

Disposable Carryout Bag Ordinance Draft 11/30/2019

Purpose.

The purpose of this article is to mitigate climate change, minimize economic impacts on business, reduce litter, reduce impacts to aquatic environments and lifecycle environmental impacts, and reduce negative impacts on recycling facilities of single-use plastic bags and incentivize Duluth consumers to use reusable carry-out bags.

Definitions.

Carryout bag means a paper or plastic bag that is provided by a retail establishment at the check stand, cash register, point of sale, or other point of departure to a customer for the purpose of transporting food or merchandise out of the establishment. Carryout bags do not include:

- (1) Bags without handles used by customers inside stores to package bulk items such as fruit, vegetables, nuts, grains, candy, greeting cards, or small hardware items, such as nails and bolts, or to contain or wrap frozen foods, meat or fish, whether prepackaged or not, or to contain or wrap flowers or potted plants, or other items where dampness may be a problem, or to contain unwrapped prepared foods or bakery goods, or to contain prescription drugs; or
- (2) Bags used to safeguard public health and safety during the transportation of prepared take-out foods and prepared liquids intended for consumption away from the retail establishment; or
- (3) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, bags used to protect fine art paper, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.

Single-use plastic carryout bag means any carryout bag made from plastic or compostables that is neither intended nor suitable for continuous reuse as a carryout bag or that is less than ten (10) mils thick.

Pass-through charge means a charge to be collected by retailers from their customers when providing carryout bags, and retained by retailers to offset the cost of bags and other costs related to the pass-through charge.

Retail establishment means any person, corporation, partnership, business venture, public sports or entertainment facilities, government agency, street vendor or vendor at public events or festivals or organizations that sell or provide merchandise, goods, or materials including, without limitation, clothing, food, beverages, household goods, or personal items of any kind directly to a customer. Examples include but are not limited to department stores, clothing stores, jewelry stores, grocery stores, pharmacies, home improvement stores, liquor stores, convenience stores, gas stations, restaurants, food vending trucks, farmers markets, and temporary vendors of food and merchandise at street fairs and festivals. Not-for-profit

organizations, Food banks and other food assistance programs are not considered to be retail establishments for the purposes of this section.

Reusable bag means a bag that is made of cloth, fiber, or other machine washable fabric or durable plastic that can be cleaned and disinfected regularly and meets the following requirements:

- (1) Is at least ten (10) mils thick;
- (2) Is specifically designed and manufactured for multiple reuses over a period of time and a minimum lifetime use of seventy-five (75) uses; and
- (3) If plastic have at least 40% post - consumer recycled content or greater
- (4) Has the capability of carrying up to eighteen (18) pounds.

Carryout bag restrictions and requirements.

(a) Retail establishments shall collect a pass-through charge of not less than ten (10) cents for each carryout (paper or plastic bag) provided to customers. It shall be a violation of this section for any retail establishment to pay or otherwise reimburse a customer for any portion of the pass-through charge. All retail establishments shall indicate on the customer transaction receipt the number of paper or plastic carryout bags and the total amount of the pass-through charge.

(b) Retail establishments are not required to collect a pass-through charge from anyone with a voucher or electronic benefits card issued under the Women, Infants and Children (WIC) or Temporary Assistance to Needy Families (TANF) support programs, or the federal Supplemental Nutrition Assistance Program (SNAP, also known as Basic Food), or a recognized Minnesota food assistance program.

(c) Paper carry-out bags shall be 100% post consumer content

Enforcement and penalties.

If any person fails, neglects or refuses to comply with the Disposable *bag* ordinance, the City of Duluth Solid Waste Officer shall serve upon the delinquent establishment personally, by electronic mail or by first class mail directed to the last address of the food store on file with the City, written notice of the Disposable Bag Ordinance and a Warning Notice of Violation and request for an Acknowledgement of Compliance, due within twenty calendar days after the date of the notice. The Acknowledgement of Compliance shall indicate knowledge of the Warning Notice of Violation and steps, including deadline, to achieve compliance.

If Acknowledgement of Compliance is not received on or before the applicable due date, a Notice of Violation shall be served by first class mail and electronic mail and initial penalty of \$50 shall be assessed, due within twenty calendars days after the Notice of Violation.

If Acknowledgement of Compliance and penalty is still not received on or before the applicable due date, a second Notice of Violation shall be served by first class mail and electronic mail and a penalty of \$500 shall be assessed.

An establishment may request a hardship waiver on any proposed penalty imposed under this title after receiving a Notice of Violation by filing a written request for a waiver within twenty calendar days of the date of mailing of the Notice of Violation. The request for a hardship waiver shall set forth the reasons for and amount of changes in the Notice of Violation that the establishment seeks and such other information.

The city solid waste office shall notify the establishment in writing their determination, within sixty days of the date of receipt of the request for a hardship waiver.

City of Duluth Legislative Code Sec. 1-7. General penalty; continuing violations.

Whenever in this Code or in any other ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefor, the violation of any such provision of this Code or any other ordinance of the city shall be punished by a fine not to exceed \$1,000, or less if specifically set in accordance with Section 31-8 of this Code.

Every day any violation of this Code or any other ordinance of the city shall continue shall constitute a separate offense. (Ord. No. 643, 10-4-1915, ' 1, 2; Ord. No. 6141, 7-25-1938, ' 1; Ord. No. 7718, 7-21-1969, ' 1; Ord. No. 7825, 11-23-1970, ' 1; Ord. No. 8188, 11-24-1975, ' 1; Ord. No. 8342, 7-25-1977, ' 1; Ord. No. 8688, 1-23-1984, ' 1; Ord. No. 9611, 7-28-2003, ' 1; Ord. No. 10155, 5-29-2012, ' 1; Ord. No. 10239, 8-26-2013, ' 1.)

Severability.

(a) *Severability of text.* If any portion of this article is determined to be invalid or unconstitutional by a court of competent jurisdiction, that portion shall be deemed severed from the regulations, and such determination shall not affect the validity of the remainder of the article.

(b) *Severability of application.* If the application of any provision of this article to a particular person or property is determined to be invalid or unconstitutional by a court of competent jurisdiction, such determination shall not affect the application of said provision to any other property.

Effective date.

This article shall become effective six (proposed) months after passage.

Polystyrene Foam Food (PSF) Food Containers

Findings and purpose.

Expanded polystyrene disposable food containers form a significant portion of the solid waste stream going into our landfills. Local landfills are running out of room; our future solid waste may need to be transported hundreds of miles to a landfill at a considerable cost. Expanded polystyrene is not biodegradable; once buried in a landfill, it will remain for centuries. EPS does not biodegrade and is not easily recycled. Polystyrene foam is pervasive in the marine environment. Like most plastics, EPS foam is lightweight and floats. When littered, it is carried from streets and through storm drains out to the Great Lakes watershed. The American Academy of Pediatrics recommends avoidance of Polystyrene plastics. The elimination of expanded polystyrene food and beverage containers is in the best interest of the health and welfare of the inhabitants of the City of Duluth and its ecosystem.

Definitions.

Disposable Food Containers - Single-use disposable products for serving or transporting ready-to-consume food or beverages, including, without limitation, take-out foods and/or leftovers from partially consumed meals prepared by a restaurant and/or retail food establishment and prepackaged vegetables prepared by a grocer. This includes, but is not limited to, plates, cups, bowls, trays, hinged or lidded containers.

PSF - Blown polystyrene (polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam) and expanded and extruded forms, 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, form molding, and extrusion-blow molding (extruded foam polystyrene), sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam.

"PSF" means any material composed of polystyrene and having a closed cell air capacity of 25 percent or greater, or a density of less than 0.787 grams per cubic centimeter based on an average polystyrene density of 1.05 grams per cubic centimeter, as determined by an analytical testing laboratory.

Retail Food Establishment — Any establishment which sells food for consumption on or off the premises, including but not limited to restaurants, grocery stores, theaters and other food service establishments.

Polystyrene Foam Food (PSF) Containers Prohibited.

Expanded polystyrene food or beverage containers shall not be used to package or serve food or beverages by retail food establishments within the City of Duluth. This ordinance shall not apply to the packaging of uncooked meat, uncooked poultry, and/or uncooked fish.

Enforcement; violations and penalties.

If any person fails, neglects or refuses to comply with the single use disposable *bag* ordinance, or distributes Polystyrene Foam Food (PSF) Containers, the City of Duluth Solid Waste Officer shall serve upon the delinquent establishment personally, by electronic mail or by first class mail directed to the last address of the food store on file with the City, written notice of the Polystyrene Foam (PSF) Food Containers Ordinance and a Warning Notice of Violation and request for an Acknowledgement of Compliance, due within twenty calendar days after the date of the notice. The Acknowledgement of Compliance shall indicate knowledge of the Warning Notice of Violation and steps, including deadline, to achieve compliance.

If Acknowledgement of Compliance is not received on or before the applicable due date, a Notice of Violation shall be served by first class mail and electronic mail and initial penalty of \$50 shall be assessed, due within twenty calendars days after the Notice of Violation.

If Acknowledgement of Compliance and penalty is still not received on or before the applicable due date, a second Notice of Violation shall be served by first class mail and electronic mail and a penalty of \$500 shall be assessed.

An establishment may request a hardship waiver on any proposed penalty imposed under this title after receiving a Notice of Violation by filing a written request for a waiver within twenty calendar days of the date of mailing of the Notice of Violation. The request for a hardship waiver shall set forth the reasons for and amount of changes in the Notice of Violation that the establishment seeks and such other information.

The city solid waste office shall notify the establishment in writing their determination, within sixty days of the date of receipt of the request for a hardship waiver.

City of Duluth Legislative Code Sec. 1-7. General penalty; continuing violations.

Whenever in this Code or in any other ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefore, the violation of any such provision of this Code or any other ordinance of the city shall be punished by a fine not to exceed \$1,000, or less if specifically set in accordance with Section 31-8 of this Code.

Every day any violation of this Code or any other ordinance of the city shall continue shall constitute a separate offense. (Ord. No. 643, 10-4-1915, ' 1, 2; Ord. No. 6141, 7-25-1938, ' 1; Ord. No. 7718, 7-21-1969, ' 1; Ord. No. 7825, 11-23-1970, ' 1; Ord. No. 8188, 11-24-1975, ' 1; Ord. No. 8342, 7-25-1977, ' 1; Ord. No. 8688, 1-23-1984, ' 1; Ord. No. 9611, 7-28-2003, ' 1; Ord. No. 10155, 5-29-2012, ' 1; Ord. No. 10239, 8-26-2013, ' 1.)

Severability.

Each section of this ordinance shall be construed as separate to the end that if any section, sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that ordinance and all other ordinances shall continue in full force.

Effective Date:

This ordinance shall take effect 12 (suggested) months following the effective date of the ordinance to allow time for restaurants and retail food establishments to use their existing stock.

Plastic Straws (and/or Serviceware) Draft

(may be expanded in the future to include serviceware)

Findings and Purpose

1. Plastic straws are amongst the top contaminants found within WLSSD compost.
2. Plastic straws are the sixth most frequently occurring litter in the United States, according to the Ocean Conservancy.
3. Over 660 species, including sea turtles, whales, dolphins and seabirds, are known to be impacted by plastic, either by ingesting or becoming entangled in plastic debris.
4. In response to this global problem, the European Union, California and many North American cities already have or are in the process of acting to combat their own contributions to plastic debris.
5. Flexible straws including compostable straws are the preferred straw for individuals with disabilities and health care patients.
6. It is in the public interest to restrict the proliferation of single-use plastic serviceware.
7. The Minnesota Waste Management Act (Minn. Stat. § 115A) whose purpose is to protect the state's natural resources and public health established a waste hierarchy in which it most beneficial to reduce waste before reduction and recycling.

Parameters and Guidelines

1. This policy reduces single-use plastic serviceware through waste prevention. Waste prevention includes only providing straws upon customer request and asking customers if they need plastic utensils and condiment packets before providing them.
2. City of Duluth mixed recycling programs are not a viable solution. To be recyclable, materials must meet the following criteria: a) a market upon which the material can be reintroduced into the stream of commerce exists and; b) the materials has properties that allow material recovery facilities to separate materials from each other. Single-use plastic serviceware items are not currently recyclable because they do not meet these criteria.

Definitions for Restrictions on Single-Use Plastic Serviceware

- A. "Condiment packaging" means plastic packaging used to deliver single-serving condiments to customers. This includes but is not limited to single-serving plastic packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly and jam and soy sauce.
- B. "Customer" means every person who purchases food or beverage that is intended to be consumed using single-use plastics.
- C. "Dine-in" means food and beverage that are intended to be consumed inside the place of business where the food and beverage were purchased, including without limitation cafeterias and food halls.
- D. "Electronic orders" are food purchases conducted by smart phone, email or the website of a retail food and beverage establishment.
- E. "Fast food" is food that can be prepared quickly and easily and is sold in retail food and beverage establishments as a quick meal or to be taken out of the retail food and beverage establishment for consumption. Fast food includes take-out and delivery orders and applies to orders transacted in person, by phone or electronically.
- F. "Institutional cafeterias are dine-in areas within government, education and medical institutions. Institutional cafeterias include ones managed by the institution or contracted food services.
- G. "Plastic serviceware means single-use plastic straws (stirrers, utensils and condiment packaging.)
- H. "Retail food and beverage establishments means any retail business that provides single-use plastic serviceware as a component of the product delivery. This includes but is not limited to full service and limited service (or fast food) restaurants, food carts, bars, coffee and tea shops, grocery stores, convenience stores, hotels and motels, caterers and food service contractors.
- I. "Utensils are single-use plastic utensils intended for consumption of food which include but are not limited to spoons, forks, knives, sparks and chopsticks.

17.103.310 Restrictions on Single-Use Plastic Serviceware

- A. As of DATE, all retail food and beverage establishments and institutional cafeterias, where beverages may be consumed at dine-in areas, shall provide plastic serviceware only after customer request.
- B. As of DATE, all retail food and beverage establishments and institutional cafeterias, where customers order fast food, take-out or delivery, shall provide plastic serviceware to customers only after asking if the customer needs plastic serviceware and the customer responds affirmatively.

Enforcement; violations and penalties.

If any person fails, neglects or refuses to comply with the Single-use plastic serviceware Ordinance, or distributes Single Use Plastic Serviceware, the City of Duluth Solid Waste Officer shall serve upon the delinquent establishment personally, by electronic mail or by first class mail directed to the last address of the food store on file with the City, written notice of the Single Use Plastic Serviceware Ordinance and a Warning Notice of Violation and request for an Acknowledgement of Compliance, due within twenty calendar days after the date of the notice. The Acknowledgement of Compliance shall indicate knowledge of the Warning Notice of Violation and steps, including deadline, to achieve compliance.

If Acknowledgement of Compliance is not received on or before the applicable due date, a Notice of Violation shall be served by first class mail and electronic mail and initial penalty of \$50 shall be assessed, due within twenty calendars days after the Notice of Violation.

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Severability.

Each section of this ordinance shall be construed as separate to the end that if any section, sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that ordinance and all other ordinances shall continue in full force.

Effective Date:

This ordinance shall take effect 12 months following the effective date of the ordinance to allow time for restaurants and retail food establishments to use their existing stock.