF CALIFORNIA AMENDING VARIOUS SECTIONS OF CHAPTER  
5.70, SINGLE-USE PLASTIC CARRYOUT BAG REDUCTION, AND  
ADDING A NEW CHAPTER 5.80, RESUABLE FOODWARE AND WASTE  
REDUCTION TO EXPAND THE PROGRAM TO REDUCE POLLUTION  
FROM SINGLE-USE PLASTICS AND OTHER MATERIALS**

**WHEREAS**, plastic waste pollutes natural ecosystems - like oceans, lakes, rivers, and landscapes - on a global scale and the plastics and microplastics in the environment will likely circulate indefinitely; and

**WHEREAS**, in addition to environmental pollution, plastic production and disposal emits greenhouse gases at every stage of its life cycle - from extraction and transportation of fossil fuels for plastic production to plastic refinement to recycling and disposal of plastics; and

**WHEREAS**, plastic pollution is a growing threat to human health due to the toxic chemicals used to produce plastic. Health threats including increased risk of cancers, lung disease, birth defects, altering of hormone activity, reproductive and growth issues, cognitive function and the spreading of pathogens.

**WHEREAS**, the California Legislature passed the California Global Warming Solutions Act of 2006 (AB 32), which created a comprehensive, multi-year program to reduce greenhouse gas emissions in California including emissions from Recycling and Waste sources; and

**WHEREAS**, Mandatory Commercial Recycling was one of the measures adopted in the AB 32 Scoping Plan by the Air Resources Board (ARB) pursuant to the California Global Warming Solutions Act in January of 2012; and

**WHEREAS**, on June 7, 2022, the Napa County Board of Supervisors adopted a Resolution acknowledging that a climate emergency exists and it threatens our county, region, state, nation, and the natural world; and

**WHEREAS**, plastic pollution can alter habitats and natural processes, reducing ecosystems' ability to adapt to climate change, directly affecting millions of people's livelihoods, food production capabilities and social well-being; and

**WHEREAS**, while recycling is one strategy for processing plastic and other materials that are already in circulation, general scientific consensus is that prevention is the best, and only real, answer for solid waste pollution.

**WHEREAS**, the Board of Supervisors desires to adopt regulations to eliminate the use of single-use plastic bags and single-use plastic foodware accessories by food purveyors in the unincorporated County jurisdiction.

**NOW, THEREFORE** the Board of Supervisors of Napa County, State of California, ordains as follows:

**SECTION 1:** Chapter 5.70 (SINGLE-USE PLASTIC CARRYOUT BAG REDUCTION) of the Napa County Code shall be renamed "SINGLE-USE PLASTIC BAG REDUCTION."

**SECTION 2:** Section 5.70.010 (Title.) of Chapter 5.70 (Single-Use Plastic Bag Reduction) of the Napa County Code is amended to read in full as follows:

**5.70.010 Title.**

This chapter shall be known as the county's "Single-Use Plastic Bag Reduction Ordinance," and may be cited as such, and will be referred to herein as "this chapter."

**SECTION 3:** Section 5.70.020 (Purpose and intent.) of Chapter 5.70 (Single-Use Plastic Bag Reduction) of the Napa County Code is amended to read in full as follows:

**5.70.020 Purpose and intent.**

The purposes of this chapter are to:

- A. Enact a bag reuse program that reduces waste and pollution, and that decreases the use of single-use plastic bags in the county.
- B. Protect the environment from the negative impacts of single-use plastic bags by reducing the use of single-use plastic bags, with a provision that would require retail stores within the unincorporated area to charge customers who request recycled paper bags or reusable plastic bags.

C. Provide an incentive for customers to use reusable bags or bring their own bags by exempting application of the bag charge from those customers who use reusable bags or bring their own bags.

**SECTION 4:** Section 5.70.030 (Definitions.) of Chapter 5.70 (Single-Use Plastic Bag Reduction) of the Napa County Code is amended to read in full as follows:

**5.70.030 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 approved in Chapter 5.7 (commencing with Section 42355) of Part 3 of Division 30 of the Public Resources Code and accepted by County contracted collection program(s), (2) item is certified by either BPI Certified, or other third-party product certification recognized by the County, 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.

B. "Customer" means any person obtaining merchandise from retail establishment.

C. "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.

D. "Director" means the director of planning, building and environmental services or their designee.

E. "Merchandise" means any consumer goods as that term is defined by California Civil Code section 1791(a), except that "Merchandise" shall also include clothing and consumables, as those terms are defined by California Civil Code Sections 1791(c) and (d), respectively.

F. "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, and wood.

G. "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.

H. "Pre-checkout bag" or "produce bag" means a recyclable or compostable paper bag, or compostable bag made from plant-based compostable 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 of a store. Pre-checkout bag shall not include items composed wholly or partially of plastic of any kind, except as exempted in this chapter.

I. "Prepared food" means food or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. Prepared food does not include any raw or uncooked meat product, or fruits and vegetables that are intended to be prepared for consumption off site.

J. "Public eating establishment" means a restaurant, take-out food establishment, or any other business that receives ninety percent or more of its revenue from the sale of prepared food to be eaten on or off its premises.

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

L. "Recycled paper bag" means a paper bag provided by a retail establishment to a customer in accordance with this chapter, at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent post-consumer recycled material; is one hundred percent recyclable; 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.

M. "Retail establishment" means any commercial establishment that sells merchandise at retail directly to the customer; and is located within or doing business within the geographical limits of Napa County, that is, the unincorporated area. Retail establishment does not include public eating establishments.

N. "Reusable 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; and
7. Is not made of plastic film, regardless of thickness.

O. "Single-use plastic carryout bag" means a bag, provided by a retail establishment to a customer at the check 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 plastic carryout bag" specifically excludes:

1. Reusable bags;
2. Recyclable paper bags;
3. Compostable paper bags or compostable bags made from plant-based polymers (e.g., BioBag);
4. Customer-provided bags; or
5. Pre-check-out or produce bags.

P. "Specialty bag or gift bag" means a paper shopping bag made of a minimum one hundred seventy-five grams per square meter paper weight, with a flat bottom, side gussets, reinforced turn top, and ribbon, rope or cord handles. Specialty or gift bags must either be reusable, recyclable, or compostable.

**SECTION 5:** Section 5.70.040 (Single-use plastic carryout bags.) of Chapter 5.70 (Single-Use Plastic Bag Reduction) of the Napa County Code is amended to read in full as follows:

**5.70.040 Single-use plastic bags prohibited.**

- A. No designated business shall provide a single-use plastic bag to a customer except as exempted in this chapter.
- B. Retailers shall retain the proceeds from the collection of the charge required by subsection (A) of Section 5.70.046 for the point-of-sale purchase of a recycled paper bag or reusable plastic bag. This chapter does not restrict how retailers use these monies.
- C. Specialty or gift bags are exempt from the requirements of this chapter.

**SECTION 6:** A new Section 5.70.045 (Customer-provided carry-out bags.) is added to Chapter 5.70 (Single-Use Plastic Bag Reduction) of the Napa County Code to read in full as follows:

**5.70.45 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 bag of any kind, including compliant bags, as a condition of sale, with the following exceptions:
  - 1. Designated businesses may refuse, as 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.

**SECTION 7:** A new Section 5.70.046 (Recyclable and compostable bag charge.) is added to Chapter 5.70 (Single-Use Plastic Bag Reduction) of the Napa County Code to read in full as follows:

**5.70.46 Recyclable and compostable bag charge.**

- A. Except as provided in subsection (C) below, no designated business shall provide a reusable, 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 Board of Supervisors; 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 bag.
- C. A retail establishment may provide a reusable bag, a recyclable paper bag, or compostable bags at no cost at the point of sale for the following purposes:
  - 1. 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.
  - 2. To transport produce, bulk food or meat from a produce, bulk food or meat department within a store to the point of sale.
  - 3. To hold prescription medication dispensed from a pharmacy.

4. To segregate merchandise that could damage or contaminate other merchandise when placed together in a reusable bag or recycled paper bag.
5. To contain or wrap meat, fish, or frozen foods, whether prepackaged or not; or
6. To contain food from a public eating establishment.

**SECTION 8:** A new Section 5.70.047 (Recyclable/compostable pre-check-out/produce bag.) is added to Chapter 5.70 (Single-Use Plastic Bag Reduction) of the Napa County Code to read in full as follows:

**5.70.47 Recyclable/compostable pre-check-out/produce bag.**

- A. Pre-checkout/produce bags provided by a designated business shall be compostable or recyclable as defined in this chapter.
- B. No designated business shall provide a non-compliant pre-checkout bag to a customer except as exempted in this chapter.
- 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 repackage 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 CEO 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/thawing frozen item(s) is likely.
  5. Nothing in this chapter shall prevent designated businesses from selling bulk plastic bags for food storage, solid waste, pet waste, etc.

**SECTION 9:** Section 5.70.050 (Exemptions.) of Chapter 5.70 (Single-Use Plastic Bag Reduction) of the Napa County Code is amended to read in full as follows:

**5.70.050 [Reserved]**

**SECTION 10:** Section 5.70.060 (Enforcement.) of Chapter 5.70 (Single-Use Plastic Bag Reduction) of the Napa County Code is amended to read in full as follows:

**5.70.060 Administration, Enforcement, and Penalties**

The director shall have primary responsibility for enforcement of this chapter. The director 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.

It is a violation of this code, subject to punishment and prosecution pursuant to chapters 1.24 and 1.28 of this code, for any retail establishment to violate or fail to comply with any provision of this chapter.

**SECTION 11:** A new Chapter 5.80 (Reusable Foodware and Waste Reduction.) is added to the Napa County Code to read in full as follows:

## **Chapter 5.80**

### **REUSABLE FOODWARE AND WASTE REDUCTION**

**Sections:**

<b>5.80.010</b>	<b>Purpose.</b>
<b>5.80.020</b>	<b>Definitions.</b>
<b>5.80.030</b>	<b>Foodware Standards.</b>
<b>5.80.040</b>	<b>Separate Waste Receptacles Required.</b>
<b>5.80.050</b>	<b>Disposable Foodware Charges.</b>
<b>5.80.060</b>	<b>Record keeping and inspection.</b>
<b>5.80.070</b>	<b>Sale and Distribution of Disposable Plastic Bottled Beverages on County Property.</b>
<b>5.80.080</b>	<b>Exemptions.</b>
<b>5.80.090</b>	<b>Administration, enforcement, and penalties.</b>

**5.80.010 Purpose.**

It is the intent of Napa County in enacting this Chapter 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 the unincorporated area. Additionally, it is the intent of this Chapter to comply with the requirements of Chapter 5.2 of the California Public Resources Code and to require single use foodware accessories and condiments packaged for single use to be provided only if requested by a consumer.

**5.80.020 Definitions.**

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

A. "Bottled Beverage" means drinking water, sparkling water, enhanced water, soda, sports drinks, juice, or other similar product in a plastic bottle having capacity of twenty-one fluid ounces or less, and intended primarily as a single-service container.

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

C. "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 approved in Chapter 5.7 (commencing with Section 42355) of Part 3 of Division 30 of the Public Resources Code and accepted by County contracted collection program(s), (2) item is certified by either BPI Certified, or other third-party product certification recognized by the County, 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.

D. “County” means the Napa County.

E. “County Contracted Collection Program(s)” means person, business, or entity contracted by the County to collect, process, recycle, compost, and/or dispose of waste.

F. “County Executive Officer (CEO)” means the CEO of Napa County or their designee.

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

H. “Customer” means any person obtaining prepared food from a food provider for on or off-site consumption.

I. “Director” means the director of planning, building and environmental services or their designee.

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

K. “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.

L. “Event Promoter” means an applicant for any special or temporary event permit issued by the County pursuant to Napa County Code Chapters 5.36 and 10.24.

M. “Food Provider” means any food vendor or food service establishment.

N. “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 café, luncheonette, grill, sandwich shop, hotel, 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 (Part 1.5, commencing with Section 7200, of Division 2 of the California Revenue and Taxation Code).

O. “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 Planning, Building, and Environmental Services (PBES) Department.

P. “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.”

Q. “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, condiment containers, straws, stirrers, splash sticks, cocktail sticks, toothpicks, tray-liners, and plate-liners.

R. “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.

S. “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.).

T. “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.

U. “On Request” means at the request of a customer.

V. “PBES” means the Napa County Planning, Building, and Environmental Services Department.

W. “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.

X. “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 twenty-one fluid ounces or more, but less than five gallons, intended primarily as a single-service container.

Y. “Polystyrene” means a thermoplastic 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, trays, clamshell containers, meat trays, egg cartons, and coolers.

Z. “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.

AA. “Recyclable” means material accepted by County contracted collection program(s) that can be sorted, cleaned, and reconstituted for the purpose of using the altered form in the manufacturing of a new product.

BB. “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.

CC. “Store” means any of the following retail establishments located within the geographical limits of the unincorporated area within the County 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.

DD. “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.

EE. “Vendor” means any store or business which sells or offers for sale goods or merchandise, located or operating within the County, including “food providers.”

### **5.80.030 Foodware Standards.**

A. On-Premises

1. Food providers, providing food and beverages consumed on-premises shall provide reusable foodware, except as exempted in this chapter.

2. 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-service stations, except as exempted in this chapter.

3. Nothing in this section shall prohibit customers from bringing their own reusable foodware.

4. Notwithstanding the above requirements, a food provider may request a waiver of the requirement to provide reusable foodware for on-premises dining. The waiver must be approved by the Director. To obtain a waiver, the food provider must submit an application to the PBES and provide evidence which demonstrates that:

a. The premises lack on-site or off-site dishwashing capacity and the food provider is unable to contract for services to wash/sanitize reusable foodware for one or more of the following reasons:

i. Insurmountable space constraints or lack of utilities to install on-site dishwashing capacity;

ii. Insurmountable space constraint or inability to store reusables on-site;

iii. Lack of staff available to wash reusables;

iv. Other financial hardship; or

v. Other extraordinary insurmountable circumstances.

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 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 County, 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.).

**5.80.040 Separate Waste Receptacles Required.**

A. All food vendors who provide solid waste containers for customer use must provide separate receptacles for solid waste, recyclables, and organics. Receptacles shall be colored black or grey for solid waste, blue for recycling, and green for compost/organics. Receptacles shall be provided in both the customer and kitchen/clean-up areas.

B. To the extent possible given space constraints, all receptacles for solid waste, recyclables, and organics shall be placed adjacent to one another.

C. Graphic-rich signage must be posted on or above each receptacle following the waste and recycling hauler’s guidelines.

**5.80.050 Disposable Foodware Charges.**

A. Food providers shall charge customers twenty-five cents (\$0.25) for each disposable cup and each disposable take-out container provided. Food providers shall charge customers twenty-five cents (\$0.25) per order for all other disposable foodware provided. The maximum charge per order for all disposable foodware shall be one dollar (\$1.00). These charges are required even if the products provided are compostable.

1. Income from the disposable foodware charge shall be retained by the food provider. This chapter does not restrict how food providers use these monies.

2. All customers demonstrating, 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 and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the disposable foodware charge.

3. Charges for disposable foodware shall be identified separately on any receipt provided and shall be clearly identified for the customer on media such as menus, on-line ordering platforms, and/or on-premises signs; and verbally disclosed to customers ordering by phone.

4. The disposable food charge shall not apply to pizza boxes

5. The disposable food charge shall not apply to Mobile Food Facilities or Temporary Food Facilities as defined by CA Health and Safety Code Sections 113831 and 113930 and as amended.

B. Food providers shall provide a minimum twenty-five cent (\$0.25) discount for customers who bring their own reusable foodware for take-out food. Food providers may provide a larger discount at their own discretion.

**5.80.060 Record keeping and inspection.**

A. Food providers shall keep complete and accurate records 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 County Enforcement officials or representatives designated by the County 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 County Enforcement officials or representatives designated by the County shall be a violation of this chapter.

B. County Enforcement officials or representatives designated by the County are authorized to conduct inspections and investigations of foodware usage in any portion of the food providers' 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 County 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.

#### **5.80.070 Sale and Distribution of Disposable Plastic Bottled Beverages on County Property.**

A. The County shall not enter into any new leases, contracts, or other forms of agreement, or issue any new permits, bid proposals, or solicitations; or renew, amend or reissue any existing leases, contracts, agreements or permits, which allow County property to be used for the sale or distribution of plastic bottled beverages. Nothing in this chapter shall be construed to impair a lease, contract, permit, bid proposal, solicitation, or other form of agreement to which the County is a party on the effective date of the Ordinance codifying this chapter.

B. Where containers greater than twenty-one ounces in size are used on County property, compostable or reusable cups shall be used to serve beverages.

C. The provisions of this section shall not apply where there are hydration requirements for employees working outside (e.g., fieldwork) and no reasonable alternative to plastic beverage bottles will serve the same purpose.

#### **5.80.080 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; and when the use of compostable 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 County facilities, by County franchisees, contractors, and any vendors doing business with the County in situations deemed by the CEO 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 County 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 an event for which the event organizer submitted a complete application or agreement for review, or received approval, prior to the effective date of this Ordinance.

#### **5.80.090 Administration, enforcement, and penalties.**

A. The director shall have primary responsibility for enforcement of this chapter. The director 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 Board of Supervisors.

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 1.20 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 County of Napa 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 County from pursuing any other remedy provided by law.

**SECTION 12:** The Board finds that the adoption of this Ordinance will not have a significant effect on the environment and is exempt from the California Environmental Quality Act pursuant to Categorical Exemption Class 8 (“Actions by Regulatory Agencies for the Protection of the Environment”) which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15308; and the General Rule in that it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore the CEQA is not applicable. [See Guidelines for the Implementation of the CEQA 14 CCR §15061(b)(3).]

**SECTION 13:** It is hereby declared to be the intention of the Board of Supervisors that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, section, paragraph or section of this Ordinance shall be declared unconstitutional or invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

**SECTION 14:** This Ordinance shall take effect twelve (12) months from and after the date of adoption by the Napa County Board of Supervisors, which should provide sufficient time for outreach and education to food purveyors, as well as allow food purveyors to source new reusable or compostable foodware and use the reserves of non-compliant single-use plastic bags and plastic foodware accessories.

**SECTION 15:** A summary of this Ordinance shall be published at least once five (5) days before adoption and at least once before the expiration of fifteen (15) days after its passage in the Napa Valley Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 12<sup>th</sup> day of November, 2024, and

passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 3<sup>rd</sup> day of December 2024, by the following vote:

AYES: SUPERVISORS \_\_\_\_\_  
 NOES: SUPERVISORS \_\_\_\_\_  
 ABSTAIN: SUPERVISORS \_\_\_\_\_  
 ABSENT: SUPERVISORS \_\_\_\_\_

NAPA COUNTY, a political subdivision of the State of California

By: \_\_\_\_\_  
 JOELLE GALLAGHER, Chair of the Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>/s/ Jason M. Dooley</u> Deputy County Counsel</p> <p>By: <u>/s/ Brandon Aguilera</u> Code Services</p> <p>Date: <u>10/31/2024</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____</p> <p>_____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p> <p>_____</p>
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I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON \_\_\_\_\_.

\_\_\_\_\_  
 NEHA HOSKINS, CLERK OF THE BOARD