

ORDINANCE NO. 2021-05-023

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON TO REDUCE SINGLE-USE PLASTIC WASTE IN BELLINGHAM AND TO ENCOURAGE COMPOSTABLE OR REUSEABLE ALTERNATIVES

WHEREAS, the worldwide production of plastics (both resins and fibers) increased from 2 million metric tons in 1950 to 380 million metric tons in 2015, an annual growth rate of 8.4%, and the use of plastic has increased about two and a half times faster than global gross domestic product annually; and

WHEREAS, researchers have found that most plastic breaks down into very small fragments in the environment, called microplastics, which contaminate soil and water, and may even become airborne; and

WHEREAS, annual plastics pollution reaching the ocean has been estimated to range from 5 to 13 million tons annually; and

WHEREAS, microplastics that enter the marine environment are consumed by fish, marine mammals, birds, and other organisms, where they may pose a particular burden for endangered species such as salmon and southern resident orcas; and

WHEREAS, microplastics may also have human health implications as they have been detected in beverages and food products; and

WHEREAS, many types of single use plastic are in limited demand in the recycling market, and restaurant and food service plastic is a particular problem because plastic used for food consumption is often contaminated, making it not recyclable; and

WHEREAS, even where a market for recycling exists, plastic is often shipped to countries with few environmental rules, and much of the plastic turns out to not actually be recycled and often ends up in bodies of water or burned in unregulated incinerators that pollute the air and soil and represent an extreme hazard to human and wildlife health; and

WHEREAS, only 9% of the plastic produced to date in the U.S. has been recycled and annual recycling rates in the U.S. have stagnated at around 9% since 2012; and

WHEREAS, single use plastic, including food service items such as utensils, straws, cups, plates, food containers, and wrappers all frequently end up as litter and often end up polluting our marine environment; and

WHEREAS, hotels and other lodging establishments also contribute substantially to the single use plastic waste stream with small plastic products that are used once or a few times and then discarded; and

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WHEREAS, single-use plastic food service products also contaminate our recycling and compost systems, which reduces the cost-effectiveness of recyclable commodities and jeopardizes the quality of our compost; and

WHEREAS, there are many alternatives to single use plastic service products available, many of which are equivalent or even superior substitutes for single use items; and

WHEREAS, some single-use plastic products, including plastic straws and small bottles for personal care products, need to be available upon request as a reasonable accommodation to ensure equity, inclusivity, and sustainability for those who need them; and

WHEREAS, some alternatives to single-use plastics are not adequate for some people's access needs, and access needs should be accommodated in a manner that is not stigmatizing; and

WHEREAS, each county in the state is required by RCW 70.95.080 to prepare a Comprehensive Solid and Hazardous Waste Management Plan, and

WHEREAS, incorporated cities in the county, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas are participants in the County's solid waste management planning, and these jurisdictions have worked with the County to manage solid waste-related needs since the 1970s and entered into formal inter-local agreements regarding solid waste management in 1989; and

WHEREAS, Whatcom County's Solid Waste Management Plan states that "The first step in the waste management hierarchy is reducing waste generated", and a priority for waste reduction is also established in state law under RCW 70.95.010(8)(a); and

WHEREAS, costs associated with the use and disposal of single use plastic food service products create a burden on the City's solid waste disposal system and clog stormwater drains; and

WHEREAS, reduction in demand and price for recyclable products raises the cost of solid waste management in Bellingham and places an increasing financial burden on the City's residents; and

WHEREAS, reuse, and the substitution of compostables where this is not possible, is a key and essential element in Bellingham's solid waste management strategy going forward; and

WHEREAS, in light of the need to protect our sensitive marine environments, and with a desire to lead a transition to more environmentally sustainable alternatives, it is the intent of the Bellingham City Council to reduce the use of single-use plastic products, and to take other steps to reduce waste from single-use products; and

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WHEREAS, it is the City's intent to provide education to consumers and businesses around the requirements of this ordinance, and on the need for and utility of single use plastic reduction, and to encourage the use of alternatives, such as compostable and reusable food service products or refillable containers for personal care products; and

WHEREAS, it is the City's intent to implement, with community partners, a significant education and outreach effort that is suitable for small business owners and diverse ethnic populations, including language-appropriate materials, targeted outreach, and distribution of culturally appropriate materials; and

WHEREAS, the Bellingham City Council finds that a reduction in single-use plastic products is in the best interest of public health, safety, and welfare for the citizens of Bellingham and the environment.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Definitions

"Compostable" means a product that meets the requirements of RCW 70.360.040, as amended.

"City" means the City of Bellingham, Washington.

"Director" means the City's public works director.

"Food service businesses" means a business selling or providing food for consumption on or off the premises, and includes full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks or carts, home delivery services, delivery services provided through an online application, and business or institutional cafeterias.

"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.

"Plastic" means any of numerous organic synthetic or processed materials derived from petroleum that are mostly thermoplastic or thermosetting polymers of high molecular weight and that can be made into objects, films, or filaments, including, but not limited to, extruded polystyrene and expanded polystyrene.

"Plastic food service product" means a food service product that is composed of plastic; or foil, fiber or paper with a plastic coating, window, component, or additive.

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"Personal care product" means a product intended to be applied to or used on the human body in the shower, bath, or for personal cleanliness or grooming and shall include only shampoo, lotion, hair conditioner, and soap.

"Prepackaged food" means food service products that have 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 prior to receipt by the point of sale retail establishment.

"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 food service business. "Retail establishment" includes, but is not limited to, food service businesses, 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.

"Reusable" means 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.

"Reusable package system" is a set of containers and/or utensils provided to a retail customer that is intended to be returned to a restaurant or other collection location for cleaning and reuse. All materials used in such a system must meet the definition of reusable, above.

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

"Small bottle" means a bottle or container with less than or equal to a 6-ounce capacity that is intended to be nonreusable by the end user.

"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 2. Single use plastic food service products – Prohibited

The provisions in this section take effect July 31, 2022.

A. Retail establishments may not sell or provide food and beverage for consumption on or off the premises in or with single-use plastic food service products, except as provided in this chapter.

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B. Given that a straw is an adaptive utensil that may provide accommodation for an individual with a disability to eat and drink, a retail establishment where liquid foods are dispensed shall provide a flexible single-use plastic straw upon request by an individual for a plastic straw.

C. Prepackaged foods in plastic packaging may be continued to be sold by food service establishments. Establishments are encouraged to use bulk dispensers for condiments and sauces.

D. Reusable package systems that employ products made of durable plastic and/or other materials that are intended for and capable of being reused are not prohibited by this section.

Section 3. Single use plastic food service products – Limited time exemption for certain products

A. The following single use plastic food service products are exempt from the prohibition contained in section 2 of this chapter until January 1, 2023:

1. Produce bags;
2. Catering trays;
3. Clear food wrap and shrink wrap;
4. Containers for uniquely shaped foods, e.g., deviled eggs and cupcakes;
5. Flexible plastic packaging used to preserve moisture and freshness such as for cookies;
6. Containers or trays for hot meat items such as for ribs or rotisserie chicken;
7. Small absorbent pads put under meat or seafood to absorb liquids in the package.

B. The director may extend the foregoing exemption for one or more of the listed products for additional periods of time not to exceed one year in duration (per authorization) when the director determines as follows:

1. There are not at least two suitable and readily commercially available compostable alternatives to the single use plastic food service product for which the exemption is being extended; or
2. There are not at least two vendors that make commercially available a suitable compostable alternative to the single use plastic food service product for which the exemption is being extended.

C. Notwithstanding the foregoing, the director shall extend the exemption for containers or trays for hot meat items until the director determines that a commercially viable and equally safe alternative form of packaging is readily commercially available.

D. If the director extends any exemption granted herein, public notice of such extension shall be posted on the City's official website.

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Section 4. Requiring reusable food service products for on-premises dining

The provisions in this section take effect July 31, 2022.

A. Reusable food service products including utensils are required at all on-premises dining establishments for any meal to be eaten on the premises. Plastic straws shall be allowed upon request for dining on the premises. Condiments, such as sauces, ketchup, or mustard, provided for on-site 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 conjunction with another food service business. This requirement does not prohibit a food service business from providing, upon a customer's request, food service products compliant with Sections 2 through 3 above for the customer to take away leftover prepared food after dining on the premises.

C. Waivers. On-premises dining establishments that do not have onsite or off-site dishwashing capacity may petition the Department of Public Works for a full or partial one-year waiver. Waivers may be renewed. 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 products used for on-premises dining pursuant to a waiver obtained under this section shall comply with all requirements set forth elsewhere in this Chapter.

Section 5. Restricting certain types of single use personal products in lodging establishments

Beginning July 31, 2022, no single use personal care products in small bottles are allowed to be distributed in lodging rooms. As some single use personal care bottles may serve as an adaptive product to provide accommodation for an individual with a disability to access personal care products, lodging establishments shall provide personal care products in small bottles to a person at no cost, upon request only. Lodging establishments are encouraged to use refillable personal care product dispensers.

Section 6. Education

City staff designated by the Mayor shall provide, or contract for the provision of, education and outreach activities to inform retail establishments, consumers, and other interested individuals about the requirements of this chapter. Education and outreach will be designed to effectively convey the policies underlying this chapter, describe the actions necessary to gain compliance with its provisions, and minimize the need for formal enforcement action. The City will emphasize education and outreach rather than enforcement to achieve compliance with the requirements of this chapter.

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Section 7. Enforcement

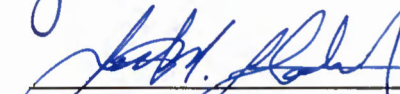
A. Prior to imposing penalties or taking other enforcement action set forth below in subsection B, the City shall attempt to provide written notice to any retail establishment in violation of this chapter. The notice shall include a description of the item sold or provided by the retail establishment in violation of the requirements of this chapter, the text of the specific code provision(s) that apply and information on how to comply with the provision(s). The notice shall be provided to the retail establishment by personal service or certified mail, return receipt requested. Such notice is not a formal enforcement action, is not subject to appeal, and is a public record.

B. An owner or operator of a retail establishment that violates any provision of this chapter shall be guilty of a civil infraction, which shall be punishable by a fine not to exceed \$250.00 per day for the first 20 days that the violation exists and \$500.00 per day for each day thereafter. Each day that an establishment violates any of the provisions of this chapter shall constitute a single, separate violation.

PASSED by the Council this 24th day of May, 2021.


Hannah Stone, Council President

APPROVED by me this 2nd day of June, 2021.


Seth Fleetwood, Mayor

ATTEST: 
Andy Asbjornsen, Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

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