ORDINANCE NO. 2021-34


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 cardboard 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 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 are upon requiring customer’s affirmation.

A. A retail food establishment may provide the following single-use food service products are 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
PASSED BY THE CITY COUNCIL: November 9, 2021
PUBLISHED: November 19, 2021
EFFECTIVE DATE: January 1, 2023
ORDINANCE NO. 2021-34
ORDINANCE NO. 2021-18


WHEREAS, the impact of the world’s increasing waste stream is unsustainable and detrimental to the future of the world’s environment, economy, and the health and safety of its people; and

WHEREAS, the City of Bainbridge Island has been a leader in developing responsible waste management policies including a ban on polystyrene food packaging in 1989 and a ban on single-use plastic bags in 2012; and

WHEREAS, the City of Bainbridge Island currently regulates the use of nonbiodegradable packaging materials in Chapter 8.24 of the Bainbridge Island Municipal Code (“BIMC”); and

WHEREAS, certain exemptions to prohibited materials and items exist in Chapter 8.24 BIMC; and

WHEREAS, single-use plastic food service products contaminate Bainbridge Island’s recycling and compost systems, soiling other recyclables, such as paper, and jeopardizing the quality of the community’s recycling and compost; and

WHEREAS, single-use plastic items such as utensils, straws, cups, lids, plates, and wrappers are frequently found as street and beach litter in Bainbridge Island and throughout Washington state; and

WHEREAS, plastic is a pollutant that never fully degrades but rather breaks down into smaller nonbiodegradable pieces and particles such as microplastics that are commonly ingested by marine and terrestrial wildlife, with bioaccumulation up the food chain that contaminates soil and water, threatening the health of Bainbridge Island’s and the Puget Sound’s ecosystems, as well as the health of our own community; 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, among other hazards, plastic debris attract and concentrate ambient pollutants like heavy metals and persistent organic pollutants in seawater and fresh water, which can transfer to fish and other seafood, that is eventually caught and sold for human consumption; and

WHEREAS, the annual worldwide production of plastics (both resins and fibers) increased from 2 million metric tons in 1950 to 380 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, only 9% of the plastic produced to date in the United States has been
recycled and annual recycling rates in the U.S. have remained at around 9% since 2012; and

WHEREAS, commercial composting services that allow for the processing of
“compostable” plastics and wood or fiber-based food service products are not currently available
on Bainbridge Island or in Kitsap County; and

WHEREAS, the greenhouse gas inventory recently completed for the City of
Bainbridge Island calculated that there was an approximately eleven percent increase in
community greenhouse gas emissions from solid waste between 2014 and 2018; and

WHEREAS, that recent greenhouse gas inventory also indicated that four percent of
current greenhouse gases are from solid waste generation; 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 Kitsap County, including Bainbridge Island, are
participants in the County’s solid waste management planning, and these jurisdictions work with
the County to manage solid waste-related materials; and

WHEREAS, one of the essential goals of Kitsap County’s Solid Waste Management
Plan is to “Reduce the environmental impacts to climate, air, water, and land that are associated
with waste generation, transportation, handling, recycling, and disposal”; and

WHEREAS, one of the key priorities of the Washington State Solid and Hazardous
Waste Plan is to “Mitigate climate change through waste reduction, reuse, and recycling”; and

WHEREAS, the City of Bainbridge Island adopted a Climate Action Plan on November
20, 2020; and

WHEREAS, the City’s Climate Action Plan includes as one of its 18 immediate actions
for 2021 a recommendation that the City, “Adopt an ordinance to reduce the use of single-use
plastic food service ware, including utensils and take-out containers, by all Island food service
establishments” (See, Action 7.A.2.a.); and

WHEREAS, significantly reducing single-use plastic food service ware from retail food
establishments within the City of Bainbridge Island will reduce litter, contamination of recycling
and composting systems, greenhouse gas emissions, and negative environmental impact by
avoiding dead-end deposition in a landfill; and
WHEREAS, some single-use plastic products, including plastic straws, 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 personal access needs or financial circumstances, and these personal needs and circumstances should be accommodated in a manner that is not stigmatizing; and

WHEREAS, Washington State waste reduction laws provide that it is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies; and

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

WHEREAS, it is the City’s desire to phase out the use of single-use plastic food service products as well as single-use, throwaway items of all types and increase the use of more sustainable alternatives; and

WHEREAS, to prevent solid waste generation, it is in the City’s interest to discourage the use of single-use beverage cups which can be accomplished through price signals; and

WHEREAS, it is the City’s intent to provide education to consumers and businesses regarding 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; 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, it is the City’s intent to listen to and work with businesses to implement the provisions of this ordinance in a collaborative fashion; and

WHEREAS, through a greater focus on waste minimization we can conserve resources; reduce greenhouse gas emissions, waste, terrestrial and marine litter, and other pollution; protect public health and welfare today and for future generations of Bainbridge Islanders; and avoid costly environmental damages; and

WHEREAS, the City Council considered an initial draft of this Ordinance No. 2021-18 on June 8, 2021, discussed that draft, and directed the City Attorney’s Office to revise the
draft to focus more narrowly on activities that may otherwise be preempted by state law, specifically E2SSB 5022, if the Council doesn’t enact such regulations by July 1, 2021 related to single-use food service products; and

WHEREAS, this revised version of Ordinance No. 2021-18 is intended to reflect the City Council’s intent to adopt reasonable regulations on this topic prior to July 1, 2021 to ensure that these new regulations are not preempted by state law, including as relates to enacting “an ordinance to reduce pollution from single-use food service products by requiring affirmation that a customer wants single-use food service products from the customer of the food service business or other retail establishment,” as set forth in Section 11(5) of E2SSB 5022; and

WHEREAS, the City Council considered and discussed this ordinance at its study session on June 15, 2021; and

WHEREAS, the City Council further considered and discussed this ordinance at its regular business meeting on June 22, 2021; and

WHEREAS, the City Council finds that a reduction in single-use plastic products is in the best interest of public health, safety, and welfare of the persons of Bainbridge Island, the terrestrial environment, and the Puget Sound.

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:

SINGLE USE FOODWARE AND WASTE REDUCTION

Section 2. A new Section 8.24.005 of the Bainbridge Island Municipal Code is hereby added as follows:

8.24.005 Definitions.

A. “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. “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. “Nonbiodegradable materials” means those made in whole or in part of polystyrene plastic.

D. “Packaging” means all food-related wrappings, boxes, containers, and disposable or non-reusable plates, cups, or drinking utensils.

E. “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.

F. “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.

G. “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.

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

I. “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 3. Chapter 8.24.010 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

8.24.010 Definitions. Restrictions on Food and Beverage Containers.

A. “Biodegradable materials” means those 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. “Nonbiodegradable materials” means those made in whole or in part of polystyrene plastic.

C. “Packaging” means all food-related wrappings, boxes, containers and disposable or nonreusable plates, cups, or drinking utensils.

D. “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.

A. No retail food establishment licensed to do business or required to be licensed within the city shall 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. 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.

Section 4. A new Section 8.24.015 of the Bainbridge Island Municipal Code is hereby added as follows:

8.24.015 Exemptions.

A. 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.

B. [Reserved.]

Section 5. Chapter 8.24.020 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

Prohibition [Reserved.]

A. No retail food establishment licensed to do business or required to be licensed within the city shall 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. 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.

Section 6. A new Section 8.24.025 of the Bainbridge Island Municipal Code is hereby added as follows:

8.24.025 Single-use food service products upon customer’s affirmation.

A. A retail food establishment may provide the following single-use food service products 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 BIMC 8.24.025.A. may not be available to customers in cylinders, bins, dispensers, containers, or other means on a self-service basis for any reason.

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

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

8.24.030 Exemptions[Reserved.]

BIMC 8.24.020 shall not apply to the following items:

A. Any flexible transparent covering;

B. Any food packaging used at hospitals, nursing homes;

C. Any paper or other cellulose-based packaging that is coated with polyethylene plastic on only one side, or wax coated;

D. Any plastic covers, covering material, food containers, or lids that are biodegradable;

E. Any glass container or glass packaging which is recyclable;

F. 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;

G. Plastic eating utensils, such as forks, knives or spoons, straws, or beverage container covers; and

H. 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, not more than 10 percent of the total volume of food sold at the retail food establishment is packaged in nonbiodegradable packaging. (Ord. 89-03 § 3, 1989).

**Section 8.** A new Section 8.24.035 of the Bainbridge Island Municipal Code is hereby added as follows:

8.24.035 [Reserved.]

**Section 9.** Chapter 8.24.050 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

8.24.050 Penalties.

A. Prior to imposing penalties or taking other enforcement action as set forth below in subsection B, the city shall attempt to provide written notice to any 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. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor to have committed a civil infraction and, upon conviction thereof, such a finding, shall be fined in an amount not exceeding $500.00, or be imprisoned in the county jail for a period not exceeding six months, or be both so fined and imprisoned, 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 such violation committed or permitted to continue by the violator shall constitute a separate offense and shall be punishable as such under this section. Each day that an establishment violates any of the provisions of this chapter shall constitute a single, separate violation.

**Section 10.** A new Section 8.24.060 of the Bainbridge Island Municipal Code is hereby added as follows:

8.24.060 Education.

As necessary, the City Manager, or their designee, and pursuant to BIMC 8.24.040, 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.
Section 11. 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 12. Implementation.

A. No less than 60 days after final adoption, the city shall post, mail, or deliver a copy of the ordinance adopting this chapter to affected businesses within the city.

B. The city shall use additional outreach and education measures to publicize this chapter and to assist affected persons and businesses with implementation.

PASSED by the City Council this 22nd day of June, 2021.

APPROVED by the Mayor this 22nd day of June, 2021.

Rasham Nassar, Mayor

ATTEST/AUTHENTICATE:

Christine Brown, CMC, City Clerk

FILED WITH THE CITY CLERK: June 4, 2021
PASSED BY THE CITY COUNCIL: June 22, 2021
PUBLISHED: June 25, 2021
EFFECTIVE DATE: June 30, 2021
ORDINANCE NO. 2021-18