

ORDINANCE NO. 2021-34

AN ORDINANCE of the City of Bainbridge Island, Washington, amending Chapter 8.24 of the Bainbridge Island Municipal Code.

WHEREAS, the production, management, and consumption associated with disposable food service ware, typically used for only a few minutes before being discarded, have significant environmental impacts, including environmental contamination, consumption of precious resources such as energy and water, emissions of greenhouse gases, air and water pollution, litter on streets, and plastic pollution in waterways and oceans; and

WHEREAS, one of the leading contributors to plastic waste in the world's oceans is packaging and utensils from take-out food and beverages; and

WHEREAS, the City of Bainbridge Island has a longstanding commitment to reducing single use plastic products, including by banning polystyrene food packaging in 1989 and single-use plastic bags in 2012, and limiting the distribution of single-use utensils starting in 2022; and

WHEREAS, the Bainbridge Island Climate Action Plan, adopted by the City Council in 2020, has as one of its "immediate actions" to be implemented by November 2021 the development of an ordinance reducing the use of single-use plastics; and

WHEREAS, the most effective ways to reduce the negative impacts of disposable food service ware are, in order of priority, using reusable food service ware, using compostable materials, and recycling food service ware; and

WHEREAS, virtually all food service products such as cups, plates, bowls, clamshell containers, lids, and utensils are now available in paper, sugarcane, bamboo, wheat stalk/straw, and other blends of natural plant fibers that do not contain toxic chemicals and that safely degrade in soil and marine environments; and

WHEREAS, so-called "compostable plastic" food service products are primarily only compostable where consumers have access to industrial composting facilities and such composting is currently not available to residents of Bainbridge Island; and

WHEREAS, regardless of the availability of industrial composting, most "compostable plastic" food service products pose a similar threat as petrochemical-based plastic, particularly to the marine environment, when not properly disposed of; and

WHEREAS, certain disposable food service ware, including compostable paperboard containers, may contain fluorinated chemicals, also known as per- and polyfluorinated alkyl substances ("PFAS"), which are synthetic chemicals commonly used in disposable food service ware to repel water and grease and which pose a public health risk as they have been linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty, and obesity; and

WHEREAS, confusion created by the bioplastics industry regarding the term “compostable” created the need for a new term describing products that will biodegrade in a safe and timely manner outside of an industrial composting facility; and

WHEREAS, the term “home compostable” has been recognized internationally and by a growing number of states and municipalities, and an increasing number of cities and counties are banning both petroleum plastic and “compostable plastic” food service ware; and

WHEREAS, studies have demonstrated that fees are more effective than discounts in programs aimed at incentivizing the use of reusable cups; and

WHEREAS, an estimated 5 billion single use personal care products in plastic bottles provided by lodging establishments are disposed of annually; and

WHEREAS, the States of California and New York have recently banned the distribution of single use personal care products in plastic bottles and lodging establishments are increasingly replacing single use bottles with refillable dispensers; and

WHEREAS, the City Council adopted preliminary changes to Chapter 8.24 BIMC on June 22, 2021, with the intent to consider certain additional amendments by the end of 2021.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The title of Chapter 8.24 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

Chapter 8.24

SINGLE USE FOODWARE DISPOSABLE FOOD SERVICE WARE AND WASTE REDUCTION

Section 2. The table of contents of Chapter 8.24 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

Sections:

8.24.005 Definitions.

8.24.010 ~~Restrictions on Food and Beverage Containers~~ Standards for disposable food service ware.

8.24.015 Exemptions.

8.24.020 Reserved.

8.24.025 ~~Single use food service products upon~~ Disposable food service ware requiring customer’s affirmation.

8.24.030 ~~Reserved~~ Requiring reusable food service ware for on-premises dining.

8.24.035 ~~Reserved~~ Restricting certain types of single use personal care products in lodging establishments.

- 8.24.040 Rules and regulations.
- 8.24.050 Penalties.
- 8.24.060 Education and outreach.

Section 3. Section 8.24.005 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

8.24.005 Definitions.

A. “ASTM Standard Specification” means an explicit set of requirements to be satisfied by a material, product, system, or service established by meeting the standards of the American Society for Testing and Materials (“ASTM”). ~~“Biodegradable materials” means those materials made of cellulose based or other substances that are capable of being readily attacked, decomposed, assimilated, and otherwise completely oxidized or broken down by bacteria or other natural biological organisms into carbonaceous soil material or water and carbon dioxide within a reasonable period of time.~~

B. “Biodegradable Products Institute,” or “BPI,” refers to a certification program that ensures that compostable products and packaging displaying the BPI logo have been independently tested and verified to meet certain standards. ~~“Food service product” means a product intended for one-time use and used for food or drink offered for sale or use. Food service products include, but are not limited to, containers, plates, bowls, cups, lids, beverage containers, meat trays, deli rounds, utensils, sachets, straws, condiment packaging, clamshells and other hinged or lidded containers, wrap, and portion cups.~~

C. “Compost Manufacturing Alliance,” or “CMA,” refers to a certification program that ensures that compostable products displaying the CMA logo have been independently tested and verified to meet certain standards. ~~“Nonbiodegradable materials” means those made in whole or in part of polystyrene plastic.~~

D. “Disposable” means designed to be discarded after a single or limited number of uses, not manufactured for long-term multiple reuse, and/or is not reusable as defined herein. ~~“Packaging” means all food-related wrappings, boxes, containers, and disposable or non-reusable plates, cups, or drinking utensils.~~

E. “Fluorinated chemicals” means perfluoroalkyl and polyfluoroalkyl substances (PFAS chemicals) or chemicals which are a class of fluorinated organic chemicals containing at least one fluorinated carbon atom.

F. “Food service ware” means a product intended to be used for serving, distributing, holding, packaging, and/or transporting prepared food including, but not limited to, plates, bowls, cups, trays, deli rounds, clamshells and other hinged or lidded containers, food contact paper (e.g., wraps, bags, tray liners), and portion cups. The term food service ware also includes food service accessories including, but not limited to, lids, straws, stirrers, cup spill plugs, cup sleeves, condiment packets, utensils, cocktail sticks/picks, toothpicks, napkins, and the packaging that any of these individual items are wrapped in.

G. “Home compostable” means comprised of natural fiber as defined below, and/or able to break down or otherwise become part of usable compost in a safe and a timely manner in a non-industrial composting environment. Any food service ware item that is “OK Compost HOME” certified by TÜV Austria will be presumed to satisfy this definition. In the event that an ASTM standard for home compostable products that meets or exceeds the OK Compost HOME certification is established, any food service ware item certified as satisfying that standard will satisfy this definition.

H. “Industrial composting facility” means a large-scale professional composting facility which processes significant amounts of organic waste, including food service ware certified as industrial compostable, through a controlled biotechnological process, regulating factors such as particle size, moisture content, aeration, temperature, pH, and carbon/nitrogen ratio.

I. “Lodging establishment” means an establishment that contains one or more sleeping room accommodation(s) that is rented or otherwise provided to the public, including, but not limited to, a hotel, motel, resort, bed and breakfast inn, or vacation rental (including lodging provided through hosting services such as Airbnb and VRBO).

J. “Natural fiber” means a plant-based, non-synthetic fiber, including, but not limited to, products made from paper, wood and wood-pulp, sugar cane, bamboo, wheat stems/stalk, and hay.

K. “Expanded Polystyrene” means blown polystyrene and expanded and extruded foams which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

L. “Prepackaged food” means food service products ware that have has been filled with food and sealed by a separate food service business or food manufacturer prior to receipt by the point-of-sale retail establishment. “Prepackaged food” includes a utensil, straw, or other item physically attached for purposes of retail sale to a food service product ware prior to receipt by the point-of-sale retail establishment.

M. “Prepared Food” means food or beverages that undergo a cooking or food preparation technique on or off the retail food establishment’s premises for consumption by the public. Cooking and food preparation techniques include, but are not limited to, the following:

1. Cooking methods utilizing the application of heat, such as steaming, microwaving, simmering, boiling, broiling, grilling, frying, or roasting;

2. Beverage preparation, such as blending, brewing, steeping, juicing, diluting, or pouring;

3. Food preparation techniques, such as defrosting, rinsing, washing, diluting, cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing, decorating, or icing.

Prepared Food does not include raw eggs or raw, butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance.

NF. “Retail establishment” means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer, including to a “retail food establishment.” “Retail establishment” includes, but is not limited to, retail food establishments, grocery stores, department stores, hardware stores, home or business delivery services, pharmacies, liquor stores, restaurants, catering trucks, convenience stores, or other retail stores or vendors, including temporary stores or vendors at farmers markets, street fairs, and festivals.
~~“Retail establishment” means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer, including to a “retail food establishment.” Retail establishment includes, but is not limited to, retail food establishments, grocery stores, department stores, hardware stores, home or business delivery services, pharmacies, liquor stores, restaurants, catering trucks, convenience stores, or other retail stores or vendors, including temporary stores or vendors at farmers markets, street fairs, and festivals.~~

~~For the purposes of this definition, “retail food establishment” means all sales outlets, stores, shops, or other places of business located within the city, which sell or convey foods directly to the ultimate consumer. Retail food establishment shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant; drive-in; coffee shop; cafeteria; short order cafe; delicatessen; luncheonette; grill; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; take-out prepared food establishment; industrial feeding establishment; catering kitchen; commissary; grocery store; public food market; 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, including homes, where food is processed, prepared, stored, served, or provided for the public for charge.~~

O. “Retail food establishment” means all sales outlets, stores, shops, or other places of business located within the city, which sell or convey foods directly to the ultimate consumer. “Retail food establishment” shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant; drive-in; coffee shop; cafeteria; short-order cafe; delicatessen; luncheonette; grill; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; take out prepared food establishment; industrial feeding establishment; catering kitchen; commissary; grocery store; public food market; 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, including homes, where food is processed, prepared, stored, served, or provided for the public for charge.

PG. “Reusable” means an item subject to this chapter designed and manufactured to maintain its shape and structure, and to be materially durable for repeated (at least 1,000 times each) sanitizing in water at 171 degrees Fahrenheit for at least 30 continuous seconds, washing via commercial dishwashing machine, and reuse.

QH. “Single-use” means a product that is designed to be used once and discarded, and/or is not reusable as defined herein.

R. “TÜV Austria” means the corporation that certifies categories of compostable products including the certification of “OK Compost HOME” which classifies products as being able to be composted at ambient temperatures and with a natural microbial community (e.g., in a home compost environment).

SI. “Utensil” means a product designed to be used by a consumer to facilitate the consumption of food or beverages, including knives, forks, spoons, cocktail picks, chopsticks, splash sticks, and stirrers. “Utensil” does not include plates, bowls, cups, bottles, and other products used to contain food or beverages.

Section 4. Section 8.24.010 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

8.24.010 Standards for disposable food service ware~~Restrictions on Food and Beverage Containers.~~

A. ~~No retail food establishment licensed to do business or required to be licensed within the city shall use expanded polystyrene-based food service ware at any time when providing prepared food. sell or convey food directly to ultimate consumers within the city unless such food is placed, wrapped, or packed in biodegradable packaging at the conclusion of a sales transaction for the purchase of such food.~~

B. Retail food establishments licensed to do business or required to be licensed within the city shall only use home compostable disposable food service ware when providing prepared food, except as otherwise provided in BIMC 8.24.015.~~No retail food establishment licensed to do business or required to be licensed within the city shall sell, give, or provide food containers to any persons within the city if such food container is composed of nonbiodegradable materials.~~

C. All home compostable disposable food service ware items shall be certified to be free of all intentionally added fluorinated chemicals.

D. Except as otherwise provided in BIMC 8.24.015, all disposable food service ware items, including those that that qualify for an exemption pursuant to BIMC 8.24.015, shall be:

1. Certified to be compostable in an industrial composting facility in a timely manner; and/or

2. Eligible to be accepted for recycling by the retail food establishment's recycling collection service.

E. To verify compliance with sections C. and D.1. above, items shall be certified by the Biodegradable Products Institute ("BPI"), the Compost Manufacturer's Alliance ("CMA"), or another independent third party approved by the city manager or designee, in collaboration with the city's climate adaptation officer.

F. In order to encourage the use of reusable cups, retail food establishments shall charge \$0.25 for every disposable cup provided.

1. Income from the disposable cup charge shall be retained by the retail food establishment.

2. Charges for disposable cups shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms, and/or menu boards. Customers placing orders by telephone shall be informed verbally of the single-use cup charge at the time of the placement of the order.

3. This provision shall not prohibit a retail food establishment from providing free drinking water upon request to customers in a small, unlined paper cup.

4. This provision shall not apply to nonprofit entities or entities providing services on behalf of a nonprofit that operate as a retail food establishment for less than 10 days per calendar year.

5. Customers may provide their own reusable cups for beverage service in accordance with the Retail Food Code, Chapter 246-215-03348 of the Washington Administrative Code. These reusable cups must be clean, sturdy, and appropriately insulated if ordering hot beverages such that they can be held in the customer's bare hand if intended to be used for hot liquids. Retail food establishments may refuse to use, at their sole discretion, any customer-provided cup that is cracked, chipped, or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be soiled or unsanitary, and instead require use of a reusable cup provided by the establishment for any beverage consumed on the premises, or an establishment-provided disposable cup that conforms to the standards of this chapter.

Section 5. Section 8.24.015 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

8.24.015 Exemptions.

A. Prepackaged food is exempt from the provisions of this chapter. ~~BIMC 8.24.010 shall not apply to the following items:~~

- ~~1. Any flexible transparent covering;~~
- ~~2. Any food packaging used at hospitals or nursing homes;~~
- ~~3. Any paper or other cellulose based packaging that is coated with polyethylene plastic on only one side, or wax coated;~~
- ~~4. Any plastic covers, covering material, food containers, or lids that are biodegradable;~~
- ~~5. Any glass container or glass packaging which is recyclable;~~
- ~~6. Any plastic bags dispensed at the request of a customer at the check-out counter of a grocery store for the purpose of carrying groceries, provided that paper bags are customarily dispensed for that purpose;~~
- ~~7. Plastic eating utensils, such as forks, knives or spoons, straws, or beverage container covers; and~~
- ~~8. Any foods sold by a retail food establishment packaged by a wholesale distributor, manufacturer, processor, bakery, or similar wholesaler whose premises is located outside the city; provided that not more than 10 percent of the total volume of food sold at the retail food establishment is packaged in nonbiodegradable packaging. [Reserved.]~~

B. If the city manager, with the input of the climate adaptation officer, determines that a reasonably feasible disposable food service ware item that complies with BIMC 8.24.010.B. does not exist, that item will be exempt from that provision for a period not to exceed one year. A current list of exempted items will be posted on the city's website.

Exemptions will only be granted where there are not at least two vendors that make suitable and readily commercially available home compostable alternatives to the disposable food service item for which the exemption is being sought.

C. Exempted items shall comply with BIMC 8.24.010.D., unless the city manager or their designee specifically determines that there is no reasonably feasible alternative that meets that standard.

D. If the city manager extends any exemption granted herein, public notice of extension shall be posted on the city’s website. Extensions under this section may be granted for periods of time not to exceed one year per authorization.

E. Nothing in this chapter shall be construed to conflict with the Americans with Disabilities Act or any other applicable law concerning the rights of individuals with disabilities. In particular, nothing in this chapter shall restrict, or be construed to restrict the provision by retail food establishments or health care facilities of disposable non-compostable straws to individuals who may request the use of disposable non-compostable straws to accommodate medical needs or disabilities. In the case of health care facilities, straws may be distributed without patient request on a case by case basis at the discretion of the healthcare facility staff based on the physical or medical needs of the patient.

Section 6. Section 8.24.025 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

8.24.025 Disposable Single-use food service products ~~ware~~ upon requiring customer’s affirmation.

A. A retail food establishment may provide the following single-use food service ~~products~~ ware only upon customer’s affirmation for the below item or items:

1. Utensils;
2. Straws;
3. Condiment in packaging;
4. Beverage cups; and/or
5. Beverage cup lids.

B. A retail food establishment may provide beverage cup lids without customer’s affirmation for:

1. Hot beverages; or
2. Beverages provided through delivery service, drive-through, or curbside pickup.

C. The products listed in subsection A of this section may not be available to customers in cylinders, bins, dispensers, containers, or other means on a self-service basis for any reason.

D. This section shall take effect as of January 1, 2022.

Section 7. Section 8.24.030 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

8.24.030 Requiring reusable food service ware for on-premises dining. ~~{Reserved.}~~

- A. Reusable food service ware, including utensils, are required at all on-premises dining establishments for any meal to be eaten on the premises. Home compostable straws shall be allowed upon request for dining on the premises. Condiments, such as sauces, ketchup, or mustard, provided for onsite consumption, shall not be served in disposable, individual-serving packaging.
- B. Consumption is considered on-premises if it takes place at tables and/or seating provided by the food service business, either on its own or in relation to another food service business. This requirement does not prohibit a food service business from providing, upon a customer's request, disposable food service ware compliant with BIMC 8.24.010 above for the customer to take away leftover food after dining on the premises.
- C. Customers must be asked whether they will consume the food or beverage they have ordered at the premises, or whether the order will be taken away as a takeout order. In the case of self-service facilities (e.g., food or salad bar), this requirement shall be satisfied by the provision of reusable and disposable options for customer self-selection, with reusable options clearly marked to encourage use for on-premises dining.
- D. Waivers. On-premises dining establishments that do not have onsite or off-site dishwashing capacity may petition the city manager or their designee for a full or partial one-year waiver. To obtain a waiver, the food service business shall demonstrate inability to comply due to insurmountable space constraints, undue financial hardship, and/or other extraordinary circumstances. Food service ware used for on-premises dining pursuant to a waiver obtained under this section shall comply with all requirements set forth elsewhere in this chapter. Granting of a waiver is at the sole discretion of the city manager or their designee, and is not subject to appeal. Waivers may be renewed by submitting a new petition to the city manager or their designee.

Section 8. Section 8.24.035 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

8.24.035 Restricting certain types of single use personal products in lodging establishments. ~~{Reserved.}~~

No single-use personal care products shall be distributed in lodging establishments unless they are packaged in home compostable packaging. Lodging establishments are encouraged to use refillable personal care product dispensers.

Section 9. The title to Section 8.24.060 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

8.24.060 Education and outreach.

Section 10. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 11. This ordinance shall take effect on January 1, 2023. The ordinance will be published as required by law.

PASSED by the City Council this 9th day of November, 2021.

APPROVED by the Mayor this 9th day of November, 2021.



Rasham Nassar, Mayor

ATTEST/AUTHENTICATE:



Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK:	November 5, 2021
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