



# OFFICE OF THE CITY ADMINISTRATOR

Gavin Newsom, Mayor  
Edwin M. Lee, City Administrator

## Rules and Regulations Food Service Waste Reduction Ordinance 295-06, SF Environment Code Chapter 16

San Francisco's Food Service Waste Reduction Ordinance, Ordinance No. 295-06, SF Environment Code Chapter 16 (Ordinance) requires restaurants, retail food vendors, City departments, City contractors and City lessees to use biodegradable/compostable or recyclable disposable food service ware when selling or distributing prepared foods, unless there is no "affordable" alternative, as defined below. The Ordinance also prohibits such businesses and the City from using disposable food service ware made from polystyrene (Styrofoam™). Violation of the Ordinance may result in contractual damages, a criminal fine, administrative penalty, or other civil enforcement action.

Under the Ordinance, the City Administrator is responsible for creating and updating lists of affordable biodegradable/compostable or recyclable disposable food service ware that comply with the Ordinance, determining when no affordable complying product is available, approving hardship waivers, promulgating rules, regulations and forms implementing the Ordinance, and for enforcing compliance by San Francisco restaurants and food vendors. The City Administrator may issue written warnings to non-compliant restaurants and food vendors, issue and enforce administrative citations, provide for administrative review, and refer violations to other enforcement agencies.

City departments are responsible for enforcing compliance with the Ordinance in their own operations and for enforcing the obligations of their City contractors and lessees to comply with the Ordinance, including assessing liquidated damages when warranted.

### I. **Affordable Compliant Products and Acceptable Alternatives List and associated Rules and Regulations.**

- A. Approved List of Complying Biodegradable/Compostable or Recyclable Products and Distributors. Section 1604(a) requires the City Administrator to adopt, and periodically to update, a list of available Affordable Biodegradable/Compostable or Recyclable Products, by product type, that comply with the Ordinance ("Approved Products List"). For most product types, the Approved Products List includes, for public convenience, specific manufacturer or brand names as well as approved product content. The City does not endorse any specific manufacturer or brand of complying product, nor represent that the Approved Products List includes either all the products or the best products that comply with the Ordinance. The City Administrator's list is found at [www.sfgov.org/site/cao](http://www.sfgov.org/site/cao). The City Administrator will update this list as he or she identifies product categories or additional qualifying products. Any person or entity that wishes to propose Affordable Biodegradable/Compostable or Recyclable Products to be added to the Approved Products List should contact the Department of the Environment, 11 Grove Street, San Francisco, CA 94102, telephone (415) 355-3700, [www.sfenvironment.com/foodservice](http://www.sfenvironment.com/foodservice).
- B. Distributor List. The City Administrator also has compiled a list of businesses that carry products on the Approved Products List for the convenience of the public ("Distributor List"). The Distributor List is found at [www.sfenvironment.com/foodservice](http://www.sfenvironment.com/foodservice). The City does not warrant the accuracy of information on the Distributor List and neither approves nor endorses any specific business on this List. The City does not represent that the Distributor List includes all businesses or the best businesses from which the public should purchase products on the Approved Products List. Any business that distributes products on the Approved Products List that is not included on the Distributor List that wishes to be added to the list should contact the Department of the Environment, 11 Grove Street, San Francisco, CA 94102, telephone (415) 355-3700, [www.sfenvironment.com/foodservice](http://www.sfenvironment.com/foodservice).

- C. City Administrator's Availability and Affordability Determinations. The City Administrator has concluded, based on a survey of available market pricing, that the products on the Approved List generally are "Affordable" under the Ordinance, which means that these products are "purchasable for not more than 15% more than the purchase cost of the non-Biodegradable, non-compostable or non-recyclable alternative(s)" under the Section 1602(a).

Any person or entity that believes, based on the circumstances of his or her business activities, (1) that there are no products on the Approved List to substitute for non-biodegradable, non-compostable and/or non-recyclable product(s) that the business requires, or (2) that the only suitable alternative products on the Approved List are, in fact, not affordable within the meaning of the Ordinance, may request the City Administrator, to issue a written determination that there is no suitable alternative product, or that the only suitable available product is not affordable ("Determination Request"). Any person or entity may combine a Determination Request under this Rule I.C. with a Hardship Waiver Request under Rule II. Where the circumstances so warrant, the City Administrator may approve the use of products that do not meet the standards for "Biodegradable, Compostable or Recyclable" under a Determination Request. However, the City Administrator may approve the continued use of products that contain Polystyrene Foam only under a Hardship Waiver Request.

Any person or entity seeking City Administrator's Determination must submit a written Determination Request, preferably on the form provided by the City Administrator, and shall set forth with specificity 1) the name, address, and license number of the restaurant or food vendor's most current business registration certificate (business license) on file with the City's Treasurer/Tax Collector, (2) the non-biodegradable, non-compostable and/or non-recyclable product(s) at issue, including why the business requires the products(s) and an estimate of the monthly quantity of the non-complying product used; and (3) the factual basis to support the requested determination that there is no suitable complying alternative or that all suitable complying alternatives cost more than 15% more than the non-complying products and (4) all Determinations previously issued to the requestor related to any business activity subject to the Ordinance. The Determination Request shall be served as provided in Rule VI.

The City Administrator shall acknowledge receipt of Determination Requests within 10 days of service of a completed request and shall issue his determination promptly thereafter. The City Administrator's decision on the Determination Request shall be final.

## II. **Hardship Waiver Rules and Regulations.**

The City Administrator may grant waivers to any person or entity subject to the Ordinance, including restaurants, retail food vendors, City departments, City contractors and City lessees from compliance with any requirement of the Ordinance for a period of up to one year where the City Administrator finds that "the specific requirement would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances."

Any person or entity seeking such a waiver must submit a written request, preferably on the form provided by the City Administrator, served as provided in Rule VI, setting forth with specificity: (1) the name and address and license number of the restaurant or food vendor's most current business registration certificate (business license) on file with the City's Treasurer/Tax Collector, of the requestor, (2) ) the non-complying product(s) at issue, including why the business requires the products(s), an estimate of the monthly quantity of the non-complying product used, and the duration of the waiver requested; (3) the factual basis to support a finding of "undue hardship or practical difficulty not generally applicable to other persons in similar circumstances," and (4) all waivers previously granted to the requestor for any business activity subject to the Ordinance.

The City Administrator, or his or her designee, shall issue a written decision granting or denying the waiver within 10 days of service of a completed waiver request. The City Administrator's decision on the waiver request is final.

### III. Enforcement.

#### A. Warning Letters to Non-Complying Businesses.

1. Issuance of Warning. Whenever the City Administrator determines that a San Francisco restaurant or food vendor has violated or is violating the Ordinance, the City Administrator, or his or her designee, may, in his or her sole discretion, issue a written warning letter ("Warning"). The Warning shall be served as provided in Rule VI.
2. Contents of Warning. A Warning shall include the following information: (1) a description of the violation(s) including a reference to each provision of Ordinance violated, the corrective action required for compliance, and the various sanctions that may follow from continued non-compliance; (2) the address or a description of the location where the violation occurred; (3) the date(s) of the violation; (4) the name, address and signature of the City Administrator, or his or her designee; (5) how to request a hardship waiver from the Ordinance (as provided in Rule II); and (6) how to appeal the Warning (as provided in Rule IV).

#### B. Imposition of Sanctions or Referral.

Whenever the City Administrator determines that a San Francisco restaurant or food vendor that has received a Warning(s) has violate the Ordinance either by continuing the violation(s) for which the Warning was issued, or by other non-compliance, the City Administrator, or his or her designee, may, in his or her sole discretion, issue additional Warnings and otherwise continue informal efforts to obtain compliance; or may issue an Administrative Citation imposing the penalties and enforcement costs as provided by the Ordinance; or may refer the matter to the District Attorney or City Attorney. The City Administrator may also refer any violation by a City Contractor or lessee to the Contract awarding department for appropriate sanctions. An Administrative Citation shall be served as provided in Rule VI.

#### C. Imposing Penalty by Administrative Citation.

1. Issuance of Administrative Citation. Whenever the City Administrator determines that the circumstances warrant imposition of administrative penalties under the Ordinance, the City Administrator shall issue an Administrative Citation imposing administrative penalties as specified in the Ordinance, which may be up to \$500, depending upon the circumstances and enforcement costs.
2. Contents of Administrative Citation. An Administrative Citation shall include the following information: (1) a description of the violation(s) including a reference to each provision of Ordinance violated and the amount of the administrative penalty imposed for the violation(s); (2) the amount of any enforcement costs assessed; (3) the address or a description of the location where the violation occurred; (4) the date(s) of the violation; (5) the date by which the administrative penalty and any must be paid, the procedure for making such payment, and the consequences of failure to pay; (6) the name and signature of the City Administrator or his or her designee; and (7) how to appeal the Administrative Citation (as provided in Rule IV).
3. Payment of Penalties. If the cited party does not file an appeal within the 10-day period provided in Rule IV, the City Administrator's determination should become final. The cited party must pay all administrative penalty amounts no later than 90 days after service of the Administrative Citation, unless the cited party appeals the administrative citation as provided in Rule IV. Overdue administrative penalties shall be subject to the collection procedures set forth in Rule V.

### IV. Appeal Process for Warning or Administrative Citation.

#### A. Requesting Administrative Hearing to Appeal Warning or Penalty.

1. Ten Days to Make Written Request. Any person or entity that is cited in a Warning or Administrative Citation may appeal the Warning or Administrative Citation on the grounds that there was no violation of the Ordinance for which the Warning or Administrative Citation

was issued, or that the person or entity cited is not the responsible party. Such person (hereinafter "appellant") must appeal in writing, preferably on the form provided by the City Administrator, and serve the written appeal (as provided in Rule VI) on the City Administrator within 10 calendar days of the date the City Administrator served the Warning or Administrative Citation for which review is sought. At a minimum, such appeal shall include a copy of the Warning or Administrative Citation being appealed and a brief statement of the reason(s) for the appeal.

2. Request for Appeal Stays Enforcement. A timely appeal shall stay enforcement of any Administrative Penalties and enforcement costs imposed pending the hearing officer's final decision, but shall not stay enforcement of any new or different violations of the Ordinance.
3. Appointment of Hearing Officer. The City Administrator shall appoint a hearing officer and schedule a hearing within 15 calendar days of receipt of a timely appeal. The City Administrator shall promptly notify the appellant of the time and date of said hearing, and shall include with the notice a copy of the Ordinance and these Rules.

B. Hearing and Decision on Appeal.

1. Duties of the Hearing Officer. The hearing officer appointed by the City Administrator shall conduct all appeal hearings and shall be responsible for deciding all matters relating to the hearing procedures not otherwise specified in these Rules.
2. Conduct of the Hearing, Evidence.
  - a. Public Hearing. The appeal hearing is a public hearing and shall be audio recorded. Any party to the hearing may cause, at his or her own expense, the hearing to be recorded by a certified court reporter, but this will not be the official record of the proceeding unless the Hearing Officer agrees and a copy of the transcript is provided at no cost to the Hearing Officer and the opposing party.
  - b. Burden of Proof. The City Administrator shall have the burden of proof in the hearing.
  - c. Exchange of Documentary Evidence. Any written information in addition to that submitted with the Request for Administrative Hearing that either the City Administrator or appellant submits to the Hearing Officer for consideration at the hearing, shall also be served on the other party at least 5 days prior to the date of the hearing.
  - c. Admissible Evidence. The hearing officer may accept and rely on evidence that responsible persons commonly rely upon in the conduct of serious affairs. All parties shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all documents and other information the City relies on in the proceeding, and to confront and cross-examine any witness against them.
  - d. Continuances. When all evidence has been presented, the hearing officer may, in his or her sole discretion, continue the hearing and request additional information from the appellant and/or City Administrator. The Hearing Officer may also continue the hearing at any time, for good cause shown as determined in the discretion of the Hearing Officer.
3. Written Decision by Hearing Officer. After considering all of the testimony and evidence submitted by the parties, the hearing officer shall issue a written decision to uphold or vacate the Warning or Administrative Citation and shall set forth the reasons for the Decision. The hearing officer shall issue his or her written Decision within 10 calendar days of the completed hearing. The hearing officer shall serve a copy of the Decision on the appellant. The hearing officer's decision shall be final.
4. Judicial Review. Any person aggrieved by the hearing officer's Decision on a Warning or Administrative Citation may obtain review of the decision by filing a petition for judicial review within 20 days after service (as provided in Rule VI) in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

## V. Collection of Fines and Costs

If no appeal of the hearing officer's decision is filed as provided in Rule IV.B.4, and if required administrative penalties (and enforcement costs) are not paid in full to the Office of the City Administrator within 90 days after the mailing of the hearing officer's decision, the City Administrator shall file a statement of each unpaid administrative penalty (and enforcement cost) with the Bureau of Delinquent Revenue. The Bureau shall endeavor diligently to collect the same on behalf of the City and County.

## VI. Service


- A. Any document required by these Rules to be served shall be accomplished either by personal (hand) delivery to the designated recipient or by deposit in the United States mail, in a sealed envelope postage prepaid, as follows:
- If to the City Administrator or the Hearing Officer, handed or addressed to the appropriate Official at the address stated on the Warning or Administrative Citation;
  - If to a San Francisco restaurant or food vendor, to the person or persons named on the restaurant or food vendor's most current business registration certificate (business license) on file with the City's Treasurer/Tax Collector at the address stated on such business license, except that, for Determination Requests or Hardship Waiver Requests, to the person or persons named as Requestor at the address stated in the written request.
- B. Service by mail shall be deemed to have been completed at the time of deposit with the U.S. Post Office.

## VII. Interpretive Regulations and Guidelines

The City Administrator adopts the following regulations and guidelines under Section 1605(a) of the Ordinance, which authorizes the City Administrator "to promulgate regulations, guidelines and forms and to take any and all other actions reasonable and necessary to implement and enforce this Chapter."

Rule 1. Food that meets the definition of "prepared" set forth in Section 1602.(l) shall be considered to be prepared "within the City and County of San Francisco" if it is "prepared" (1) anywhere within the geographic boundaries of the City and County of San Francisco, or (2) in or at any City Facility as defined in Section 1602.(f), whether such City Facility is located inside or outside of the geographic boundaries of the City and County of San Francisco.

Rule 2. Disposable Food Service Ware that is accepted by San Francisco's composting program, such as compostable paper based products that have a polyethylene film coating, is "Compostable Disposable Food Service Ware," which is permitted under the Ordinance and is eligible to be included on the City Administrator's Approved Products List. Any Disposable Food Service Ware with polyethylene foam coating or any polystyrene content is Prohibited Disposable Food Service Ware under Section 1603 and is not allowed, whether or not such product is accepted by San Francisco's composting program.

  
Edwin M. Lee  
City Administrator

Date: May 29, 2007