

Responses to questions initially received by the Department of Environmental Services (ENV) for general clarification for ordinance interpretation:

**In regards to the section on amendments to the Plastic Bag Ban:**

- (a) Does “dampness” refer only to the product within a container itself, or also to the byproduct moisture from distribution/consumption, e.g., a container lid with vent holes releasing steam producing moisture?

**Response:** Dampness refers to condensation or steam produced by the product.

- (b) The provision broadly refers to “dampness,” which can be caused by hot and cold items. Therefore, is it correct that handle-less plastic bags can be used to contain hot and cold “items to contain dampness”?

**Response:** Yes. Dampness refers to condensation or steam produced by the product.

- (c) If a container’s lid isn’t closed all the way or has vent holes with steam coming out and produces moisture and placed in a plastic bag. Is it exempt?

**Response:** Yes. To contain the dampness from the condensation or steam produced by the product.

- (d) Can hotels provide handle-less plastic bags for wet or dirty clothing because they “contain dampness”?

**Response:** Yes. Hotels can provide handle-less plastic bags for wet or dirty clothing. The Plastic Bag Ban ordinance does not affect these types of bags since there is no point of sale.

**In regards to the section on polystyrene foam and plastic food ware and service ware:**

- (e) What is the minimum serving size for a product to be considered catered food?

**Response:** Further discussion is needed to clarify “bulk quantity” and “multiple servings” as used to define catered food.

- (f) How many uses are considered disposable?

**Response:** Further discussion is needed with City Corporation Counsel on interpretation.

- (g) If the container includes reusable / washable would it be allowed?

**Response:** The specifications for the container need to include that the container was designed or manufactured for long term multiple reuse.

- (h) If a manufacturer provides a letter that states the product is reusable / washable would it be allowed?

**Response:** The specifications for the container need to include that the container was designed or manufactured for long term multiple reuse.

- (i) If a plastic service ware or plastic food ware is “designed or manufactured for long-term multiple re-use,” then such wares are not “disposable.” Is this correct?

**Response:** Yes. The specifications for the container need to include that the container was designed or manufactured for long term multiple reuse.

- (j) Do public/private schools fall under “business” and/or “food vendor”? Currently, they must comply with the Plastic Bag Ban definition of “business”, so I’m assuming they would also have to comply with Bill 40 (although packaging for catered food is exempt).

**Response:** Schools are considered food vendors and need to comply with the ordinance.

- (k) Does content mix only apply to the container? What if a sticker is placed on it, e.g., a sticker wrap on a cup?

**Response:** The ordinance applies to the host container and not a sticker placed or wrapped on the container.

- (l) How much plastic in a product is allowable?

**Response:** The product must be 100% free of petroleum-based materials.

- (m) Does this bill specifically target take-out type food containers?

**Response:** No. Both food ware and service ware are included in the ordinance.

- (n) How does “plastic food ware” relate to the definition of “food related bags or wrappers” in Plastic Bag Ban?

**Response:** "plastic food ware" as it relates to “food related bags or wrappers” is not a type of carry-out bag and is not included in the Plastic Bag Ban.

- (o) In a take-out restaurant situation, if the prepared food is NOT placed in a container, e.g. plate lunch to be eaten on premises, then the prepared food is NOT “prepackaged food”. Is this correct?

**Response:** Yes. Prepackaged per the definition is sealed, wrapped or contained. The plate lunch was ordered, making it a prepared food.

- (p) In a take-out restaurant situation, if the prepared food is placed in a container (which prevents the prepared food from having any direct human contact) prior to being provided for sale by the take-out restaurant operator to a customer, is the prepared food then “prepackaged food”? (Although a customer may have made payment, the “sale” is not completed until the prepared food is “prepackaged” and provided to the customer.)

**Response:** No. Prepared food placed in a container after being ordered and packaged is not "prepackaged food".

- (q) If a customer calls a restaurant to place a take-out order and the prepared food is placed in polystyrene foam food containers, is the prepared food then “prepackaged food”? (The sale is completed when the customer makes payment AND when the customer receives the prepackaged prepared food.)

**Response:** No. Prepared food placed in a container after being ordered and packaged is not "prepackaged food".

- (r) If a customer calls DoorDash (a third-party delivery service) to place a delivery order and the prepared food is placed in polystyrene foam food containers prior to delivery to the customer, is the prepared food then “prepackaged food”? (The sale is completed when the customer makes payment AND when the customer receives the prepackaged prepared food at home.)

**Response:** No. Prepared food placed in a container after being ordered and packaged is not "prepackaged food".

- (s) Is food packaged by a central kitchen operator considered prepared and subject to the ban?

**Response:** For a central kitchen operator, the food that they package prior to being provided for sale is considered “prepackaged food” and is exempt. Because they own their central kitchen, the case could be made that the cut fruit and other prepackaged items coming out of the central kitchen will be subject to Bill 40, even though it is designed to be merchandised in a chill case for retail sale and is not made-to-order for customers. If the food was ordered (like takeout), then it is considered “prepared food”.

- (t) Baked pies are on the shelf in clear rigid plastic containers. Is this allowed? Is a slice of pie considered “prepared” foods and must be sold in an alternative container?

**Response:** Yes. Baked pies on the shelf in a clear rigid plastic container are allowed and considered prepackaged. If the slice of pie is packaged after being ordered and ready to consume, it would be considered "Prepared Food"; same as an unpackaged pie on display. Whole and sliced pie that are already packaged are pre-package. NOTE: If the item falls under both definitions, the default would be to consider the item to be "prepackaged food".

- (u) Is “service ware” ONLY, “any stirrers, straws, baran, and utensils including forks, spoons, sporks and knives”, or is there wiggle room? Example: plastic swords (toothpick/fruit pick), plastic pizza saver, and chopsticks? Chopsticks aren’t mentioned in Bill 40.

**Response:** Yes. Plastic toothpicks, plastic pizza saver and chopstick fall under the definition of service ware. Service ware type utensils should serve a purpose. This topic needs further clarification on utensil versus serving a purpose.

- (v) Per the definition of “service ware”, “the term does not include items contained within or attached to packaging of food or beverages, including, but not limited to, disposable plastic straws prepackaged and sold with beverage boxes, or disposable plastic utensils prepackaged and sold with ice cream or salads.” Is it a loophole to attach a prepackaged straw/utensil to a cup with tape?

**Response:** Disposable plastic straws attached as part of a prepackaged food by the manufacturer (not the storefront) is allowed (e.g. Capri Sun juice boxes). Tightening the language in the definition would resolve the issue.

- (w) Is it an easy loophole to just put utensils inside any prepackaged foods? All they have to do is put a fork inside a pie box and now it's exempt?

**Response:** Clarified above. Service ware attached as part of a prepackaged food by the manufacturer is allowed. It would not be considered a prepackaged food if the utensil was placed in a prepared food container. NOTE: If the item falls under both definitions, the default would be to consider the item to be "prepackaged Food".

- (x) Is plastic wrapping around utensils (e.g., plastic-wrapped straws, plastic-wrapped chopsticks) included in the definition as service ware?

**Response:** Plastic wrapping around plastic straws, chopstick are not considered service ware.

- (y) A typical "plate lunch" is "prepared food that can be safely stored at room temperature and does not require refrigeration, freezing, or heating for food safety purposes, prior to purchase by a customer." Therefore, is a typical "plate lunch" is "shelf stable food"?

**Response:** No. A prepared food is ordered then packaged, and is ready for consumption. The definition of "shelf stable food" includes no time frame and therefore, is inclusive of any "prepared food that can be safely stored at room temperature and does not require refrigeration, freezing, or heating for food safety purposes, prior to purchase by a customer."

- (z) How is "no reasonable alternative" defined?

**Response:** "no reasonable alternative" needs further discussion to define.

- (aa) How is "available" defined?

**Response:** "available" needs further discussion to define.

- (bb) How is "significant hardship" defined?

**Response:** "significant hardship" needs further discussion to define.

- (cc) How is "no affordable compliant alternative" defined?

**Response:** "no affordable compliant alternative" needs further discussion to define.

- (dd) What is meant by industry exemption?

**Response:** "industry exemption" needs further discussion to define.

- (ee) Who should apply for industry exemption and what is the process?

**Response:** An association etc. representing the industry can file for an industry exemption. See ENV Admin Rules for the process.

- (ff) End-users have different purposes for various containers; would end-users apply for exemption for each product on a case-by case basis?

**Response:** Yes.

- (gg) How is "no acceptable alternatives" defined?

**Response:** "no acceptable alternatives" needs further discussion to define.

- (hh) How will City manage availability of alternative food service packaging from China, Korea, etc. due to Covid-19 supply chain disruption, to include slowdown in import shipping?

**Response:** ENV will not respond to this question.

- (ii) What is the City's plan if supply chains are running short of sustainable products?

**Response:** This could be considered an industry exemption.

- (jj) Can the rules please clarify that employees are not required to verify the medical or physical condition? Or if employees are supposed to verify how should they do so without violating the ADA? Worried that for smaller businesses that may not be familiar with the ADA the language in the bill sets them up to ask questions that may cause them to be in violation, so I think it would be good if they clarify this in the rules.

**Response:** Yes. The rules will clarify that verification will not be required to verify medical or physical conditions.

- (kk) No straws are fossil-fuel free because it takes fossil fuels to manufacture anything. Did they mean fossil-fuel free ingredients?

**Response:** Yes. Fossil fuel free in regards to the product and not the process.

- (ll) Are in-house meals exempt? For example, Molokai Hospital uses plastic hinge containers for in-house dining of patients and visitors. They also currently use the same type of plastic hinge containers for their "Meals On Wheels" prepared foods to homebound clients.

**Response:** No. In-house meals are considered prepared foods and must comply with the ordinance.

- (mm) When poke is prepackaged and rice is added at the counter to make a poke bowl, what definition and container use prevails: prepackaged or prepared foods?

**Response:** Poke bowls are considered a "prepared food" based on the definition of "prepared food".

- (nn) Is poke exempt? Including all items provided at a poke counter?

**Response:** No. Poke is not exempt. It's considered a "prepared food". Prepackaged retail poke is exempt.

- (oo) Because poke is cut and seasoned and other ingredients are added, does it qualify as raw seafood under the exemption? Also, other items at a traditional poke counter are cooked, potentially creating a two-tiered family of products at a poke counter.

**Response:** No. To be considered raw seafood, it must not be prepared for consumption. See definition of "prepared food".

- (pp) Unprepared whole fruits and vegetables are exempt from container restrictions. If the fruits and vegetables are chopped or prepared it falls into the "prepared food" definition which is restricted. If these prepared fruits and vegetables are prepackaged for grab and go sales, which definition and food container takes precedent for the retailer?

**Response:** Prepared fruits and vegetables can be categorized as "prepared food" and "prepackaged food". NOTE: If the item falls under both definitions, the default would be to consider the item to be "prepackaged food".

- (qq) When operators are fined due to lack of understanding, how will this be done or controlled or determined?

**Response:** ENV will assist the operator to be compliant before issuing a fine. A notice of violation (NOV) is given to the operator. At that time, the City will assist with complying with the ordinance. A fine occurs when a notice of order (NOO) is issued.

- (rr) Will the City take responsibility for having operators understand this law where a lot of it crosses the line? Some things are allowed while others are not?

**Response:** The City will make every effort for operators to understand the law.

- (ss) How will a lot of these changes be conveyed to the various ethnic groups. It is very hard for even us to understand all of these changes.

**Response:** The City will translate education pieces into different languages.

- (tt) Federal customers do not need to comply with City restrictions. How are distributors to meet federal customer supply needs?

**Response:** Should there be an exemption for distributors selling to state or federal customers? Possibly adjusting the language in the next phase of the ordinance to clarify this situation.