

ORDINANCE NO. 2024-05

AN ORDINANCE OF THE CITY OF PINOLE ADDING CHAPTER 8.38 “SINGLE-USE PLASTIC FOODWARE AND BAG REDUCTION” TO THE PINOLE MUNICIPAL CODE

WHEREAS, Single-use plastics (SUPs) —including bags and foodware (plates, cutlery, cups, lids, straws, “clamshells” and other containers) is a major contributor to street litter, ocean pollution, marine and other wildlife endangerment and loss. A 2022 trash survey of the Pinole Creek found SUPs represented the majority of the debris collected from the creek.

WHEREAS, The production, consumption and disposal of SUPs contributes significantly to the consumption of fossil fuels and exacerbation of greenhouse gas (GHG) emissions. Plastics are made from chemicals sourced from petrol, gas, or coal. “Recyclable” plastic on average can be recycled two times before attenuating. Over three-fourths of “recyclable” plastic ends up as litter or in the landfill.

WHEREAS, Plastics in waterways and oceans break down into microplastics which are not biodegradable and can now be found in most of the world's oceans. These microplastics have been detected in human blood and can disrupt normal body processes, increasing health risks.

WHEREAS, Plastic debris in seawater and freshwater can attract and collect pollutants, which can then accumulate in fish, seafood, and salt that is later consumed by humans. Additionally, some food packaging, such as food contact papers and compostable paperboard containers, may contain harmful fluorinated chemicals that are associated with serious health problems.

WHEREAS, 2011 Bay Area litter survey showed that over two-thirds of trash collected was from take-out food and beverage packaging. In the Bay Area, food and beverage packaging comprises the majority of street litter and is a significant contributor to the total amount of waste entering the waste stream.

WHEREAS, It is in the utmost interest for the health, safety and welfare of who live, work, visit and do business in the City of Pinole that the consumption of SUPs be reduced.

WHEREAS, The Pinole Sustainability Element strives for Pinole to become a “Model City” that demonstrates how sustainable practices can be incorporated in the municipal, commercial and residential functions of a city. Reduction of single-use plastic food packaging and bags furthers this goal by eliminating solid waste at its source and maximize reusing, composting and recycling

WHEREAS, This Chapter is consistent with the City’s Sustainability Element of the General Plan and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

WHEREAS, on January 30, 2023, the Municipal Code Subcommittee reviewed federal, state and regional legislation regulating single-use plastic bags and foodware.

WHEREAS, on August 21, 2023 and August, 28, 2023, the Municipal Code Subcommittee reviewed outreach and results of resident/visitor and business surveys.

WHEREAS, on January 22, 2024, the Municipal Code Subcommittee reviewed survey results from food and retail business surveys.

WHEREAS, on February 26, 2024, the Municipal Code Subcommittee reviewed and refined the draft ordinance.

WHEREAS, on June 4, 2024, City Council conducted a public hearing regarding the proposed textual changes to the Municipal Code.

WHEREAS, on July 2, 2024, City Council conducted a second public hearing regarding the proposed textual changes to the Municipal Code.

WHEREAS, on September 3, 2024 City Council conducted an initial introduction of the Ordinance adding Chapter 8.38 “Single-Use Plastic Foodware and Bag Reduction” to the Municipal Code.; and

WHEREAS, on September 17, 2024 City Council waived second read of the Ordinance.

NOW THEREFORE, BE IT RESOLVED, pursuant to the findings stated herein, that the City Council of the City of Pinole does ordain as follows:

Section 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

Section 2. Amendment of Municipal Code. Chapter 8.38, Single-Use Plastic Foodware and Bag Reduction, is hereby amended to the Pinole Municipal Code to read as shown in Exhibit A, attached hereto and incorporate herein.

Section 3. CEQA. Pursuant to Title 14 of the California Administrative Code, the City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons: (1) under Section 15061 (b)(3), it is not a project which has the potential for causing a significant effect on the environment; (2) under Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration, enhancement, or protection of the environment.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each of every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 5. Effective Date and Duration. This ordinance shall take effect on January 1, 2025.

Section 6. Publication. The City Clerk is directed to cause this ordinance to be published in a manner required by law.

PASSED AND ADOPTED at a regular meeting of the Pinole City Council held on September 17, 2024, the City Council passed this ordinance by the following vote:

AYES: COUNCILMEMBERS: **Martínez-Rubin, Murphy, Sasai, Tave, Toms**
NOES: COUNCILMEMBERS: **None**
ABSTAIN: COUNCILMEMBERS: **None**
ABSENT: COUNCILMEMBERS: **None**

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of Pinole on September 17, 2024.



Maureen Toms, Mayor

ATTEST:



Heather Bell, City Clerk

APPROVED AS TO FORM:



Eric S. Casher, City Attorney



Chapter 8.38
SINGLE-USE PLASTIC FOODWARE AND BAG REDUCTION

Sections:

- 8.38.010 Findings and Purpose.
- 8.38.020 Definitions.
- 8.38.030 Single-use Foodware Accessories.
- 8.38.040 Consumer-owned Reusable Containers.
- 8.38.050 Takeout Food.
- 8.38.060 Reusable Foodware for Dining on the Premises.
- 8.38.070 Disposable bags.
- 8.38.080 Disposable Foodware Standards.
- 8.38.090 Disposable Bag Standards.
- 8.38.100 Separate Disposable Foodware Waste Receptacles.
- 8.38.110 Waivers-process to obtain.
- 8.38.120 Extension of time—process to obtain.
- 8.38.130 Regulations applicable to all Food Providers and Retailers
- 8.38.140 Duties, responsibilities and authority of the City of Pinole.
- 8.38.150 City of Pinole – utilization prohibited.
- 8.38.160 Effective Date.
- 8.38.170 Liability and Enforcement.
- 8.38.180 Severability.
- 8.38.190 Chapter supersedes existing laws and regulations.

8.38.010 The Council of the City of Pinole finds and declares as follows:

- A. Single-use plastics (SUPs) —including bags and foodware (plates, cutlery, cups, lids, straws, “clamshells” and other containers) is a major contributor to street litter, ocean pollution, marine and other wildlife endangerment and loss. A 2022 trash survey of the Pinole Creek found SUPs represented the majority of the debris collected from the creek.
- B. The production, consumption and disposal of SUPs contributes significantly to the consumption of fossil fuels and exacerbation of greenhouse gas (GHG) emissions. Plastics are made from chemicals sourced from petrol, gas, or coal. “Recyclable” plastic on average can be recycled two times before attenuating. Over three-fourths of “recyclable” plastic ends up as litter or in the landfill.
- C. Plastics in waterways and oceans break down into microplastics which are not biodegradable and can now be found in most of the world's oceans. These microplastics have been detected in human blood and can disrupt normal body processes, increasing health risks.
- D. Plastic debris in seawater and freshwater can attract and collect pollutants, which can then accumulate in fish, seafood, and salt that is later consumed by humans. Additionally, some food packaging, such as food contact papers and compostable paperboard containers, may contain harmful fluorinated chemicals that are associated with serious health problems.

- E. 2011 Bay Area litter survey showed that over two-thirds of trash collected was from take-out food and beverage packaging. In the Bay Area, food and beverage packaging comprises the majority of street litter and is a significant contributor to the total amount of waste entering the waste stream.
- F. It is in the utmost interest for the health, safety and welfare of who live, work, visit and do business in the City of Pinole that the consumption of SUPs be reduced.
- G. The Pinole Sustainability Element strives for Pinole to become a “Model City” that demonstrates how sustainable practices can be incorporated in the municipal, commercial and residential functions of a city. Reduction of single-use plastic food packaging and bags furthers this goal by eliminating solid waste at its source and maximize reusing, composting and recycling.
- H. This Chapter is consistent with the City’s Sustainability Element of the General Plan and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

8.38.020 Definitions.

- A. **CITY.** The City of Pinole.
- B. **CITY DEPARTMENT.** Any governmental subdivision of the City.
- C. **CITY FACILITY.** Any building, structure, vehicle, land or park owned and operated by the City.
- D. **CITY FACILITY USER.** Any person, society, association, organization or special events promoter who requires a permit to use a City facility or a permit or contract to use a plaza, sidewalk, or roadway.
- E. **CITY MANAGER.** The City Manager of the City of Pinole or City Manager's designee.
- F. **CITY-SPONSORED EVENT.** Any activity that is organized by the City, and any private activity whose organizers voluntarily request and receive from the City any endorsement, financial assistance, or similar recognition that is unrelated to any requirements for such an event under applicable law.
- G. **CONSUMER-OWNED BAG.** A reusable customer-brought bag that is specifically designed and manufactured for multiple reuse, is in good performing condition, not unsanitary, and washable.
- H. **CONSUMER-OWNED CONTAINER.** A reusable customer-brought food or beverage container that is in good performing condition, not unsanitary, and in accordance with Section 3-304.17(B)(1) of the 2017 Food Code.
- I. **CONDIMENT.** means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food or drink item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes.
- J. **DISPOSABLE BAGS.** A bag provided at the check stand, cash register, point of sale or other location for the purpose of transporting food or merchandise out of a Retailer or Food Provider. Disposable Bags do not include Pre-checkout Bags.
- K. **DISPOSABLE CUP.** A beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks and alcoholic beverages.
- L. **DISPOSABLE FOODWARE.** All containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and

any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Food Provider's premises.

- M. **DISPOSABLE FOODWARE ACCESSORY.** Any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.
- N. **ESTABLISHMENT.** A place of business of a food provider or other person subject to the requirements of this Chapter.
- O. **FOOD PROVIDER.** Any establishment located within the City, or any establishment that sells or otherwise provides Prepared Food or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria (with the exception of public school cafeterias), caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food market, farmer's market, mobile food preparation truck or vehicle, roadside stand, or any other person or organization who provides Prepared Food. Food provider also includes any organization, group or other person that regularly provides Prepared Food to its members or the general public as a part of its activities or services.
- P. **PRE-CHECKOUT BAG.** A bag provided or sold to a customer to carry produce, bulk food, or other food items to the point of sale inside a store.
- Q. **PREPARED FOOD.** Any food or beverage ready to consume without any further food preparation, alteration or repackaging, other than heating. Prepared food does not include (1) uncooked or raw meat, fish, poultry, or eggs unless provided for consumption without further food preparation; or (2) prepackaged food that is delivered to the food provider wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food provider in the same container or packaging.
- R. **TAKEOUT FOOD.** Prepared Food which is purchased to be consumed off a Food Provider's premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Food Provider or by a Takeout Food Delivery Service.
- S. **RETAILER.** Any establishment that sells perishable and/or non-perishable goods that are packaged for customer takeaway in plastic bags and is not currently regulated by Public Resources Code sec. 42280 et seq.
- T. **REUSABLE FOODWARE.** All foodware, including plates, bowls, cups, trays, containers, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is 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.
- U. **SURCHARGE FEE.** A mandatory or discretionary fee charged to a customer requiring Disposable Foodware.
- V. **TAKEOUT FOOD DELIVERY SERVICE.** A third-party delivery service which picks up Takeout Food from a Food Provider and delivers it to the customer for consumption off the premises.

8.38.030 Disposable Foodware Accessories.

- A. In compliance with Public Resources Code sec. 42270 et seq. Disposable Foodware Accessory items shall be provided only upon request by the customer or at self-serve stations, except that for safety reasons Disposable Cups for delivery by a Food Provider or a Takeout Food Delivery Service may include lids, spill plugs and sleeves without request.
- B. In compliance with Assembly Bill 1276, Food Provider and Takeout Food Delivery Services must provide options for customers to affirmatively request Disposable Foodware Accessory items separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person.
- C. Food Providers offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.
- D. Non-adhering items shall only be provided to customers who require them for medical needs.

8.38.040 Consumer-owned Containers.

- A. Per Health and Safety Code sec. 114121 et seq., Food Providers, except, as provided in Chapter 11, Temporary Food Facilities of the California Health and Safety Code, Section 114353, are encouraged to allow customers to bring Consumer-owned Containers and maintain sanitary procedures to prevent cross-contamination. Food Providers may refuse, at their sole discretion, any Consumer-owned Containers that are cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be soiled or unsanitary.

8.38.050 Takeout Food.

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards in Section 8.38.080. Takeout Food may also be served in Reusable Foodware made for takeaway as well as Consumer-owned Containers.
- B. Disposable Foodware Accessories shall conform with the Disposable Foodware Standards in 8.38.080.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Food Provider that is served in Disposable Foodware and with Disposable Foodware Accessories, if any were requested, that conform to the Disposable Foodware Standards in 8.38.080.
- D. A Food Provider may optionally apply a foodware Surcharge Fee at their own discretion. The intent of the foodware Surcharge Fee is to account for extra expense of complying with this Ordinance. A Food Provider is not required to apply a foodware Surcharge Fee. The following applies if a Food Provider chooses to apply a Surcharge Fee:
 - 1. All foodware Surcharge Fee shall be retained as income by the Food Provider.
 - 2. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit

transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from any form of foodware Surcharge Fees.

3. Foodware Surcharge Fees 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 foodware Surcharge Fees.
- E. Notwithstanding the requirements at Section 8.38.050, subsections A-C, a Food Provider may request a waiver or waivers pursuant to Section 8.38.110 for one to all Disposable Foodware item(s).
1. To obtain a waiver for item(s), the Food Provider must demonstrate that:
 - a. No Disposable Foodware item(s) exists with substantially similar size, performance and/or utility that conforms with the Disposable Foodware Standards in Section 8.38.80 or, if such an item(s) exist, that costs of using such item(s) would cause undue financial hardship; and
 - b. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is recyclable in the City recyclable collection program with a good-faith effort to prioritize aluminum foodware containers/packaging where practicable above recyclable plastic.
 2. To obtain a waiver for item(s), the Food Provider must provide documentation of good-faith efforts to obtain a substantially similar compliant item at a non-prohibitive price. Records of attempts to obtain a compliant item may include:
 - a. Emails, letters or other correspondence with vendors that furnish compliant Disposable Foodware, seeking the compliant item(s).
 - b. Responses from such compliant Disposable Foodware vendors including, where applicable, specifications and pricing for such item(s).
 - c. Specifications and pricing for the recyclable non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and
 - d. Any other verifiable records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item(s).
 3. Reasonable added cost for a conforming item as compared to a substantially similar recyclable non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.
- F. A Food Provider may request, pursuant to Section 8.38.120, to extend the time period of comply with all provisions of this Section 8.38.050. To be eligible for an extension of time the Food Provider must:
- a. Employ 10 full time employees equivalents or less; and
 - b. Have gross receipts less than \$500,000 annually
 - c. Provide documentation of good-faith efforts to obtain comply with provisions of Section 8.38.050 in addition to an explanation of why additional time is needed.

8.38.060 Reusable Foodware for Dining on the Premises.

- A. Food Providers are encouraged to maximize Reusable Foodware where practicable and to the extent possible and make a good-faith effort to consider serving customers utilizing Reusable

Foodware for consumption on- premise especially if there is dishwashing capacity or potential for on-site dishwashing.

- B. If serving customers with Reusable Foodware is not practicable or possible, all Food Providers shall serve dine-in customers utilizing Disposable Foodware that conforms to the Disposable Foodware Standards in Section 8.38.080 and all Disposable Foodware Accessories shall conform with the Disposable Foodware Standards in 8.38.080.
- C. A Food Provider may request, pursuant to Section 8.38.120, to extend the time period of comply with all provisions of this Section 8.38.060. To be eligible for an extension of time the Food Provider must:
 - a. Employ 10 full time equivalents or less; and
 - b. Have gross receipts less than \$500,000 annually; and
 - c. Provide documentation of good-faith efforts to obtain comply with provisions of Section 8.38.060 in addition to an explanation of why additional time is needed.

8.38.070 Disposable Bags.

- A. Food Providers and Retailers shall only package goods in bags that conform to the Disposable Bag Standards in Section 8.38.090.
- B. Takeout Food Delivery Services shall only deliver Takeout Food from a Food Provider that is bagged in a bag that conforms to the Disposable Bag Standards in 8.38.090.
- C. Surcharge Fees for Disposable Bags shall be applied as follows:
 - 1. Retailers shall charge a minimum 15-cent single-use bag Surcharge Fee per Disposable Bag over 5.25"x3.75"x8". The Surcharge Fee is optional for Disposable Bags of a small size (at or less than 5.25"x3.75"x8").
 - 2. Food Providers may charge the 15 cent single-use bag Surcharge Fee for Disposable Bags at their own discretion and is not mandatory.
 - 3. The following applies to the application of the Surcharge Fee:
 - a. All bag Surcharge Fees shall be retained as income by the Retailer or Food Provider.
 - b. All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from any form of bag fees.
 - c. Any bag Surcharge Fees 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 any bag Surcharge Fees.
- D. Notwithstanding the requirements at Section 8.38.110, subsections A-C, a Retailer or Food Provider may request a waiver or waivers pursuant to Section 8.38.110 for specific Disposable Bags. To obtain a waiver for item(s), the Retailer or Food Provider must demonstrate that:
 - 1. No Disposable Bag exists with substantially similar size, performance and/or utility that conforms with the Disposable Bag Standards in Section 8.38.090 or, if such an item exists,

- that costs of using such item would cause undue financial hardship, or Consumer-owned Bags will create health risks from cross-contamination, or regulation will pose health and safety risks and;
2. The Retailer or Food Provider must provide documentation of good-faith efforts to obtain a substantially similar compliant item at a non-prohibitive price.
 3. Records of attempts to obtain a compliant item may include:
 - a. Emails, letters or other correspondence with vendors that furnish compliant Disposable Bags, seeking the compliant item.
 - b. Responses from such Disposable Bag vendors including, where applicable, specifications and pricing for such item.
 - c. Specifications and pricing for the non-conforming item sought to be used, demonstrating its substantial superiority and/or affordability, and
 - d. Any other verifiable records which demonstrate a good faith effort to comply with Disposable Bag Standards for such item.
 4. Reasonable added cost for a conforming item as compared to a substantially similar non-conforming item shall not by itself constitute adequate grounds to support a waiver for such item.
- E. Consumer-owned Bags shall be accepted by all Retailers unless a waiver exemption is granted and at the discretion of Food Providers.
- F. Retailers and Food Providers shall ask consumers if a bag is required and not automatically provide a bag.
- G. Pre-checkout bags, such as produce bags, as outlined in and conforming to Public Resources Code sec. 42281.2 must be provided to consumers.
- H. A Retailer or Food Provider may request, pursuant to Section 8.38.120, to extend the time period of comply with all provisions of this Section 8.38.070. To be eligible for an extension of time the Retailer or Food Provider must:
- a. Employ 10 full time equivalents or less; and
 - b. Have gross receipts less than \$500,000 annually; and
 - c. Provide documentation of good-faith efforts to obtain comply with provisions of Section 8.38.070 in addition to an explanation of why additional time is needed.

8.38.080 Disposable Foodware Standards.

- A. Disposable Foodware must be accepted by City's municipal compost collection programs, except that non-compostable foil wrappers that are accepted in the City of Pinole recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item. Acceptable material types include natural fiber-based, natural (wood, bamboo, etc.), uncoated paper, etc. Bioplastics, or compostable plastics, are not allowed. Single-sided lamination by plant-derived polylactic acid (PLA) is acceptable. Disposable foodware must be free of added fluorinated chemicals such as perfluoroalkyl and polyfluroalkyl substances (PFAS). Bleached Disposable Foodware is not allowed. Single-use Foodware from third-party certifying organizations such as the Biodegradable Product Institute is encouraged. Disposable foodware

made from post-consumer recycled content and sustainable, regenerative practices are encouraged.

- B. The City shall maintain on its website and at City Hall a list of suppliers that offer compliant Disposable Foodware.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of the next calendar year, and the City shall provide notice of any such changes to Food Providers at least 90 days prior through the email address listed on the most recent Business License for the Food Provider.

8.38.090 Disposable Bags Standards

- A. Disposable bags must be made of unbleached paper and with 40% postconsumer recycled content. Single-use bags may also be made of plant starches and must be BPI-certified bags. Bags must be 100% recyclable and/or compostable.
- B. The City shall maintain on its website and at City Hall a list of suppliers that offer compliant Single-use Bags.
- C. Changes, if any, to Disposable Bag Standards shall become effective on January 1 of the next calendar year, and the City of Pinole shall provide notice of any such changes to Retailers and Food Providers at least 90 days prior through the email address listed on the most recent Business License for the Retailer or Food Provider.

8.38.100 Separate Disposable Foodware Waste Receptacles.

- A. All Food Providers, except Food Providers that provide full bussing service and do not customarily provide waste receptacles for customer use, must provide at least one set of three easily accessed receptacles for discarded items to be composted, recycled, and, if needed, to be landfilled or otherwise wasted for self-bussing customers.
- B. To the extent possible given space constraints, all three receptacles should be placed together in the same location.
- C. The City shall identify materials accepted for each collection program on the City's website, and signage must be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color-coded as follows:
 - 1. Blue for recyclables
 - 2. Green for compostables
 - 3. Black or gray for items to be landfilled or otherwise wasted
- D. Food Providers that share premises may share receptacles.

8.38.110 Waivers--process to obtain.

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Food Providers or Retailers to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver.

- B. Waivers shall be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or their designees shall act on a complete waiver application no later than 60 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Waivers may be granted for a specified term of up to two (2) years. During the waiver term, the Food provider or Retailer shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Food provider or Retailer demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become compliant, compliance remains infeasible, additional waivers of up to two (2) years each may be granted. It shall be the Food Provider's or Retailer's responsibility to apply for any subsequent waivers in a timely manner.
- E. Notwithstanding the two (2) year maximum term for waivers set forth in Section 8.38.110(D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Food Provider or Retailer demonstrates diligent efforts to comply but, due to economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a waiver for a longer specified term.
- F. All waivers shall expire automatically in the event of a significant remodel, renovation or other alteration of the premises with a construction valuation that exceeds \$60,000 or if the Food Provider or Retailer ceases operations at the location for which the waiver has been granted.

8.38.120 Extension of time—process to obtain.

- A. The City Manager shall prescribe and adopt rules, regulations and forms for Food Providers or Retailers to obtain an extension of time to comply with this Chapter.
- B. Extensions of time shall be granted by the City Manager or their designees, based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification, including site visits.
- C. The City Manager or their designees shall act on a complete time extension application no later than 60 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- D. Time extensions may be granted for a specified term of up to six (6) months. During the extension term the following requirements apply:
 - 1. No administrative citation may be issued for violation of a requirement of this chapter
 - 2. The Food provider or Retailer shall make diligent efforts to become compliant.
- E. Under extraordinary circumstances, should a Food provider or Retailer demonstrate that, at the close or expiration of a granted time extension term, and with diligent efforts to become compliant, compliance remains infeasible, one final six (6) month extension may be granted. It shall be the Food Provider's or Retailer's responsibility to apply for any subsequent extensions in a timely manner.
- F. Notwithstanding the maximum term for extensions set forth in Section 8.38.120(D), in certain limited and unique circumstances existing prior to adoption of this ordinance, where the Food Provider or Retailer demonstrates diligent efforts to comply but, due to economic constraints

and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or their designee may grant a time extension for a longer specified term.

- G. All time extensions shall expire automatically in the event of a significant remodel, renovation or other alteration of the premises with a construction valuation that exceeds \$60,000 or if the Food Provider or Retailer ceases operations at the location for which the extension has been granted.

8.38.130 Regulations applicable to all Food Providers and Retailers.

- A. Each Food Provider and Retailer shall maintain written records evidencing compliance with this Chapter.
- B. All records required by this Chapter shall be made available for inspection by the City Manager or their designated representative. It shall be unlawful for anyone having custody of such records to fail or refuse to produce such records upon request by the City Manager or their designated representative.

8.38.140 Duties, responsibilities and authority of the City of Pinole.

- A. The City Manager or their designee shall prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter and is hereby authorized to take any and all actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any Food Provider's or Retailer's premises to verify compliance.
- B. The City shall, at minimum, provide simple technical assistance and a resource packet to educate Food Providers and Retailers on new regulations and how to be in compliance, and make a good-faith effort to seek out and provide financially sound resources in forms such as financial assistance, comprehensive technical assistance, advanced technologies, public-private partnerships etc. to Food Providers and Retailers in order to help mitigate any increased costs and knowledge barriers that may arise from the regulation in this chapter.

8.38.150 City of Pinole – utilization prohibited.

The City or City Facility Users shall not utilize any Disposable Foodware that does not comply with the Disposable Foodware Standards in Section 8.38.080, nor shall any City-sponsored event utilize non-compliant Disposable Foodware.

8.38.160 Effective Date.

The provisions of this Chapter shall take effect January 1, 2025.

8.38.170 Liability and Enforcement.

- A. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 8.25.020; however, no administrative citation may be issued for violation of a requirement of this chapter until six months after the Effective Date

of such requirement as specified in Section 8.28.150. Pursuant to Section 8.38.120, eligible Food Providers and Retailers may submit a request to extend the period of time where no administrative citation may be issued for violation of a requirement of this chapter.

- B. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 8.38.110.
- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive.

8.38.160 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

8.38.170 Chapter supersedes existing laws and regulations.

The provisions of this chapter shall supersede any conflicting law or regulations.