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ORDINANCE NO. 2024-05

**AN ORDINANCE OF THE ALBANY CITY COUNCIL ESTABLISHING
REQUIREMENTS FOR THE USE OF SUSTAINABLE FOODWARE**

WHEREAS, the City of Albany has a desire and responsibility to protect the health, welfare, and safety of its community. The proliferation of non-reusable (or disposable) foodware, packaging, and plastics has contributed to street litter, ocean pollution, and harm to marine and other wildlife, along with greenhouse gas emissions from the production of the disposable materials; and

WHEREAS, Disposable Food Service Ware, defined below, substantially contributes to hard-to-recycle wastes, and packaging comprises 27% of California’s disposed waste stream annually. The generation of municipal solid waste in 1960 was just 2.68 pounds per person per day in California and reached 4.9 pounds per person per day in 2018, the last time EPA reported generation rates; and

WHEREAS, using reusable foodware significantly reduces the generation of unnecessary waste and in most cases reduces disposal costs; and

WHEREAS, reducing the generation of non-reusable foodware, including plastic utensils, cups, clamshells, and straws, maximizes the operating life of landfills, reduces litter, and helps to lessen the economic and environmental costs of managing waste; and

WHEREAS, non-reusable foodware threatens public health because many types contain fluorinated chemical additives, which are known or suspected carcinogens and/or endocrine disruptors. These additives are known to leach from foodware into food and beverage containers and into compost, soil, and water; and

1 **WHEREAS**, in 2008, the City Council adopted Ordinance #08-02 requiring all food
2 vendors and City facilities to transition to the use of biodegradable, compostable, and recyclable
3 food service ware; and
4

5 **WHEREAS**, numerous jurisdictions in the San Francisco Bay Area and the State of
6 California have since adopted legislation reducing the use of non-reusable food packaging, with
7 local and national businesses successfully replacing single-use food packaging with affordable,
8 durable, and reusable (or, when needed, compliant compostable fiber) foodware products; and
9

10 **WHEREAS**, California Assembly Bill (AB) 1276 prohibits food facilities from providing
11 any single-use Food Service Ware Accessories or condiment packages unless requested; and
12

13 **WHEREAS**, California Assembly Bill (AB) 619 allows consumers to bring their own
14 clean, reusable food and beverage containers for takeout orders and leftovers, and the Alameda
15 County Department of Environmental Health allows the use of Reusable Food Service Ware when
16 properly washed, rinsed, and sanitized; and
17

18 **WHEREAS**, Senate Bill (SB) 54, the Plastic Pollution Prevention and Packaging
19 Producer Responsibility Act, imposes minimum content requirements for single-use packaging
20 and plastic food service ware, to be achieved through an extended producer responsibility (EPR)
21 program; and
22

23 **WHEREAS**, the City of Albany Climate Action and Adaptation Plan (CAAP) established
24 the objective of a 70% reduction in greenhouse gas (GHG) emissions by 2035, and net zero
25 emissions by 2045. The CAAP focuses on reducing emissions from the City’s largest emissions
26 sectors, including addressing the environmental impacts of municipal purchasing. Specifically,
27 Goal 3.2.1 is to work with StopWaste to adopt an ordinance requiring reusables for dine-in
28

1 restaurants and to promote the use of sustainable take-out Foodware. Additionally, Albany’s
2 General Plan lays out goals to reduce waste and improve commercial composting practices.
3

4 **NOW, THEREFORE, THE ALBANY CITY COUNCIL DOES ORDAIN AS**
5 **FOLLOWS:**
6

7 **SECTION 1: Chapter 5 Of The Albany Municipal Code, Section 5-26 Titled**
8 **“Sustainable Foodware” Is Hereby Created As Follows:**
9

10 **5-26.1 Definitions**
11

12 (a) “BPI Certified” means those Compostable fiber Foodware products that have been certified
13 by the Biodegradable Products Institute (BPI) to safely and readily biodegrade in an industrial
14 composting facility in the typical processing time. As of January 1, 2020, BPI ensures all certified
15 products are Fluorinated Chemical free.

16 (b) “Bioplastic” (sometimes called “Compostable Plastic”) means a disposable product developed
17 from polylactic acid (PLA), which requires a specific set of conditions to compost and/or
18 biodegrade that are not available at the City of Albany compost facility. These products are
19 considered non-compliant.

20 (c) “Compliant Disposable Foodware” means a disposable Foodware item or accessory made
21 entirely of aluminum, glass, or compostable fiber that is accepted in the City of Albany
22 composting collection program as compostable and BPI certified or certified by another
23 independent third party certifying organization or agency recognized by the City and free of High
24 Priority Toxic Food Packaging Chemicals as determined by a third-party certification program
25 for Disposable Food Service Ware that requires full disclosure of intentionally added chemicals
26 as a condition of certification.

27 (d) “Compliance official” means the Community Development Director or any designee
28 authorized and responsible for implementing this section.

(e) “Compost Facility” means compost facilities used by the City’s current waste haulers for
composting organic material.

1 (f) “Compostable Fiber” means an item or material (1) will break down, or otherwise become
2 part of usable compost in a safe and timely manner; (2) is made from natural fiber; or (3) is absent
3 of any plastic, micro-plastic, or Bioplastic linings or coatings, including polylactic acid (PLA).

4 (g) “City” means the City of Albany, California.

5 (h) “Customer” means any person obtaining Prepared Food from a Food Vendor.

6 (i) “Disposable” means a Foodware item or accessory designed to be used only one time and then
7 disposed of.
8

9 (j) “Dine-In Service” means food consumption on-premises. Food consumption is considered
10 on-premises if it takes place at tables and/or dining areas, including non-seated picnic areas
11 provided by the Prepared Food Vendor either on its own or in conjunction with one or more other
12 Prepared Food Vendor(s) or pursuant to an agreement between the Prepared Food Vendor and a
13 third party.

14 (k) “Disposable Cup” means a beverage cup designed for single-use to serve beverages such as
15 water, hot and cold drinks, and alcoholic beverages.

16 (l) “EPS” means expanded polystyrene, also known as Polystyrene Foam.

17 (m) “Fluorinated Chemical” means a class of fluorinated organic compounds containing at least
18 one (1) fully fluorinated carbon atom, also known as perfluoroalkyl (PFOA) and polyfluoroalkyl
19 (PFOS) substances, or PFAS chemicals. California Prop 65 lists PFOA and PFOS as reproductive
20 toxicants.

21 (n) “Foodware” means all containers, bowls, plates, food trays, cups, lids, boxes, and other like
22 items that are used for Prepared Foods, including without limitation, Foodware for takeout foods
23 and/or Foodware for leftovers from partially consumed meals prepared by Food Vendors.

24 (o) “Foodware Accessory” means types of items usually provided alongside prepared food,
25 including but not limited to forks, spoons, knives, chopsticks, napkins, cup sleeves, food
26 wrappers, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks,
27 toothpicks, tray-liners, and plate-liners.

28 (p) “Food Vendor” means a food facility, including, but not limited to, a restaurant, bar, grocery
store, delicatessen, bakery, food service establishment (carry out, quick service, full-service),
food truck, itinerant restaurant, pushcart, farmers market, caterer, microenterprise home kitchen

1 operation, or cottage food operation, that sells prepared good to be consumed on and/or off the
2 premises located or operating within the City, except that for purposes of this ordinance the term
3 “food vendor” shall not include a public or private school cafeteria or an event within the City
4 that is subject to a City permit and expected to have more than 500 attendees or participants.

5 (q) High Priority Toxic Food Packaging Chemicals means any Perfluoroalkyl or Polyfluoroalkyl
6 Substances (PFAS) or any of the chemicals listed in California's Proposition 65 (Health & Safety
7 Code § 25249.8; list set forth at 22 CCR § 69502.2(a)(1)(A)), the European Union's Substances
8 of Very High Concern Candidate List (set forth at 22 CCR § 69502.2(a)(1)(C), (G)), and the
9 International Agency for Research on Cancer lists Group 1 and Group 2a (set forth at 22 CCR §
10 69502.2(a)(1)(J)). G
11

12 (r) “Natural Fiber” means a plant-based, non-synthetic fiber, including but not limited to paper,
13 wood, bamboo, palm leaf, wheat straw, or sugarcane. Natural Fiber does not include plastic of
14 any kind.

15 (s) “Polystyrene Foam” means and includes blown polystyrene and expanded and extruded foams
16 (sometimes incorrectly called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene
17 foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer
18 and processed by any number of techniques including, but not limited to, fusion of polymer
19 spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow
20 molding (extruded foam polystyrene). Polystyrene Foam is generally used to make cups, bowls,
21 plates, trays, clamshell containers, meat trays, coolers, packing peanuts, and egg cartons.

22 (t) “Prepared Food” means food or beverages which are served, packaged, cooked, chopped,
23 sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the premises of the Food
24 Vendor, and includes Takeout Food. For the purposes of this definition, Prepared Food does not
25 include raw, butchered meats; fish; and/or poultry, which are sold from a butcher case or similar
26 appliance.

27 (u) “Reusable” means Foodware and Foodware accessories that are manufactured of durable
28 materials and specifically designed and manufactured to be washed and sanitized and to be used
repeatedly over an extended period of time, and are safe for washing and sanitizing according to
applicable regulations.

1 (v) “Standard Condiment” means relishes, spices, sauces, confections, or seasonings that require
2 no additional preparation and that are usually used on a food item after preparation, including
3 ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar and sugar
4 substitutes.

5 (w) “Takeout Food” means food or beverages requiring no further preparation to be consumed
6 and which generally are purchased to be consumed off the premises of the Food Vendor.
7

8 9 **5-26.2 Dine-In Foodware Regulations**

10 Food Vendors within the City:

- 11 1. Shall provide only reusable Foodware and utensils (forks, spoons, knives, and chopsticks)
12 for Dine-In Service.
- 13 2. Shall ensure that all Foodware Accessories provided, other than forks, spoons, knives, and
14 chopsticks, shall be either Reusable or Compliant Disposable.
- 15 3. Shall offer Standard Condiments in reusable containers or dispensers rather than pre-
16 packaged, single-use condiment packets. A supply of single-use Standard Condiment
17 packets may be maintained and provided to customers upon request, based on medical
18 necessity.
 - 19 a. Should a reusable container or dispenser not be commercially available or
20 logistically feasible for certain condiments, the City may approve temporary
21 exemptions from this requirement.

22 **5-26.3 Takeout Foodware Regulations**

- 23 1. For use with Takeout Food, Food Vendors shall provide only Reusable Foodware or
24 Compliant Disposable Foodware containers and Compliant Foodware Accessories.
- 25 2. Food Vendors may provide recycled-content paper bags and Reusable bags, but, where
26 applicable, affected Food Vendors must charge a minimum per-bag fee, consistent with
27 State law.
28

- 1 3. Should specific disposable Foodware or Foodware Accessories made of compliant
2 materials not be commercially available, as determined by the Compliance Official, the
3 City may approve temporary exemption of specific items until they are made sufficiently
4 commercially available. The City shall maintain a list, updated periodically, of exempted
5 Foodware and/or Foodware Accessories.
6
- 7 4. Food Vendors shall provide compliant Foodware Accessories for Takeout Food service
8 only upon request or at self-serve stations, where Customers can select desired accessories
9 individually.
10
- 11 5. Takeout Food delivery services shall provide the option for compliant Disposable
12 Foodware accessories (forks, spoons, knives, chopsticks) and single-use condiments only
13 upon request. A Food Vendor or a Takeout Food delivery service may include lids, spill
14 plugs, and sleeves without Customer request when disposable cups are delivered.

15 **5-26.4 Customer-Provided Reusable Beverage Cups And Food Containers For Take-Out.**

- 16 1. Customers shall be allowed to provide their own empty Reusable beverage cups and
17 Reusable food containers for consumption of Take-Out Food prepared by Food Vendors
18 in accordance with the California Retail Food Code (Health and Safety Code, Section
19 113700, et seq.).
- 20 2. Prepared Food Vendors subject to this section may refuse, at their sole discretion, any
21 Customer-provided Reusable beverage cup or Reusable food Container that is cracked,
22 chipped, or corroded, or which is, in their reasonable judgment, inappropriate in size,
23 material, or condition for the intended beverage or food, or that appears to be soiled or
24 unsanitary.
- 25 3. Notwithstanding any other provision of this Code, the City and all Prepared Food Vendors
26 operating on City property shall comply with this section. All leases, contracts, funding
27 agreements, and sponsorships entered into by the City shall require compliance with this
28 section for all activities in the City.

1 **5-26.5 Disposable Cup Charge**

- 2
- 3 1. All Food Vendors shall charge customers twenty-five cents (\$0.25), or another amount as
- 4 amended by Resolution of the City Council, at the point of sale for every disposable cup
- 5 provided, unless the Customer is exempt under this Chapter.
- 6 2. Income from the disposable cup charge identified in (1) above shall be retained by the
- 7 Food Vendor.
- 8 3. Charges for disposable cups shall be identified separately via an itemized charge on any
- 9 post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on
- 10 media such as menus, ordering platforms, and/or menu boards. Customers placing orders
- 11 by telephone shall be informed verbally of disposable cup charges.
- 12 4. All Customers demonstrating, at the point of sale, a payment card or voucher issued by
- 13 the California Special Supplemental Food Program for Women, Infants, and Children
- 14 (WIC) pursuant to Article 2 (commencing with section 123275) of Chapter 1 of Part 2 of
- 15 Division 106 of the California Health and Safety Code and as amended, or an electronic
- 16 benefit transfer card (EBT) issued pursuant to section 10072 of the California Welfare and
- 17 Institutions Code, and individuals with disabilities shall be exempt from the Disposable
- 18 Cup Charge.

19 **5-26.6 City Purchasing, Facilities, And City-Sponsored Events.**

- 20
- 21 1. The City Manager shall establish administrative procedures for City purchasing, City
- 22 facilities, and City-permitted events. It is the intent that City purchasing, City facilities,
- 23 and City-permitted events be brought in line with the provisions of this Chapter over time
- 24 as deemed feasible by City staff.
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1 **5-26.7 Exemptions**

2 1. Food items packaged outside the City of Albany are exempt from the provisions of this
3 Chapter; provided. However, such entities are urged to follow the provisions of this
4 Chapter.
5

6 2. Hardship/Income Exemption

7 a. If a Food Vendor believes that circumstances exist that make compliance with the
8 requirements of this Chapter an undue hardship on the Food Vendor, or that it is
9 physically infeasible to meet the requirements of this Chapter, they may apply for
10 an exemption or reduction in this Chapter’s requirements. In applying for an
11 exemption, the burden is on the applicant to show financial hardship or physical
12 infeasibility.

13 b. An “undue hardship” includes, but is not limited to, the following:

14 i. A situation unique to the food facility where a suitable alternative that
15 conforms with the requirements of this Chapter does not exist for a specific
16 application.

17 ii. Imposing the provisions of this Chapter would cause significant economic
18 hardship. “Significant economic hardship” may be based on, but is not
19 limited to, a demonstration that suitable Foodware or Foodware
20 Accessories made of compliant, compostable Natural Fiber are not
21 available at a commercially reasonable price and the additional cost
22 associated with providing the compliant Foodware or Foodware
23 Accessories is particularly burdensome to the Food Vendor based on the
24 type of operation(s) affected, the overall size of the business/operation, the
25 number, type and location of its facilities, the impact on its overall financial
26 resources, and other similar factors. Reasonable added cost for a suitable
27 item, as compared to a similar item that the Food Vendor can no longer
28 use, shall not by itself constitute adequate grounds to support an exemption
for such item. In determining whether a significant economic hardship has

1 been established, the Director or his or her designee shall consider the
2 following information: the ability of the Food Vendor to recover the
3 additional expense by increasing its prices; the availability of tax credits
4 and deductions; outside funding; and other options.
5

6 c. Granting of Exemption. The determination of whether to grant a request for an
7 exemption shall be made by the City’s Compliance Official. If an exemption is
8 granted, the applicant shall be required to comply with this Chapter in all other
9 respects.
10

11 d. Denial of Exemption. If the City’s Compliance Official determines that the
12 requested exemption has been denied, they shall so notify the applicant in writing.

13 3. For the preservation of the public peace, health, or safety due to an emergency or natural
14 disaster, the Compliance Official and/or City Manager may exempt Food Vendors,
15 persons operating CITY facilities and agents, contractors, and vendors doing business
16 with the CITY, from the provisions of this Chapter.

17 **5-26.8 Enforcement**

- 18 1. Enforcement of the requirements of this Section shall begin no sooner than 12 months
19 after the effective date of the Ordinance in order to provide time for businesses to comply.
20 2. Documentation of non-compliance shall be made by a person suitably trained in the
21 provisions of this Section.
22 3. Enforcement may include written notice of non-compliance and a reasonable opportunity
23 to correct such non-compliance, if feasible, prior to issuance of any penalty.
24 4. If, after issuing a written notice of noncompliance, the City finds that the Food Vendor
25 continues to violate the provisions of this Chapter, the City may impose a fine as
26 established in the City of Albany Master Fee Schedule approved by the City Council.
27
28

1 **5-26.9 Appeal**

- 2
- 3 1. Any aggrieved applicant may appeal the determination of the Compliance Official
- 4 regarding: (i) the grant or denial of an exemption; (ii) compliance with this Chapter; or
- 5 (iii) fines levied for non-compliance with this Chapter.
- 6 2. Any appeal must be filed in writing with the Community Development Department within
- 7 fourteen (14) days of the determination by the Compliance Official. The appeal shall state
- 8 the alleged error or reason for the appeal. In reviewing the appeal, the City Manager may
- 9 request additional written or oral information from the applicant or Compliance Official.
- 10 The City Manager shall make a written determination regarding the appeal within sixty
- 11 (60) days of the date when the appeal was filed.
- 12

13 **SECTION 2: SEVERABILITY**

14 If any subsection, subdivision, paragraph, sentence, clause, or phrase of this section, or

15 any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court

16 of competent jurisdiction, such decision shall not affect the validity or effectiveness of the

17 remaining portions of this section or any part thereof. The City Council hereby declares that it

18 would have passed each section, subsection, subdivision, paragraph, sentence, clause, and phrase

19 of this section irrespective of the fact that one (1) or more subsections, subdivisions, paragraphs,

20 sentences, clauses, or phrases be declared unconstitutional, invalid, or effective. To this end, the

21 provisions of this section are declared to be severable.

22 **SECTION 3: PUBLICATION AND EFFECTIVE DATE.**

23 This ordinance shall be posted at three public places within the City of Albany and shall

24 become effective thirty days after the date of its posting.

25 

26 _____

27 JOHN MIKI, MAYOR



City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

ORDINANCE NO. 2024-05

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 16th day of September, 2024, by the following votes:

AYES: Council Members Hansen-Romero, Jordan, López, Tiedemann and

Mayor Miki

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this 17th
day of September, 2024.

Anne Hsu
CITY CLERK

*Albany is committed to providing a healthy, safe, and accessible city,
and strives to lift every voice in our community.*