2020

Comprehensive Foodware Policy Toolkit

SURFRIDER FOUNDATION

Contents

Executive Summary

Overview

As part of Surfrider Foundation's Plastic Pollution initiative, Surfrider has created this Comprehensive Foodware Policy Toolkit to empower advocates with a deeper understanding of comprehensive foodware laws, which can be used for Chapter campaigns to advocate for source reduction of plastic pollution. This toolkit covers comprehensive foodware laws, specifically at the local and state level, and we offer background and best practices on each type of law, with emphasis on the importance of determining what's most effective and avoiding pitfalls.

The best comprehensive foodware bills emphasize a shift towards reusables rather than substituting non-environmentally friendly single-use products with another type of single-use product that may have a smaller impact. In this toolkit we try to cover all of the available options, including; 1) requiring reusable foodware for dine-in orders, 2) utensils and condiments upon request for takeout and delivery, and 3) a surcharge for single-use containers and cups.

Important Components Of Comprehensive Foodware Policies

The first adopted comprehensive foodware law was Berkeley, CA's Single-Use Foodware and Litter Reduction Ordinance which adopted a three-phased ordinance in January 2019.[1] Here are the main requirements for each phase:

First Phase: Accessory foodware items (utensils, condiments, napkins, etc.) may only be provided only upon request or at self-serve stations. Providing utensils and condiments upon request is a relatively easy way to reduce waste through changing the cultural norms to require the customer to request a fork or a packet of soy sauce rather than having these items included automatically.

Second Phase: Prepared Food Vendors must charge 25-cents for every single-use beverage cup provided. Requiring a 25-cent charge for every single-use cup or non-reusable food container provided by a food service establishment is a best practice.[2] Single-use cups are targeted by this clause in large part because they make up a significant portion of litter and are often non-recyclable. Similar to a bag fee, charging customers for non-reusable items has proven highly effective in stemming their consumption, and incentivizing customers towards reusables.

Third Phase: Reusable (durable/washable) foodware required for dine-in meals, with some exceptions. Requiring reusable foodware for all dine-in meals is one of the ultimate goals of a comprehensive foodware policy. Requiring condiment bottles rather than single-use packets (whether it's at a self-serve station or from a waiter) is important to include.

Key Takeaways

Development, adoption, and implementation of plastic pollution reduction laws is an iterative process. Foodware laws have evolved over the last decade from being simple bans on expanded polystyrene (EPS) foodware to comprehensive legislation that addresses all potential material types and concentrates on overall waste reduction. This happens by taking bold steps such as encouraging reusable takeout foodware, requiring reusable foodware for dine-in meals, and even charging for single-use foodware.

Key takeaways from this toolkit are:

- Require reusable foodware for dine-in meals (this is the main game-changer!)
- Ban the worst materials: EPS foodware, PFAS in foodware and food packaging, commonly-littered plastic items
- Make accessories available only upon request: straws, utensils, condiments
- Encourage reusables through mandates and surcharges on beverage cups and food containers

How To Use This Toolkit

As part of Surfrider Foundation's Plastic Pollution initiative, Surfrider has created this *Comprehensive Foodware Policy Toolkit* to empower advocates with a deeper understanding of comprehensive foodware laws and prepare them to effectively fight against plastic pollution.

This toolkit covers comprehensive foodware laws and is a continuation of the Surfrider Foundation's previous guidance documents regarding single-use plastics policy, the most recent of which was our Plastic Bag Law Activist Toolkit.[3] We offer background and best practices on each type of law, with emphasis on the importance of figuring out what's most effective and avoiding pitfalls.

The intended audience for this toolkit includes Surfrider Foundation chapters, local community leaders, other organizations advocating for plastic pollution reduction, and even legislators. We anticipate that most people using this toolkit already have some background on plastics issues and are ready to take the next steps to advocate for state and local plastic bag laws in their communities. Many communities have already taken steps to regulate plastic bags, foam foodware, and straws. Foodware makes up a large proportion of solid waste and litter, and we see comprehensive foodware laws as the next step for those communities.

The best comprehensive foodware bills emphasize a shift towards reusables rather than substituting non-environmentally friendly single-use products with another type of single-use product that may have a smaller impact. In this toolkit we try to cover all of the available options, including requiring reusable foodware for dine-in orders, utensils and condiments upon request for takeout and delivery, single-use container and cup fees, and policies that require a certain percentage of reusable cups at events. We also provide sections on straws and foam foodware for communities that have not addressed those yet — and for communities looking to update those laws as part of a new comprehensive foodware law.

Some of the policies covered in this toolkit have been adopted in hundreds of jurisdictions with several iterations, and some are emerging policies. **We will be clear where more information is needed for emerging issues.** Some foodware bill structures focus on a single product, but the trend is towards encompassing all foodware policies in one comprehensive ordinance — that's our focus here.

We will also briefly touch on the state of waste management issues relating to plastic.

Impacts Of COVID-19

The COVID-19 pandemic has impacted many facets of our lives. At the time of this writing, the majority of restaurants in the U.S. are only serving meals via takeout and delivery, and many restaurants may not survive the economic downturn. Also, the plastics industry has taken advantage of public fear around COVID-19 and used it to disseminate false information around the safety of reusables versus single-use.

Surfrider has pushed back on those claims and developed guidance on how to reopen restaurants while safely using reusables.[4] We recommend being very cognizant of the wide-ranging effects of COVID-19 and thoughtfully deciding which policies and timing best support your community.

We Can't Recycle Our Way Out Of A Plastic Pollution Crisis

The Surfrider Foundation's Plastic Pollution Initiative mission statement is:

"To reduce the impacts of plastics in the marine environment by raising awareness about the dangers of plastic pollution and by advocating for a reduction of single-use plastics and the recycling of all plastics."

The Surfrider Foundation's focus is first and foremost on source reduction of single-use plastics. That is where we put the vast majority of our energy. Our secondary focus is on recycling all remaining plastics. We think that it's important to participate in some important discussions on recycling, but not to the extent that it overshadows our focus on source reduction. Many foodware laws include requirements or recommendations that all foodware be recyclable and/or compostable. We generally support these clauses as part of a comprehensive foodware policy that focuses on source reduction, but we do not support such requirements as stand-alone policies.

The Surfrider Foundation's focus is first and foremost on source reduction of single-use plastics.

Plastic Recycling Generally

The Federal Trade Commission's Green Guides are guidelines regarding when a company may market a product as recyclable. These guidelines take into account whether the product is likely to be recycled into a new identifiable product rather than just whether it's accepted in a curbside recycling bin. This is Greenpeace USA's interpretation of "Recyclable" under the FTC's rules:[5]

1. Accessibility: 60% + consumer access
2. Sortability: Sorted by existing infrastructure
3. End Markets: Sufficient U.S. domestic reprocessing capacity

The Green Guides are administrative interpretations of law and don't have force of law, but California's Environmental Marketing Claims codifies all claims contained in the Green Guides and creates a private right of action to sue for false claims of recyclability.[6] A recent report by Greenpeace USA found that only some plastic bottles and jugs made from plastic resin #1 and #2 can be legitimately labeled as recyclable in the U.S. today.[7] The remainder of plastics are not reliably recycled into new identifiable products. The current recycling rate for plastics in the U.S. are abysmally low at 9 percent,[8] which is also the recycling rate for all plastic ever produced globally.[9] Recycling rates have been projected to fall to 2.9%, in part because there is little demand for recycled plastics when virgin resins are abundant and inexpensive — and if more countries follow China's lead by banning the import of plastic waste.[10]

The current recycling rate for plastics in the U.S. are abysmally low at 9 percent, which is also the recycling rate for all plastic ever produced globally.

For over 25 years, the U.S. has been sending massive amounts of plastic waste to China rather than recycling domestically since it was more economical to send it away. Seventy percent of U.S. materials were sold and shipped to Chinese processors.[11] In 2017, China announced a strict "National Sword" policy and U.S. recyclers no longer had a consistent buyer for low-grade plastics.[12] Without a robust U.S. recycling infrastructure and with limited demand from foreign countries for these materials, fewer materials are being recycled and dependence on incineration and landfills is increasing. China's import of scrap plastic dropped from 12.6 billion pounds in 2017 to 110 million pounds in 2018; despite this dramatic reduction, China is still among the top importers of scrap plastic in the world.[13]

From an environmental and humanitarian perspective, China's National Sword policy was good because it brought to light that much of the plastic waste sent to China was not able to be effectively recycled and was instead processed by low wage workers without the health, safety or environmental protections mandated in the U.S. We were simply outsourcing the problems associated with these materials. However, China's development of stricter regulations likely means that our low-value plastic scrap material will continue to go to a developing country willing to accept it, such as Vietnam or Malaysia. Waste Management, along with several other waste hauler companies, recently announced that they are no longer exporting plastic waste outside of North America.[14] Export bans have been proposed at the federal and state levels, which would require the U.S. to process our plastic waste domestically and would go a long way towards a more just and transparent waste management system.[15]

Watch Out For Preemption

The preemption doctrine refers to the concept that a higher authority of law will displace a lower authority when two authorities come into conflict (e.g., federal law takes precedence over state law, state law trumps local law).

The two types of potential preemption policies that relate to local foodware ordinances are the American Legislative Exchange Council (ALEC) auxiliary container regulations model legislation and Food and Drug Administration (FDA) Model Food Code legislation.

ALEC Auxiliary Container Regulations

In the context of comprehensive foodware policies, preemption concerns generally relate to legislation passed at the state level that explicitly bans local governments from regulating foodware containers.

ALEC is a non-profit organization composed of conservative state legislators and private sector representatives who draft vand share model state-level legislation for distribution among state governments. ALEC has developed model legislation that would preempt local ordinances regulating the use, disposition, or sale of, prohibiting or restricting, or imposing any fee, charge, or tax on "auxiliary containers," which are defined as "a bag, cup, bottle, or other packaging, whether reusable or single-use, that meets certain requirements."[16]

This model legislation is intended to block all local laws regulating single-use plastic in a very broad sense and are a direct affront to comprehensive plastic foodware policies as well as plastic bag policies. Preemption, particularly this ALEC model legislation, is currently considered to be the biggest challenge to fighting plastic pollution locally, because any progress made at the local level is at risk of being trumped by a law passed by the state legislature. Bills similar to this ALEC model legislation have been adopted in nine states.[17] See Preemption Watch's map for details.[18]

The best way to push back on preemption is developing a strong on-the-ground presence in support of passing local regulations on plastics, while also impressing upon state legislators the importance of the issue to their constituents.[19] Another successful strategy to fight against preemption is to develop a statewide coalition of groups working on the issue so that there's a presence at the state level to challenge the industry lobbyists. Lastly, another important strategy is to diligently track the effectiveness of local plastics laws and share those statistics with legislators.[20] In doing so, it's possible to demonstrate how plastics policies effectively change consumer behavior, provide savings in cleanups costs, and reduce the amount of single-use plastic pollution in local parks, streets, beaches and waterways.

Interstate Commerce Clause

Under the Interstate Commerce Clause of the United States Constitution, state and local governments may not enact laws which burden interstate commerce. The Interstate Commerce Clause has thus far not been an impediment to adopting local or state plastic pollution reduction legislation, but the clause is sometimes raised by industry groups so we feel the need to address it here. The determination of whether a law violates the Interstate Commerce Clause is based on whether a law actively discriminates against out of state companies. Laws that directly impede interstate commerce are presumed to be invalid, but laws that incidentally burden interstate commerce will only be invalidated if the burden is so excessive that it outweighs the law's general local benefits.[21]

FDA Food Code Model Language

The Food and Drug Administration (FDA) provides model language for food safety guidelines, referred to as the Food Code, and it is up to each state to adopt and implement their own standards.[22] The model language differentiates between customer-owned containers versus containers initially provided by the food establishment. According to the model, beverage containers may be provided by either the food establishment or the customer, and either the customer or the establishment may refill the beverage containers so long as the beverage system includes a contamination-free transfer process. Food containers, on the other hand, may only be refilled if the container is provided by the food establishment, the container is cleaned and sanitized by the food establishment, and the cleanliness is verified by a food employee. The model language does not list regulations for customer-owned food containers. However, if a model language is in place in your state, that language may be interpreted to disallow customers from bringing their own food containers to a store or restaurant to fill with food. To be clear, this model language is not binding and states may adopt language that differs from the model.

Several states have adopted, or are in the process of adopting, alternative legislative language that specifically allows customers to bring their own food containers for refill. In 2019, the California state legislature adopted AB 619, which updated the California Retail Food Code to allow for clean, consumer-owned containers provided or returned to the food facility for filling may be filled and returned to the same consumer so long as the container is designed and constructed for reuse in accordance with FDA guidelines, and procedures to prevent cross-contamination are in place.[23] California's bill is serving as a model for a similar bill that is pending in Washington State.[24, 25]

Knowing whether your state has a model Food Code legislation in place is important to know if you plan to promote the use of reusable food and beverage containers. Local health and sanitary codes can supplement state law, but cannot conflict. If your state's law does not allow customers to bring their own food containers to a store or restaurant, that might need to be addressed at the state level — by amending the state law — before a local law can be adopted promoting the use of reusable food containers.

Just Salad

New York State law allows customer-owned food containers and the New York Department of Health and Mental Hygiene (DOH) code provides further guidance on Food Preparation and Food Establishments.[26] That code requires establishments that do not wash and sanitize patrons' containers before reuse must obtain approval of a written standard operating procedure (SOP) that demonstrates that there is no contamination of food and/or food contact surfaces.[27] The purpose of the SOP is to have a procedure in place to prevent potential cross-contamination participating in a reusable takeout container program.

The SOP must specify the details of the restaurant's interaction with the customer's food container:

- which reusable containers that customers will be required to use
- where the customer must place their container
- how the container will be transported behind the counter
- when the employee will wear gloves and what they will touch
- what will be done with utensils or trays that touch the container
- when the lid will be placed on the container.

Just Salad was the first NYC restaurant to have an SOP approved for customers who bring reusable salad bowls back for refill. Just Salad sells salad bowls for $1 and offers customers a free topping every time they bring back the bowl for a salad. This is a great example of a reusable foodware option for takeout.

Building Your Campaign

As you start advocating and helping to develop a comprehensive foodware policy, here are a few tips to keep in mind:

It's important to reference relevant statistics and key studies in your public testimony in support of plastic pollution bills.

Best Statistics And Studies For Local Foodware Campaigns

It's important to reference relevant statistics and key studies in your public testimony in support of plastic pollution bills. Below are some general statistics; more specific statistics can be found hyperlinked in policy-specific sections throughout this document. You can also find additional plastic pollution facts and figures on Surfrider's Beachapedia page.[28]

Plastic utensils are virtually impossible to recycle through curbside recycling programs.

98%

Of all U.S. takeout or delivery meals are consumed at home or a workplace, where reusable cutlery is typically available.

Statistics Specific To Foodware

- Plastic utensils are virtually impossible to recycle through curbside recycling programs, and 98% of all U.S. takeout or delivery meals are consumed at home or a workplace, where reusable cutlery is typically available.[29]
- Single-use disposable foodware — like paper and plastic cups, takeout containers, straws, stir-sticks, and paper sleeves — have a major impact on our environment.
- New York City residents spend at least $42 million per year on waste management fees for single-use disposable foodware.[30]
- Plastic foodware — including plates, cups and cutlery — makes up approximately 20,000 tons of New York City's residential waste stream.[31]
- Clean Water Fund's 2011 Bay Area litter survey demonstrated that 67% of the litter on Bay Area streets consisted of food and beverage packaging.[32] The report also found that takeout cups and all the items that go with them (lid, sleeve, stir stick, etc.) comprise 13% of the litter on Bay Area streets.[33]

Roughly two-thirds of all plastic ever produced remains in the environment today.

79%

Plastics End Up In Landfills Or Environment

12%

Plastics Are Incinerated

9%

Plastics Are Recycled

Statistics Relating To Plastics Generally

- Under the FDA, roughly 6,000 chemicals known as food contact chemicals (FCCs) are allowed to be used in the manufacturing of foodware and other food storage containers.[34] Many of these intentionally used chemicals have not been tested for hazard properties.
- Only a dismal 9% of plastics are recycled, 12% of plastics are incinerated, and the remaining 79% of plastic waste ends up going to landfills or being polluted into the environment.[35]
- Plastic is problematic from the point of raw material extraction to its eventual disposal and dispersion. Roughly two-thirds of all plastic ever produced remains in the environment today — either as pollution in oceans and other landscapes, as microparticles in air, soil, and rain, or as microparticles in humans and animals.[36]
- At current levels, greenhouse gas emissions from the plastic lifecycle threaten the ability of the global community to keep global temperature rise below 1.5°C degrees.[37] By 2050, the greenhouse gas emissions from plastic alone could reach over 56 gigatons — 10-13% of the entire remaining carbon budget.
- A 2019 study found that 79% of incinerators are located in black, Indigenous, and people of color (BIPOC) communities and the pollutant fumes produced by incinerating plastic have toxic effects when inhaled.[38]
- Many of the chemicals used in the manufacturing process are toxic, and workers who make them and those living near a factory are at greatest risk.[39] Moreover, emissions from these factories can pollute the air, and the liquid and solid waste produced need disposal.

Beach Clean-Up Tool Statistics

Beach cleanup data is vital when making the case to reduce single-use plastics, as many items that a policy focuses on tend to be top items collected at beach cleanups. The Surfrider Foundation's Better Beach Alliance Beach Cleanup Tool, launched in 2019, tracks the impact of our cleanups through itemized data collection.[40] It tracks not only the weight of the trash collected, but the items found as well. This generates a "top ten" list for each cleanup which can be expanded regionally or nationally. This can then be used to direct policy efforts and support active campaigns.[41] Cigarette butts, single-use plastic bags, food wrappers, and straws are consistently on the top ten list of the Ocean Conservancy's International Coastal Clean-Up Day data.[42] Surfrider's dataset will be more robust and provide a more detailed picture of the trash problem as all beach cleanup data from across the country will be entered throughout the year. Furthermore, just as we can use the data to direct new policy efforts, we can also use the data to track the success of implemented policies.

Ocean Friendly Restaurants

Engaging restaurant owners as key stakeholders is an important part of the policy-making process and Surfrider's Ocean Friendly Restaurants program is a great resource.[43] Many are willing to provide support and may provide testimony about how they are implementing reusables at their restaurant, why they think it's important, the successes they are experiencing, and how much money they are saving. A personal story can often be more engaging and convincing than scientific evidence. Similarly, if there are student clubs near you, consider seeking their assistance as well.[44] Engaging youth can make a powerful impact during public testimony.

Components Of Comprehensive Foodware Policies

Comprehensive foodware bills are the new frontier for combatting plastic pollution locally. The objective of these bills is to move beyond switching one type of single-use product with another. Rather, the emphasis is to shift towards reusables. The crown jewel of comprehensive foodware laws is a requirement that all dine-in meals must be served on reusable foodware. Other clauses likely include upon request policies and bans on certain products, but the reusable foodware requirement is a game-changer.

At the time of this publication, comprehensive foodware policies are primarily being pursued by cities that have already addressed the trifecta of individual single-use plastic products (plastic bags, foam foodware, and straws) through existing legislation. Occasionally, some cities that have not yet adopted foam or straw laws jump right to a comprehensive bill that addresses all foodware. In such instances, these ordinances take a phased approach starting with actions that are easier to implement, such as improving signage, requiring that foodware be recyclable and/or compostable, banning foam, and only allowing certain single-use items upon request. Our focus here is on the dine-in requirement, but we also cover all of the elements of the best foodware bills.

The crown jewel of comprehensive foodware laws is a requirement that all dine-in meals must be served on reusable foodware.

Keep in mind that the ultimate goal for these policies is to reduce single-use plastics and shift towards the use of reusables products.

This next section breaks down comprehensive foodware policies to describe various components of what makes a strong policy, and provides examples and lessons learned. Depending on the main focus of your campaign, and the receptiveness of your community, some components may be better received and easier to implement than others. Keep in mind that the ultimate goal for these policies is to reduce single-use plastics and shift towards the use of reusables products.

All Foodware Must Be Recyclable And/Or Compostable

This is NOT a Surfrider Priority.

Many comprehensive foodware laws include a clause requiring that all single-use foodware must be compostable or recyclable. **We want to be very clear that clauses requiring that foodware be recyclable and/or compostable is not a policy priority for the Surfrider Foundation.** We generally support these clauses as part of a comprehensive foodware policy that focuses on source reduction, but we do not support such requirements as stand-alone policies. If such a clause is included, it is a best practice to make sure that the foodware is reusable, recyclable, and/or compostable, in an effort to keep **reusable** foodware top of mind.

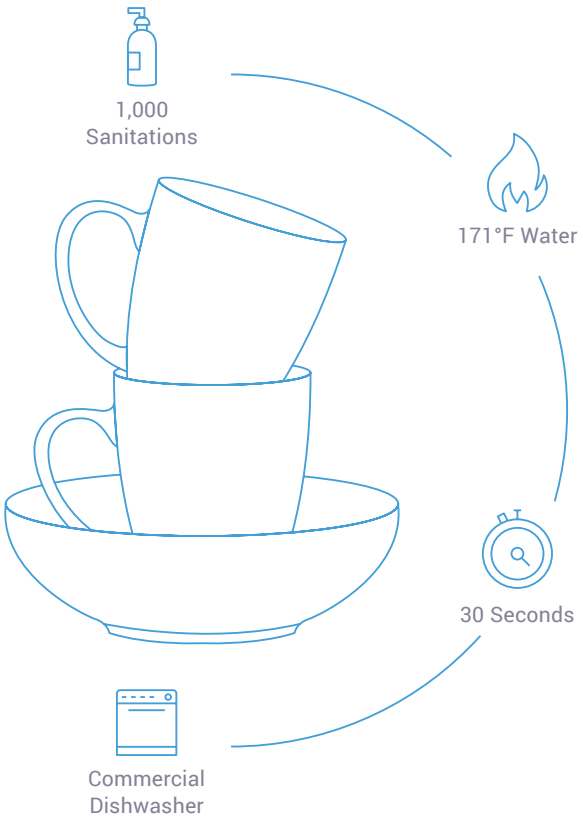
We recognize that in some cities the implementing agency wants the ability to further define what recyclability means. A more straightforward way to address recyclability would be to ban specific materials that are not recyclable, for example a ban on all polystyrene and all black plastic foodware.

Some cities require that all foodware be compostable, which is problematic to the extent that the proposed law either implicitly or explicitly promotes foodware made from compostable plastics. Compostable plastics are increasingly seen as problematic at commercial composting facilities, so much so that a group of Oregon Composters issued a statement saying that they don't want compostable plastic foodware.[45] Compostable plastics are problematic for recycling facilities as well. For more information on compostable foodware and bioplastics please see the Surfrider Foundation's Bioplastics Toolkit.[46]

Reusable Foodware Required For “Dine-In” Orders

Requiring reusable foodware for all dine-in meals is the hallmark of Berkeley’s law and the ultimate goal of comprehensive foodware policy. This requirement eliminates most single-use materials entirely , rather than requiring restaurants to switch from one single-use product to another. Requiring condiment bottles rather than single-use packets (whether it’s at a self-serve station or from a waiter) is also important to include.

San Francisco’s bill defines reusable as designed and manufactured to maintain its shape and structure, and to be materially durable for:



Definition Of Reusable Foodware

For the reusable foodware requirements for dine-in meals, it is important to have a solid definition of what reusable means since that sets the threshold for what foodware is allowed. If the term reusable is not clearly defined, there could be potential for a loophole — similar to bag ban loopholes — for only slightly more durable foodware to replace single-use foodware,which might not be sturdy enough to be routinely reused.[47]

Under Berkeley’s definition, reusable foodware must be “specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.” In addition, exceptions should also be clearly defined to avoid loopholes. For example, Berekley’s ordinance states that “disposable paper food wrappers, sleeves and bags; foil wrappers; paper napkins; straws and paper tray and plate-liners” are allowed when dining on site, as long as they meet the “Disposable Foodware Standards” section in the ordinance, which include municipal composting and certification requirements.

Bills introduced after Berkeley’s law, including New York City and San Francisco, define reusable more strictly.[48, 49, 50] San Francisco’s law defines reusable as “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.” A best practice is to correlate the reusable definition with being dishwasher-safe under the state and/or local sanitary code. Certifications for the definition of reusable have thus far not been developed, so a specific statement by the manufacturer that the foodware meets the criteria defined in the ordinance should be sufficient at this time.

Single-Use v. Disposable v. Non-Reusable

Generally, Surfrider advocates for using the term single-use instead of disposable since single-use items are specifically designed and manufactured for a single use whereas all items are potentially disposable. Some bills with a strict definition of reusable, including San Francisco’s bill, opt for defining reusable versus non-reusable rather than using the term single-use. This is due to pushback from the plastics industry on the definition of single-use, with industry arguing that single-use foodware might be capable of more than one use. An emerging best practice is to define reusable foodware (based on being dishwasher-safe under the local sanitary code) and also defining single-use (or non-reusable) foodware in the ordinance to avoid any ambiguity.

Exemption For Lack Of Dishwasher Capacity Or Other Hardships

As a general rule, exemptions that are included in a given bill often vary by jurisdiction. Whether to include certain exemptions in the first draft of a bill should be considered carefully, and some exemptions might be added in the negotiation process. A common exemption to reusable foodware requirements for dine-in meals is to exempt vendors who do not have onsite dishwashing capacity. The wording of the exemption varies depending on the situation, but the exemptions often take into account:

- insurmountable space constraints
- undue financial hardship
- whether installation of a dishwasher would cause a violation of a building code
- the cost and availability of a third party dishwashing service
- capital and operational costs, including construction and labor (weighed against the cost of purchasing single-use service ware, refuse service costs, labor time associated with managing all the waste)
- lack of onsite or off-site dishwashing capacity, or are unable to contract for services to wash, rinse, and sanitize reusable foodware, in order to comply with applicable provisions of the state's Health and Safety Code

Another best practice is to require that health departments not approve plans for new restaurants unless there is a footprint for a dishwasher and dishwashing area. Under some ordinances, businesses may file waivers for up to one year at a time if they are facing "undue hardship or practical difficulty" in implementing reusables for dining on premises and if it's not generally applicable to businesses in similar circumstances. Another option is to leave discretion to the implementing agency to determine exact parameters. Many of these exemption clauses confine this waiver to existing food vendors and make new vendors ineligible for the exemption.[51]

Responses To Economic Arguments Against Reusable Foodware Requirements

The main arguments against reusable foodware requirements for dine-in are economic arguments that such requirements will be an undue financial hardship for restaurants. However, when you do the math, the cost of individually-wrapped condiment packets, disposable utensils, stirrers, beverage cups and lids, take-out containers, plates, and bowls all add up quickly. In Los Angeles, ReThink Disposables and The Bay Foundation have put together a number of case studies showing that restaurants can save money by switching to reusables such as The Conservatory for Coffee, Tea, & Cocoa saving $6,898.82 annually.[52, 53] In addition, all of ReThink Disposable's 300+ participating restaurants save money when making the switch.[54] Not one restaurant lost money, even when they had to install a dishwasher. Another example is the University of San Francisco's Market Cafe, which saved $150,000 per year in disposable foodware costs by eliminating more than two million foodware items with no additional labor cost.[55] Not only did they save money, over 2.6 million disposable items were eliminated and 10.24 metric tons of greenhouse gas emissions reduced (MTCO2) annually.[56]

The University of San Francisco's Market Cafe saved after switching to reusables.

$150K
Saved Annually

2.6M
Disposable Items Reduced

10.24
Metric Tons Of Greenhouse Gas Emissions Reduced

Utensils And Condiments Upon Request For Takeout And Delivery

Another important clause for foodware laws pertains to utensils and condiments upon request for takeout and delivery. Requiring that such items be furnished only upon request is a relatively easy way to reduce waste through changing the cultural norms to require the customer to request a fork or a packet of soy sauce rather than having these items included automatically. For example, El Segundo, CA passed an ordinance this year where plastic straws, stirrers, and utensils will only be available upon request.[57] Berkeley's law defines accessory foodware broadly to include "straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory" or accompanying items used as part of food or beverage service or packaging. A best practice is to define accessory foodware broadly, except address straws separately, and make all accessory foodware available upon request. See section G about straws.

Definition Of Food Service Establishment

Portland, OR's definition of foodservice establishments is very a good example since it applies to all food and beverage establishments, which it defines as including sit-down and fast food restaurants, food carts, bars, coffee and tea shops, grocery stores, convenience stores, hotels and motels, caterers, and food service contractors, as well as takeout and delivery.[58] It also includes education, medical, and governmental institutions that provide food and beverages. In addition, the only exception to this law is for meals provided as part of a social service to vulnerable populations, including free or reduced-price meals provided by school systems, homeless shelters, and programs that deliver meals to the elderly. The County of Maui, HI also has a broad definition of "food vendor" which includes "any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food truck, catering vehicle, or cart, or roadside stand".[59]

Regulating Self-Serve Areas

A potential loophole for Upon Request laws is customer self-serve areas for utensils, napkins, and condiments. Ideally, all items would be kept behind the counter and be provided upon request only. However, a best practice is to define what must be kept behind the counter and what may be put in a customer self-serve area. For example, Portland, Oregon's law allows plastic straws, stirrers, or condiment packets must be kept behind the counter and allows plastic utensils in the customer self-serve area.[60]

Specifying the Responsibilities Of The Food Delivery Services And Platforms

For food delivery, accessory foodware upon request laws should specify that the food delivery services, including online platforms, are responsible for providing options for customers to affirmatively request (a.k.a. opt in to receiving) accessory foodware items. Berkeley's law requires the option to affirmatively request accessory foodware across all ordering/point of sale platforms. New York City's bill takes this a step further by explicitly stating the obligations of restaurants versus food delivery service providers and providing an enforcement framework. NYC's law requires that restaurants not include utensils in delivery orders unless the customer affirmatively requests and also requires that delivery services update their platforms to have the default selected option be no utensils.

The reasoning behind this is that most food delivery platforms currently operate under an "opt out" model for utensils. While we see this as a first step towards reducing waste from unwanted foodware, the default is that every order gets these items regardless of whether the customer needs them. Also, reports of customers still receiving those items after choosing not to receive them are widespread and common.[61]

Therefore, a best practice is to require all food delivery platforms to switch from an "opt out" model to an "opt in" model and expand beyond utensils to also address condiments and other accessory foodware like napkins and straws — and make the customer's choice enforceable. Similar to how customers choose exactly which toppings they want on their pizza, customers should also be able to opt in to exactly which utensils, napkins, or condiments they want.

25-Cent Single-Use Cup Charge

Berkeley's foodware law was also the first local ordinance to require a 25-cent charge for every single-use cup provided by a food service establishment.[62] Single-use cups are targeted by this clause in large part because they make up a significant portion of litter and are often non-recyclable. Clean Water Fund's 2011 Bay Area litter survey found that takeout cups and all the items that go with them (lid, sleeve, stir stick, etc.) comprise 13% of the litter on Bay Area streets.[63] Coffee cups and lids are not recyclable in most curbside recycling programs. The reasoning behind the single-use cup charge is similar to laws requiring charges for carryout bags: if customers are presented with mandatory charge for a single-use cup, they are more likely to remember to bring their own reusable cup.[64]

The cup charge is required to be exhibited clearly on all marketing media such as menu, ordering platforms and/or menu boards, and must be identified separately on any post-sale receipt. Under most bills, the cup charge is retained by the food vendor. The City of Santa Cruz, CA also passed a similar bill this year where the fee remains with the seller and is intended to offset any cost difference of compostable or recyclable foodware.[65]

A cup single-use charge is the best way to encourage customers to bring their own reusable cups.

126%

Rise In Use Of Reusable Cups After A 5 Pence Charge Was Added To Singlue-Use Cups In Participating Starbucks Stores In The UK

A decade ago, Starbucks pledged to serve up to 25% of its coffee in reusable cups, but changed that goal to serving 5% of beverages in personal cups, and as of 2018 only 1.3% of drinks are served in personal cups.[66, 67] In 2018, Starbucks introduced a three-month trial of a 5 pence charge in the UK for single-use cups and the result was a 126% rise in the use of reusable cups in participating stores.[68] A cup single-use charge is the best way to encourage customers to bring their own reusable cups. The city of Freiburg, Germany, is an innovative example where customers can pay a deposit of one Euro for a Freiburg Cup for coffee to go.[69] There are currently 137 participating companies and a customer can return the reusable cup to all partner companies afterwards to receive their deposit back. The cups are washed professionally and then returned back into circulation.

Inspiring Innovation For Reusable Foodware Businesses

Implementing the reusable cup and container components of a comprehensive foodware law can inspire business innovation and support business' efforts to focus on reusable foodware. For example:

- The Vessel reusable cup program in Berkeley, CA provides free, reusable, stainless-steel, thermal cups with silicone lids to participating customers through an online application.[70] The QR code at the bottom of the cup is scanned when a cup is dispensed and customers are charged if they don't return their cup to a kiosk or participating care within 5 days.
- Dispatch Goods is a food delivery container program in San Francisco, CA that partners with restaurants to deliver takeout and delivery orders in reusable stainless steel containers.[71]
- r.Cup (national) CupZero (NYC) are two companies that offer reusable cup rentals. Event planners hire these companies to drop-off, pick-up, wash, and store reusable cups.[72]

For more information on businesses involved in this space please see Surfrider's Ocean Friendly Restaurants Foodware Guide.[73]

25-Cent Non-Reusable Food Container Charge

Arcata, CA adopted an ordinance in January 2020 that requires food vendors to charge customers 25-cents for non-reusable foodware containers.[74] In addition, food vendors must provide a minimum 25-cent discount for customers who bring their own reusable foodware. Food vendors may provide a larger discount at their own discretion and SNAP/WIC recipients are exempt from the charge. The income from the charge remains with the food vendor, which helps offset the discount provided to customers for bringing their own containers.

A similar bill was also introduced in San Francisco, CA in 2019.[75] Similar to a bag fee, charging customers for non-reusable items has proven highly effective in stemming their consumption, and incentivizing customers towards reusables — and pairing a charge with a discount provides even greater incentive. Mandating a charge for food containers is a much bigger step than mandating a charge for single-use cups since the food container category is much more broad. Food containers represent a significant source of non-recyclable material and litter, and are an obvious next step to address in comprehensive foodware laws. Passing food container charges is simply a matter of building political will. This is an area we will be watching very closely.

Food containers represent a significant source of non-recyclable material and litter, and are an obvious next step to address in comprehensive foodware laws.

Requiring Reusable Cups At Events

A local ordinance in San Francisco, CA requires that event producers providing prepared food beverages at events must either make reusable beverage cups available to no less than 10% of their attendees, or be able to demonstrate that reasonable efforts have been made to ensure that at least this percentage of attendees or visitors brought or will have access to a reusable cup at the event.[76] To meet the requirements, event producers may provide, lend, or sell reusable cups to event attendees, and promote or incentivize attendees to bring their own reusable cups.

Requiring reusable cups at events is a great way to incrementally transition to having reusable foodware accepted more broadly. We recommend this policy, but further recommend that pushing for a higher threshold than 10% is possible. However, even with a relatively low threshold of making reusable cups available to at least 10% of attendees, that can add up to a significant number of cups for large events — and that threshold percentage should increase over time. Also, the incentive to encourage attendees to bring their own cups can contribute to fostering a culture of reuse.

The model Food Code allows that beverage containers may be provided by either the food establishment or the customer, and either the customer or the establishment may refill the beverage containers so long as the beverage system includes a contamination-free transfer process. Be sure to check your state and local health department regulations before moving forward with a reusable cup policy; but if your state has adopted the model Food Code language, then refilling reusable beverage containers at events is likely not a problem so long as measures to prevent potential cross-contamination are in place.

Case Study: Berkeley, CA

The first adopted comprehensive foodware law was Berkeley, CA's Single-Use Foodware and Litter Reduction Ordinance which adopted a three-phased ordinance in January 2019.[77] This ordinance is designed to reduce the use of single-use foodware including cups, lids, utensils, straws, clamshells, and other disposables. It applies to all prepared food vendors including bakeries, drive-ins, food product stores, food service establishments, drugstores, theaters, bars, and other similar establishments that sell prepared food to be consumed on the premises. Berkeley is implementing its ordinance as a phased approach.

This ordinance is designed to reduce the use of single-use foodware including cups, lids, utensils, straws, clamshells, and other disposables.

First Phase

3 months after adoption.

- Accessory foodware items (utensils, condiments, napkins, etc.) may only be provided only upon request or at self-serve stations (ie. a place where you can add condiments to your meals, grab napkins, straws, utensils, etc.).
- Color-coded receptacles are required to separate food vendors' post-consumer recyclables, compostables, and landfill waste.
- Foodware purchased by the City of Berkeley must be reusable or compostable.

Second Phase

Starts ~8 months after implementation of first phase.

- All single-use foodware and accessory foodware items must be compostable and free of intentionally added fluorinated chemicals (PFAS) - certain waivers available.
- Prepared Food Vendors must charge 25-cents for every single-use beverage cup provided.

Third Phase

Starts ~1 year and 3 months after implementation of first phase.

- Reusable (durable/washable) foodware required for dine-in meals, with some exceptions.
- Exceptions include on-site use of certified compostable paper tray/plate liners, paper wrappers, napkins, and straws, and recyclable aluminum foil for wrapping/forming items.

Additional Suggested Phases Not Included In Berkeley's Law

- Prepared Food Vendors must charge 25-cents for every single-use food container provided.
- Requirement for reusable cups at events.

Case Study: Oahu, HI

Bill 40 passed in December 2019, which bans nearly all takeout plastic and polystyrene foam across Oahu, Hawai'i and prioritizes transitioning to single-use items made from naturally occurring materials.[78] Take a look at Surfrider's Ocean Friendly Foodware Guide for specific recommendations.[79] This law is also implemented in three phases:

First Phase

One year after adoption.

- Businesses may only provide service ware (1) when requested; (2) when the customer gives an affirmative response when asked; or (3) in a self-service area or dispenser.

Second Phase

Starts 6 months after implementation of first phase.

- Bans plastic service ware including stirrers, straws, baran (plastic grass usually used to partition sushi), and utensils including forks, spoons, sporks, and knives.
- Bans polystyrene foam foodware including hot and cold beverage cups, cup lids, plates, bowls, bowl lids, "clamshells," trays, egg cartons, or other hinged or lidded containers that contain plastic and are used for selling or providing food or beverage for consumption on or off the premises of a business.

Third Phase

Starts 1.5 years after implementation of first phase.

- Bans plastic foodware including hot and cold beverage cups, cup lids, plates, bowls, bowl lids, clamshells, trays, or other hinged or lidded containers that contain plastic and are used for selling or providing food or beverage for consumption on or off the premises of a business.

Bill 40 bans nearly all takeout plastic and polystyrene foam across Oahu, Hawai'i.

Exemptions

Bill 40 includes several exemptions for grab-and-go, shelf stable foods or beverages, pre-packaged or pre-sealed items, as well as medical or physical conditions. Industry exemptions are also considered for situations where there are no acceptable alternatives or where acceptable alternatives are not readily available due to market supply constraints.[80]

Additional Suggested Phases Not Included In Oahu's Law

- Reusable (durable/washable) foodware required for dine-in meals.
- Prepared Food Vendors must charge 25-cents for every single-use or food container provided.
- Requirement for reusable cups at events.

Plastic Straw Bans And Straws Upon Request Policies

We encourage you to check out the Final Plastic Straw Program Activist Toolkit that includes resources, strategies, and examples for Surfrider chapters and clubs, and restaurants to start to move forward with a straw program in their community.[81]

Surfrider chapters advocate for policies that reduce plastic pollution at the source. One of these efforts is the mitigation of plastic straw use through a "straw upon request" policy or plastic straw ban that maintains accommodations and exemptions allowing anyone who needs a straw to be able to obtain one.

Surfrider wholeheartedly agrees that anyone who needs a straw should have access to one. People with disabilities should be incorporated in the stakeholder outreach process for developing laws designed to address plastic straw pollution, and Surfrider encourages municipalities and states to reach out to potentially affected communities, like people with disabilities, when writing the local ordinances or state law. El Segundo, CA passed an ordinance this year where plastic straws, stirrers, and utensils will only be available upon request.[82]

Keep in mind that the straws upon request policies should never require that a customer identify as disabled in order to be provided a straw, as such requirements may run counter to the Americans with Disabilities Act. Another best practice is to ban other beverage accessories (e.g. stirrers, splash sticks, beverage lid plugs) and not to allow self-serve straw stations.

Another best practice is to ban other beverage accessories and not to allow self-serve straw stations.

Expanded Polystyrene (EPS, a.k.a. Styrofoam™) Bans

Many laws at the local and state level have banned various products made from expanded polystyrene (EPS) foam, and recently many cities and towns have started to ban certain types of rigid polystyrene as well.

Don't Call It Styrofoam™!

Styrofoam™ is a registered trademark[83] of DuPont (formerly Dow Chemical Company)[84] used for building insulation materials made from "extruded polystyrene" (XPS). Foodware (cups, plates, trays, etc.), which are made from EPS, is often mistakenly referred to as the brand name Styrofoam™.[85] Dow has spent a great deal of money keeping tabs on the high-profile misuses of the term and sending cease-and-desist letters. Keep this in mind when advocating for bans of EPS foodware and consider simply calling it foam foodware.

Environmental Impacts Of Polystyrene

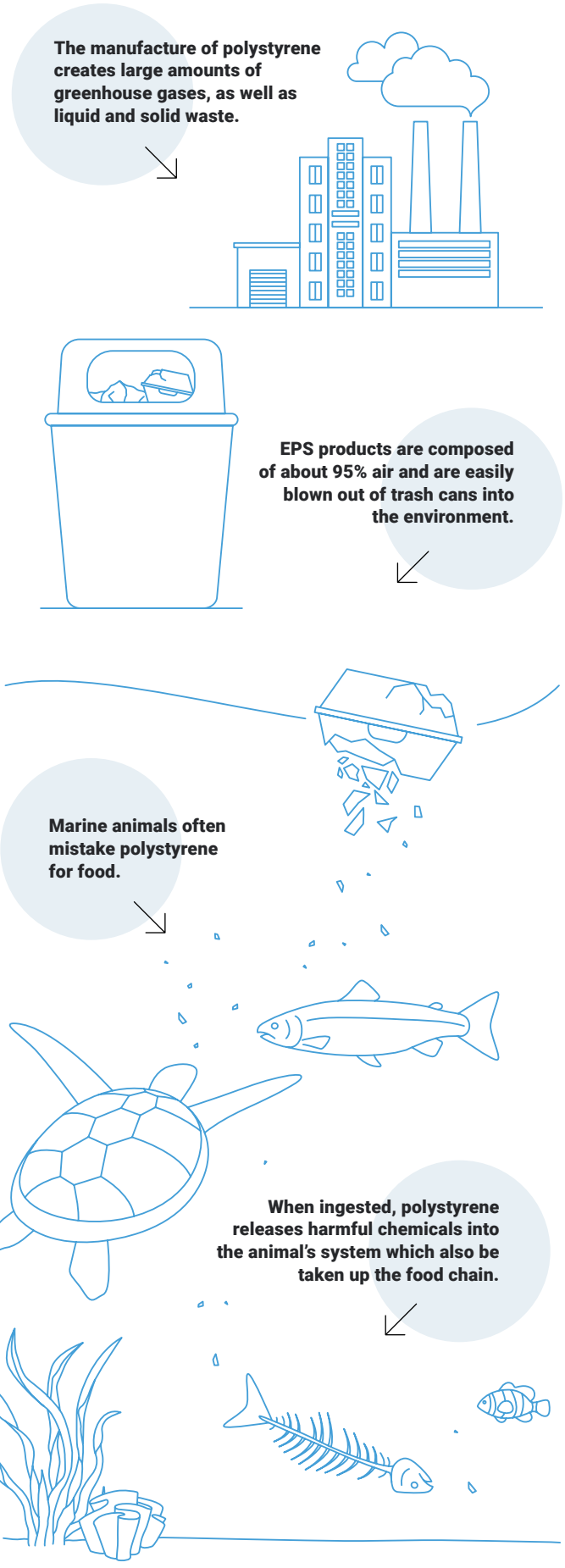
EPS foam foodware is very inexpensive to manufacture and low-cost for restaurants, but can wreak havoc on the marine environment. It is lightweight, floats, and does not biodegrade in our lifetimes.

Impacts of Polystyrene Generally

- Marine mammals can easily mistake polystyrene for food or nesting materials.[86] If polystyrene microparticles are ingested by animals (or humans), the sequestered chemicals such as PCBs, DDT, pesticides, and flame retardants might be absorbed into the animal's system and taken up the food chain.[87]
- The manufacture of polystyrene is energy intensive and uses petroleum, creating large amounts of greenhouse gases, as well as liquid and solid waste. Consequently, the environmental production costs of polystyrene have been ranked the second worst in the USA by the California Integrated Waste Management Board.[88]

Impacts of EPS Specifically

- EPS products are composed of about 95% air and are easily blown out of trash cans and other containers even when disposed of properly.[89]
- EPS is pervasive in the marine environment. When released into the environment, intentionally or accidentally, it is carried from streets and through storm drains out to the ocean.[90]
- EPS breaks up into smaller and smaller pieces. As it breaks down into smaller pieces, it gets harder and more expensive to clean up.[91] it clogs storm drains, culverts, and catch basins leading to increased time and expense to cities that is passed down to ratepayers.



Is EPS Foodware Recyclable? Basically, No.

The biggest pushback on most proposed foam foodware laws is that EPS is recyclable. Polystyrene is plastic resin number six, which can either be rigid (a fork or a clear clamshell), or expanded (a foam coffee cup). Polystyrene is low-value plastic that has little or no value on the recycling market, and EPS has even less value. While EPS is technically recyclable, in practice, EPS foodware is rarely recycled and instead is sent to landfills, as a result of very low residual economic value to recyclers and food residue contamination of EPS foodware recycling feed stock.

Dart Container Corporation (Dart), the biggest foam foodware manufacturer in the U.S., has put considerable time and funding into the argument that EPS is recyclable. The American Chemistry Council spent $824,500 on the NYC Restaurant Action Alliance, which rallied against NYC's foam foodware ban and later filed a lawsuit against NYC's foam foodware ban, claiming that the material should not be banned because it's recyclable.[92, 93] New York City's Dept of Sanitation (DSNY) issued a Determination on the Recyclability of Food-Service Foam ("Determination") that EPS foodware is not recyclable, which the judge upheld and NYC won the lawsuit.[94] The 44-page Determination is the most comprehensive analysis to date of exactly why EPS foam foodware isn't recyclable.

For example, the Determination features a section detailing research into the eight biggest jurisdictions in the U.S. and Canada that collected EPS in their recycling programs, and concluded that none of the jurisdictions were recycling EPS foodware.[95] Many of the examples were pilot programs, sometimes where Dart supplied the city with a densifier — since EPS is made up mostly of air bubbles — to condense the EPS to a weight to volume ratio that's less expensive to ship.[96] Even these subsidized pilot programs, including an Los Angeles County Program, densified blocks of EPS foodware ultimately were disposed of in a landfill because no one was willing to buy it.[97] The DSNY concluded that all eight jurisdictions regret having designated EPS as recyclable due to the costs they currently face trying to process EPS, the complete lack of markets for EPS foam in particular, and the problems municipal recovery facilities face sorting EPS foam.[98]

EPS foodware is rarely recycled as a result of very low residual economic value to recyclers and food residue contamination.

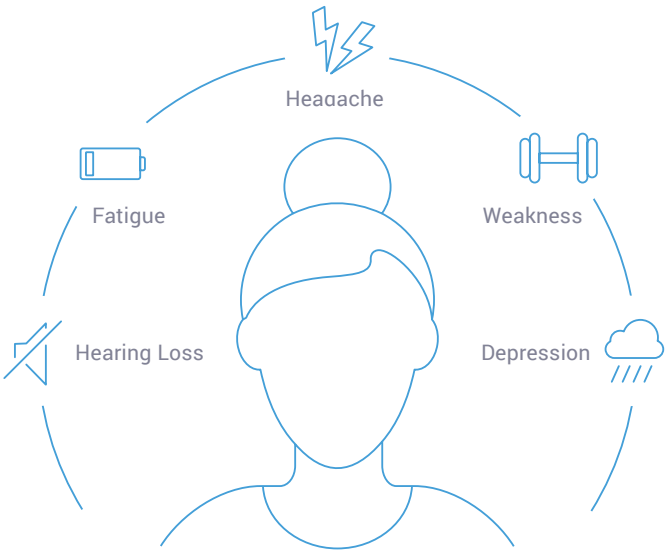
Public Health Concerns Relating To Polystyrene

Polystyrene can threaten public health with chemicals and additives that can leach from foodware into the food and beverages they contain polystyrene.

For Example:

- According to the U.S. Health and Human Services National Toxicology Program, the styrene monomer (the building block for polystyrene) is reasonably anticipated to be a human carcinogen.[99]
- Polystyrene food containers can leach small amounts of the toxin styrene when they come into contact with warm food or drink, alcohol, oils, and acidic foods causing human contamination and thereby pose a human health risk.[100]
- Life long, low-dose exposure to materials containing FCCs may lead to chronic diseases.[101] The US National Library of Medicine states that chronic (long-term) exposure to styrene in humans results in effects on the central nervous system (CNS), such as headache, fatigue, weakness, depression, CNS dysfunction, hearing loss, and peripheral neuropathy.[102]

Chronic (long-term) exposure to styrene in humans results in effects on the central nervous system.



Responses To Arguments Against EPS Ban

You may encounter opponents making various arguments against banning polystyrene. One argument is that banning styrofoam will put small restaurants out of business, as products made from alternative materials may cost more than EPS foodware. There are plenty of better alternatives to EPS foodware and although they may be slightly more expensive, it's usually a matter of a few cents.[103] Furthermore, reusable options will ultimately save businesses money. Similar bills have been successfully implemented in 100+ other local municipalities across the country. In San Francisco, for example, 4,000 restaurants (both large and small) complied with the local EPS ban and not one applied for the hardship exemption.[104]

Another argument is that EPS makes up a minimal amount of landfill waste. The truth is that EPS is composed of roughly 95% air, so looking at tonnage the impacts might seem minimal. However, when looking at beach cleanup data, EPS is consistently in the top ten items collected during a beach cleanup.[105] Also, there is still no conclusive evidence on how long it takes EPS to fully degrade, and it may take hundreds of years.[106]

Products Addressed By Polystyrene Ordinances

Some recent polystyrene bans often regulate EPS products such as packing materials, coolers and ice chests, and pool or beach toys, as adopted in San Francisco, CA and other communities.[107] Some laws also regulate certain rigid polystyrene foodware. The City of Manhattan Beach, CA is a standout example of a polystyrene law, which is the result of six iterations of polystyrene ordinances adopted by city council.[108] We refer to the Manhattan Beach law throughout the polystyrene section.

Foodware

The most common product addressed by EPS bans is on foodware (cups, plates, trays, etc.) provided by restaurants. EPS is generally not recyclable and EPS foodware is often contaminated with food as well, making it even more difficult to recycle. EPS used in foodware also has potential health concerns since it directly touches food. Other cities that have banned EPS include San Diego, Miami Beach, Seattle, and Washington, DC.[109, 110, 111] Manhattan Beach takes the ban on polystyrene foodware a step further by banning all polystyrene, including EPS and rigid polystyrene.[112]

Manhattan Beach is also a good example since it covers retail stores as well as restaurants. According to the law, food and beverage providers may only distribute single-use foodware with a resin code of "No. 6" or "PS" and must maintain documentation about the foodware's composition.

Another trend in EPS bans is moving beyond foodware.

Egg Cartons And Meat Trays

There has been some concern regarding whether replacements are sufficiently available for EPS meat and fish trays, and that replacements might have sharp edges. These items are often exempted citing health and safety reasons. Meat trays made from compostable plant fiber or recyclable PET, which have rounded edges that do not tear stretch film wrapping, are widely available.[113, 114] Manhattan Beach covers "meat and fish trays, produce trays or egg cartons made, in whole or in part, from polystyrene, either as separate items or as part of the sale of meat, fish, poultry, vegetables, fruit, or eggs sold to consumers."

Coolers

Coolers made from EPS have been banned by several local jurisdictions. These single-use coolers are lightweight and inexpensive, and designed to be used once. Crumbly remains of smashed coolers are often left at beaches. Banning beach coolers is a way to reduce a significant amount of EPS from being deposited directly on the beach. Folly Beach, South Carolina was the first city in the state to ban beach coolers among other products that consist of EPS on the beach.[115] However, be aware that when proposing a ban on foam coolers, there may be backlash from the fishing community during the negotiation process for these types of laws.

Non-Foodware EPS

Another trend in EPS bans is moving beyond foodware; some laws include packing peanuts, non-peanut EPS packing material, EPS craft supplies, pool or beach toys, and non-encapsulated docks and buoys (dock floats, mooring buoys, anchor or navigation markers). San Francisco, CA has one of the most comprehensive bans in the nation and include the sale of non-recyclable, non-compostable polystyrene food service ware, egg cartons, meat trays, and packing materials, as well as coolers, pool or beach toys, and floats or buoys that are not encapsulated in a more durable material.[116]

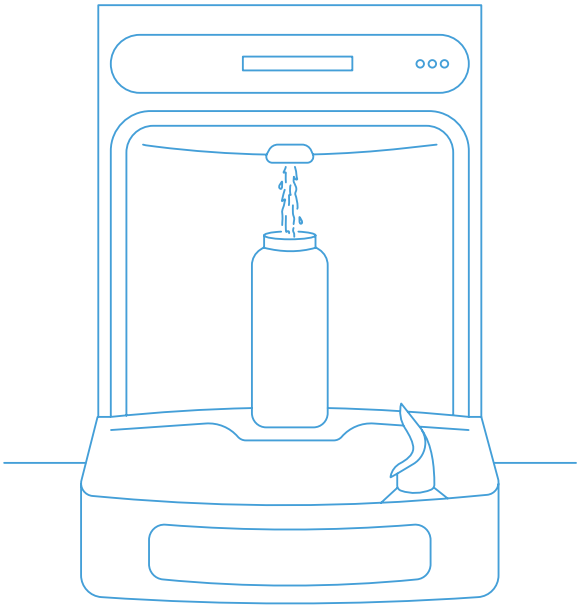
Other Non-Foodware Plastic Bans

Sometimes comprehensive foodware laws also include bans on non-foodware items. This is a good way to take advantage of momentum to reduce single-use plastics if there are opportunities to address additional items.

Single-Use Bottled Water Bans

Americans consumed nearly 14 billion gallons of bottled water in 2018 and single-use plastic beverage bottles and caps are consistently one of the top 10 items collected at litter clean-ups.[117] Bottled water requires extraction of fossil fuels for the bottle, but also extraction of water — and water rights for bottled water at spring sites become increasingly disputed.[118] More than half of the bottled water sold in the U.S. comes from municipal tap water,[119] from some of the most drought-ridden places in the country.[120] The sale of bottled water also generates avoidable greenhouse gas emissions throughout the process — from extraction of oil to manufacturing, from transportation to disposal, each of these steps generates emissions.[121] All of these environmental harms are avoidable by drinking clean and safe tap water where available.

Bills requiring water fountains and refill stations in public buildings and public parks should be seen as a stepping stone to expand single-use plastic water bottle bans.



Surfrider recommends that bans on single-use beverage bottles be limited to places where clean and safe drinking water is available.

Single-use bottled water has been targeted for bans because drinking water is available at very little cost in most U.S. households.[122] In 2007, San Francisco's Mayor released an executive directive to phase out the usage of water bottles in the city.[123] In 2014, San Francisco adopted an ordinance banning the sale of bottled water containing less than 21 ounces on city property.[124] Several airports, including SFO, have banned the sale of single-use plastic water bottles on airport property.[125] The first bottled water ban to apply outside of city property was the Town of Concord, MA ban adopted in 2012, which banned water bottles (defined as less than 34 ounces) town-wide.[126] A concern arose that if water was banned that customers might switch to sugary drinks, including fruit juice and soda. In 2019, the Town of West Tisbury, MA adopted a ban on the sale of non-alcoholic carbonated beverages in single-serve plastic bottles — this is the first such law in the U.S. to cover soft drinks and similar beverages.[127]

Surfrider recommends that bans on single-use beverage bottles be limited to places where clean and safe drinking water is available, including state and municipal buildings, and other institutional settings. We will be paying close attention to the implementation of these laws and identifying ways to expand the scope of these laws while being mindful of potential public health concerns. A precursor to such expansions should include improvements to drinking water infrastructure and accessibility, so bills requiring water fountains and refill stations in public buildings and public parks should be seen as a stepping stone to expand single-use plastic water bottle bans.

Hotel Single-Use Toiletry Bottle Ban

Roughly 5 billion half-used hotel toiletry bottles are disposed of each year. Very few of these bottles are effectively recycled, because they are too small to be captured at municipal recycling facilities.[128] Some major hotel chains, including Marriott, have already begun to transition away from the single-use bottles often provided at hotels and other accommodations.[129]

In 2018, Santa Cruz County, CA adopted a ban on small (less than 12 oz) plastic bottles of shampoo, conditioner, and "other similar products intended for personal use by visitors" at all lodging establishments.[130] Instead of the small bottles, lodging establishments are encouraged to use bulk dispensers of personal care products to reduce plastic waste and lower operating costs.

In 2019, the California state legislature adopted AB 1162, banning lodging establishments from providing small plastic bottles containing a personal care product.[131] The California statewide law was similar to Santa Cruz County's law, except it set a lower threshold of less than 6oz for the bottles and only applied to shampoo, hair conditioner, and bath soap. California's law was a huge win in the fight against single-use plastic, but it included a preemption clause that delayed implementation of Santa Cruz County's ban, preempted the container size, and eliminated regulation of all toiletries other than shampoo, hair conditioner, and bath soap. Legislation very similar to the California state law is pending in Vermont.[132]

Very few of toiletry bottles are effectively recycled, because they are too small to be captured at municipal recycling facilities.

5B

Half-Used Hotel Toiletry Bottles Disposed Of Each Year

Ingested balloons are the highest-risk debris item to marine animals.

32x

More Deadly To Marine Animals Than Hard Plastic

Plastic Carryout Bag Laws

We suggest that you check out Surfrider Foundation's *Plastic Bag Law Activist Toolkit* and our Reusable Bag Definition Addendum for a comprehensive look at plastic carryout bag laws.[133, 134] Updated maps and effectiveness data can be found at PlasticBagLaws.org.[135, 136, 137]

Outdoor Smoking Bans

Expanding smoking bans to beaches and parks can also result in reducing cigarette litter. Cigarette butts are consistently one of the top items found during beach cleanups.[138] Smoking not only poses a public health hazard, but the toxic chemicals and plastics found in cigarette butts can poison marine life and the environment. Many coastal communities are starting to take charge of this issue and banning cigarettes and vaping products on beaches.[139] As of 2017, over 315 local cities and counties have passed laws banning smoking on beaches. For example, New Jersey banned smoking, including electronic cigarettes, on public beaches and parks.[140] Violators caught smoking on the beach will be subject to a $250 fine on the first offense, a $500 fine on the second offense and a $1,000 fine on future violations. It also allows for 15% of the total area as designated smoking areas.

Balloon Bans

Mass balloon releases are also a cause of ocean litter and hurt animals as they get entangled and mistaken for food, which can harm them or even cause them to die. A 2019 study showed that ingested balloons are the highest-risk debris item; 32 times more likely to result in death than ingesting hard plastic.[141] California, Connecticut, Florida, Tennessee, and Virginia have all passed laws prohibiting the release of balloons as a way to protect the environment and wildlife.[142, 143, 144, 145, 146] Cities have also passed laws prohibiting the release and, in some instances, the sale of balloons within city limits, including Manhattan Beach.

Black Plastic

Calls for bans on black plastic foodware are an emerging issue. Black plastic containers can't be sorted using optical scanners at recycling facilities, because black plastic doesn't reflect light and can't be seen and sorted by the scanners. The problem then is that black plastic ends up contaminating other recyclable materials or being sent to landfill. Some jurisdictions including Chittenden County, VT no longer allow black plastic in curbside recycling collection bins.[147] We are not aware of bans on black plastic foodware that have been introduced yet, but we expect this clause will be included in future foodware laws.

PFAS In Foodware Ban

Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals and constitute a class of over 3,000 fluorinated chemicals that persist in the environment for a very long time.[148, 149] PFAS released to the environment have been shown to travel around the globe and their unique physicochemical properties lead to their extreme persistence and high mobility.[150] They are therefore found virtually everywhere in the water, air, and terrestrial environments, even in remote locations far from points of release. PFAS can be found in foodware and food packaging as they make coated materials heat and grease resistant.[151] PFAS has been found to accumulate and stay in the body for long periods of time, and have been linked to cancer and reproductive harm.[152] Foodware has been a major source of PFAS exposure so there has been a growing, nationwide interest in passing legislation to ban PFAS.

Sample PFAS Ban Language

Most PFAS in foodware bans apply to restaurants, and sometimes apply to retail or to government purchases. San Francisco, CA was the first city in the U.S. to prohibit PFAS chemicals in single-use foodware and currently has the strongest PFAS language.[153] A recent Michigan PFAS law ends military use of PFAS in food packaging.[154]

The Surfrider Foundation recommends inclusion of PFAS bans in all comprehensive foodware laws.

PFAS Resources

The following resources provide up-to-date information on PFAS:

- Safer States provides a tracker of statewide PFAS bills in the U.S., as well as a tracker of state bills and talking points.[155]
- CEH's single-use foodware page links to a variety of reports and other resources describing PFAS concerns in detail.[156]
- CEH's Foodware Database lists the Fluorine content for specific foodware products and classifies the products as No Fluorine, Low Fluorine, and Fluorine.[157]
- CEH's 2018 Report is aimed at institutional purchasers of foodware and provides information and recommendations to purchasers on buying safer and environmentally sustainable foodware products.[158]

BPI Certification regarding Fluorinated Chemicals

Biodegradable Products Institute's (BPI) new standard for fluorinated chemicals went into effect on January 1, 2020.[159] Products may no longer be claimed as BPI Certified, whether on the product itself, or on a product's packaging or marketing materials, unless it meets all conditions of the rule, including no intentionally added fluorinated chemicals (as demonstrated in Safety Data Sheets) and a test report showing less than 100 ppm total fluorine. BPI maintains its own product database that lists products at the SKU level, and it claims to be the definitive listing of compliant products.[160] All products that have not been verified to meet the new standard have been removed from the BPI certified product database.

One concern is that PFAS is also an issue for paper wrappings not marketed as compostable and thus not subject to BPI certification requirements. The Surfrider Foundation recommends inclusion of PFAS bans in all comprehensive foodware laws to keep the issue front of mind, locally enforceable, and applicable to all foodware and food packaging.

Conclusion

Development, adoption, and implementation of plastic pollution reduction laws is an iterative process. As each law is implemented, there's a chance to learn about what works and what doesn't. Foodware laws have evolved over the last decade from being simple bans on EPS foodware to comprehensive legislation that addresses all potential material types and concentrates on overall waste reduction by taking the bold step of requiring reusable foodware for dine-in meals. This shift from simple bans to an emphasis on reuse systems is the next generation of foodware laws and best practices policy that we advocate for at the Surfrider Foundation. We hope that this toolkit helps make clear all of the effective options currently available for foodware laws.

Key Takeaways

- Require reusable foodware for dine-in meals (this is the main game-changer!)
- Ban the worst materials: EPS foodware, PFAS in foodware and food packaging, commonly-littered plastic items
- Make accessories available only upon request: straws, utensils, condiments
- Encourage reusables through mandates and surcharges on beverage cups and food containers

Questions

If you have any questions please contact your local Surfrider chapter or contact Surfrider's Plastic Pollution Initiative policy team at:

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APPENDIX I: Recommended Online Resources

The Surfrider Foundation

The Surfrider Foundation is dedicated to the protection and enjoyment of the world's ocean, waves and beaches, for all people, through a powerful activist network. Surfrider has been dedicated to addressing the plague of plastic pollution for over ten years, and we do so through education and advocacy on source-reduction solutions. Plastic bags are one of the most ubiquitous consumer items that can be easily replaced with reusable bags, and so a great place to start on advocating for solutions. In addition to this toolkit, we have several other resources to help address plastic pollution.

- Surfrider Rise Above Plastics Toolkit
- Surfrider Foodware Toolkit
- Surfrider Straw Toolkit
- Surfrider Bioplastic Toolkit
- Surfrider Plastic Bag Law Activist Toolkit
- Reusable Bag Addendum

Local Foodware Coalitions

- ReusableNYC
- ReusableSF
- ReusableLA

Partner Organizations Working On Foodware Policy

- 5 Gyres
- Break Free From Plastic*
- Californians Against Waste
- Center for Environmental Health
- Citizens Campaign for the Environment
- Clean Water Action
- Global Alliance for Incinerator Alternatives – GAIA
- Greenpeace
- Oceana
- Peak Plastic Foundation
- Plastic Pollution Coalition
- Story of Stuff Project
- U.S. PIRG
- UPSTREAM
- Zero Waste Washington

*The Surfrider Foundation is a member of the global Break Free From Plastic movement.

APPENDIX II: Sample Local And State Foodware Laws

City Of Berkeley, CA Local Foodware Bill

Adopted Jan 2019

Reasons highlighted:

- First local foodware law to require reusables for dine-in (Reusable definition better in other bills)
- Foodware accessories upon request
- 25-cent single-use cup charge

City And County Of Honolulu, HI Bill 40

Adopted Dec 2019

Reasons highlighted:

- Phased approach
- Foodware accessories upon request
- Promotes non-plastics service ware and foodware
  - Bans plastic service ware and foodware
  - Bans polystyrene foam foodware

Maui County, HI Bill 52

Adopted Apr 2019

Reasons highlighted:

- Phased approach
- Non-plastic utensils upon request
- Promotes non-plastics foodware
  - Bans disposable plastic foodware and utensils
  - Bans polystyrene foam foodware containers
  - Requires businesses to utilize compostable and recyclable products

City Of San Francisco, CA

Introduced Jul 2019 – not adopted yet

Reasons highlighted:

- P25-cent single-use cup charge
- P25-cent single-use foodware container charge
- PRequirement for Reusable Cups at Events
- PPFAS Ban in state-of-the-art language
- Reusable definition in state-of-the-art language

City Of San Francisco, CA

Introduced Jul 2018

Reasons highlighted:

- Strongest PFAS language
- Bans foodware that is not compostable or recyclable
- Bans polystyrene
- Requires that events must either make reusable beverage cups available to no less than 10% of their attendees

Manhattan Beach, CA

Six iterations of bills, last updated 2020

Reasons highlighted:

- Strict ban on EPS and rigid polystyrene
- Covers restaurants and retail stores
- Covers foodware, egg cartons, meat trays, packing materials, coolers
- Bans single-use plastic straws and stirrers, upon request for non-plastic versions

Components Of Comprehensive Foodware Policies

Product/s Covered	Policy	Example Ordinances And Resources
Food containers Utensils Cups	Reusable Foodware Required For "Dine In" Orders	Berkeley, CA[1] San Francisco, CA [2] *under consideration*
Utensils Condiments	Utensils and/or Condiments Upon Request for Takeout and Delivery	Portland, OR[3] Honolulu, HI[4] Cranford, NJ[5]
Cups	25-Cent Non-Reusable Cup Charge	Santa Cruz, CA[6] Berkeley, CA[7]
	Reusable Cups at Events	San Francisco, CA[8]
Food containers	25-Cent Non-Reusable Food Container Charge	Arcata, CA[9] San Francisco, CA[10] *under consideration*
Straws and other beverage accessories *e.g. stirrers, splash sticks, beverage lid plugs*	Plastic Straw Ban and Straws Upon Request	Palo Alto, CA[11] Fort Myers, FL[12] El Segundo, CA [13] *upon request* See *Final Plastic Straw Activist Toolkit*[14]
Food containers *Non-Foodware: beach coolers, packing materials, craft supplies, pool or beach toys, non-encapsulated docks and buoys (dock floats, mooring buoys, anchor or navigation markers)*	Expanded Polystyrene (EPS, a.k.a. StyrofoamTM) Foam Ban	Maine[15] Folly Beach, SC[16]
Utensils Food Containers	Rigid Polystyrene Utensil and Food Container Ban	Manhattan Beach, CA[17]

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