



## Legislation Text

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**File #:** Ord 17-29, **Version:** 2

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Amending Chapter 236 of the Legislative Code regarding plastic packaging. (Public hearing held October 4, 2017; laid over from February 20, 2019 for public hearing on March 6)

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

### Section 1

Section 236.01 of the Saint Paul Legislative Code is hereby amended to read as follows:

#### **Sec. 236.01. - Legislative purpose.**

(a~~1~~) The council finds that discarded packaging from foods and beverages constitutes a significant and growing portion of the waste in Saint Paul's waste stream. Regulation of food and beverage packaging, therefore, is a necessary part of any effort to encourage a recyclable and compostable waste stream, thereby reducing the disposal of solid waste and the economic and environmental costs of waste management for the citizens of Saint Paul and others working or doing business in Saint Paul.

(b~~2~~) The council further finds that plastic packaging is rapidly replacing other packaging material and that most plastic packaging used for foods and beverages is ~~nondegradable~~ non-compostable, nonreturnable and non-recyclable.

(c~~3~~) The council also finds that the two (2) main processes used to dispose of discarded ~~nondegradable~~ non-compostable, nonreturnable and non-recyclable plastic foods and beverage packaging are land filling and incineration, both of which should be minimized for environmental reasons.

(d~~4~~) Chemicals hazardous to human health and to the safety of the environment are present in the composition of plastic packaging and have been found to escape into the air when this packaging is burned in incinerators and contribute to environmental problems associated with ash residue resulting from the incineration process.

(e~~5~~) The council, therefore, finds that the minimization of ~~nondegradable~~ non-compostable, nonreturnable and non-recyclable food and beverage packaging originating at retail food establishments within the City of Saint Paul is necessary and desirable in order to reduce the city's waste stream, so as to reduce the volume of landfilled waste, to minimize toxic by-products of incineration, to make the waste stream less damaging to the environment, and to make our city and neighboring communities more environmentally sound places to live.

(f~~6~~) The council finds that the plastic packaging used for foods and beverages contributes significantly to litter and the disposal of litter, is more difficult to collect, and lasts indefinitely until picked up or cleaned up.

(g~~7~~) The council has also been made aware of the facts recited in the addendum to the ordinance from which this chapter was derived, which facts have been weighed and considered as part of the record supporting its passage.

## Section 2

Section 236.02 of the Saint Paul Legislative Code is hereby amended to read as follows:

### **Sec. 236.02. - Definitions.**

As used in this chapter, the following terms and phrases shall have the meanings as defined in this section:

Director shall mean the director of the department of safety and inspections or his or her designee.

Environmentally acceptable packaging shall mean and include:

(1) Returnable and reusable packaging shall mean ~~F~~ food or beverage containers or packages, such as, but not limited to, soft drink bottles, growlers, and milk containers, that are capable of being returned to the distributor, such as, but not limited to, dairies and soft drink bottlers, for reuse as the same food or beverage container use at least once;

(2) Recyclable packaging shall mean ~~P~~ packaging ~~made of~~ materials that are separable from solid waste, by the generator or during collection for the purpose of recycling, for which there are city-approved contracts for collection for recycling in an organized and approved program. ~~Packaging made of either polyethylene terephthalate (P.E.T.) or high-density polyethylene (H.D.P.E.) shall be considered recyclable if and when it is collected for recycling in the same manner as here stated.~~

(3) Compostable packaging shall mean packaging materials that are separable from solid waste, by the generator or during collection for the purpose of composting, for which there are city-approved contracts for collection for composting in an organized and approved program, and/or are BPI certified and/or meet ASTM standards D6400 or D6868 or as determined by the Director.

Owner shall mean any person, agent, operator, firm or corporation having a legal or equitable interest in a retail food establishment.

Packaging shall mean and include all food-related wrappings, adhesives, cords, bindings, strings, tapes, ribbons, bags, boxes, coverings and containers, and shall further include cups, cans, glasses and similar containers for drinking out of or for holding liquids, and plates and serving trays but shall specifically exclude foods prepackaged by the manufacturer, producer, or distributor. plastic knives, forks and spoons sold or intended for use as utensils.

Qualified recycling system, as used in this chapter, means shall mean a recycling system with a clear and verifiable process for separating recyclable packaging from discarded solid waste; and collection and delivery of recyclable packaging to a recycling facility for processing in the same or at least similar manner as recyclable packaging collected in a municipally approved recycling program.

Qualified organics system, as used in this chapter, means shall mean an organics system with a clear and verifiable process for separating organic materials from discarded solid waste; and collection and delivery of organic materials to a food to people, food to animals, organics composting or anaerobic digestion facility in the same manner or at least similar manner as organic materials collected in a municipally approved organics program.

Retail food establishment, as used in this chapter, means shall mean a "food establishment" food and beverage service establishment, food cart or mobile food unit as defined in Minnesota Statute Chapter 157.15,

Food Beverage and Lodging Establishments, section 331.07 of the Saint Paul Legislative Code. References to retail food establishment in section 236.03 are specifically defined herein to include, for the purposes of prohibitions, penalties and adverse actions against licenses, the owner of such establishment and all persons, firms or corporations operating and/or managing such establishment.

### Section 3

Section 236.03 of the Saint Paul Legislative Code is hereby amended to read as follows:

#### **Sec. 236.03. - Prohibitions and Duties.**

~~No~~ It shall be unlawful for any person, owner, firm or corporation who owns, operates or manages a retail food establishment located within the City of Saint Paul ~~shall do or allow to be done any~~ to do any of the following:

(a1) ~~Within the City of Saint Paul, To~~ sell or convey at retail, or possess with the intent to sell or convey at retail, any food or beverage intended for immediate consumption that is placed, wrapped or packaged at any time at or before the time or point of sale in or on packaging that is not environmentally acceptable packaging; ~~nor or~~

(b2) ~~Within the City of Saint Paul, To~~ provide to retail customers, or possess with the intent to provide to retail customers, packaging that is not environmentally acceptable packaging.

(3) To fail to provide retail customers with an opportunity to appropriately recycle by offering a qualified recycling system and/or a qualified organics system.

The presence on the premises of the retail food establishment of packaging that is not environmentally acceptable packaging shall constitute a rebuttable presumption of intent to sell or convey at retail, or to provide to retail customers packaging that is not environmentally acceptable packaging; provided, however, that this subparagraph shall not apply to manufacturers, brokers or warehouse operators, who conduct or transact no retail food or beverage business.

### Section 4

Section 236.04 of the Saint Paul Legislative Code is hereby deleted in its entirety:

#### **~~Sec. 236.04. -- Enforcement.~~**

~~The director shall have the duty and the authority to enforce provisions of this chapter.~~

### Section 5

Section 236.05 of the Saint Paul Legislative Code is hereby amended to read as follows:

**Sec. 236.05. - Rules and regulations.**

The director may upon notice and hearing promulgate such rules and regulations as he or she deems necessary to carry out the aims of this chapter and protect the health of the public, including the development of exemptions under section 236.06 for which there is no commercially available alternative and for flexible packaging, in harmony with the legislative purposes set forth in section 236.01 of this chapter. ~~and Addendum A to this ordinance [Ordinance No. 17719].~~ In any decision concerning exemptions under section 236.06, the director shall make written findings to support the decision.

~~Editor's note - Addendum A to Ord. No. 17719, referred to in § 236.05 above, has not been included herein, but can be found on file with the city clerk.~~

**Section 6**

Section 236.05.1 of the Saint Paul Legislative Code is hereby deleted in its entirety:

**~~Sec. 236.05.1. - Standards for enforcement.~~**

~~The phasing in of enforcement shall exempt, on the effective date of this chapter [January 1, 1991], all product groups of the kinds identified in tiers in Addendum B, attached hereto and incorporated by reference herein. These exemptions shall be as follows:~~

- ~~(1) Six (6) months for Tier I product groups in both the grocery sector and the food service/deli sector.~~
- ~~(2) Nine (9) months for Tier II Group A products in the grocery sector.~~
- ~~(3) Twelve (12) months for Tier II Group B and C product groups in the grocery sector and in the food service/deli sector.~~

~~Editor's note - Addendum B referred to in § 236.05.1 above is on file for inspection in the city clerk's office.~~

**Section 7**

Section 236.06 of the Saint Paul Legislative Code is hereby amended to read as follows:

**Sec. 236.06. - Exemptions.**

Notwithstanding any other provision to the contrary, this chapter shall not apply to

(a) Any flexible packaging material of ten (10) mils or less unless specifically disapproved by the director by rule promulgated pursuant to section 236.05; provided, that the director may disapprove hereunder all flexible packaging materials not being collected for recycling in an organized manner in a municipally approved program where an alternative packaging material is being so collected.

(b) Any packaging used at hospitals or nursing homes;

~~(c) Any paper, cellophane or other cellulose-based packaging that is coated with plastic;~~

~~(d)(c)~~ Any packaging that is not environmentally acceptable for which there is no commercially available alternative as determined by the director by rule promulgated pursuant to section 236.05. In determining whether there are commercially available alternatives, the director shall consider (1) the availability of environmentally acceptable packaging for affected products; (2) the economic consequences to manufacturers, suppliers, retailers and other vendors of requiring environmentally acceptable packaging when available; and (3) the competitive effects on manufacturers, suppliers, retailers and other vendors involved in the sale of product brands or labels available only in packaging that is not environmentally acceptable packaging and, - (4) laws and ordinances of adjacent municipalities. Every rule creating an exemption under this paragraph shall be reviewed annually by the director to determine whether current conditions continue to warrant the exemption.

~~(e) Paper or other cellulose-based packaging capable of being decomposed by natural biological or biochemical processes.~~

## Section 8

Section 236.07 of the Saint Paul Legislative Code is hereby amended to read as follows:

### **Sec. 236.07. - Penalties.**

Each violation of any provision of section 236.03 this chapter or of lawful regulations promulgated under section 236.05 hereof shall be a petty misdemeanor, ~~for which the maximum fine shall be fifty dollars (\$50.00).~~ Each day on which violations occur constitutes a separate violation.

## Section 9

Section 236.08 of the Saint Paul Legislative Code is hereby amended to read as follows:

### **Sec. 236.08. - License adverse action. Severability**

~~Each violation of any provision of this chapter or of lawful regulations promulgated under section 236.04 hereof shall be sufficient grounds for adverse action pursuant to Chapter 310 of the Saint Paul Legislative Code against any and all licenses held by or at the retail food e~~

~~establishment and by its owner or operator. The presumptive penalty for the first appearance of such a licenseholder before the city council shall be a two-day suspension of all licenses held at or by such retail food establishment.~~

If any part or provision of this chapter or the application thereof to any person, entity or circumstances shall be adjudged unconstitutional or invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application that is directly involved in the controversy in which such judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this chapter or the application thereof to other persons, entities or circumstances.

## Section 10

Section 236.09 of the Saint Paul Legislative Code is hereby deleted in its entirety.

**~~Sec. 236.09. – Severability.~~**

~~If any part or provision of this chapter or the application thereof to any person, entity or circumstances shall be adjudged unconstitutional or invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application that is directly involved in the controversy in which such judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this chapter or the application thereof to other persons, entities or circumstances.~~

**Section 11**

Section 236.10 of the Saint Paul Legislative Code is hereby deleted in its entirety:

**~~Sec. 236.10. – Advisory committee on environmentally acceptable packaging.~~**

~~The council shall, by resolution, establish an advisory committee on environmentally acceptable packaging. The resolution shall provide for the membership, manner of appointment, the committee's charge and its duration. The membership shall be drawn from affected governmental units, business and industry, trade associations, general business organizations, consumer groups, environmental groups and others as determined in the resolution. The committee shall be staffed by the health department. The charge of the committee shall include the following:~~

- ~~(a) Monitoring industry and governmental actions relating to environmentally acceptable packaging;~~
- ~~(b) Advising the director on implementation issues;~~
- ~~(c) Advising the council on the feasibility of the effective date of this chapter and recommending whether or not the effective date should be extended;~~
- ~~(d) Assisting in efforts to expand the city's recycling program to include the collection of potentially recyclable materials not presently collected, including consideration of financial assistance;~~
- ~~(e) Recommending actions other levels of government and industry can take to advance the goals of this chapter;~~
- ~~(f) Assisting in the development and implementation of public education programs on recycling and packaging; and~~
- ~~(g) Encouraging adoption of substantially similar regulations by surrounding cities, particularly those with a border in common with Saint Paul.~~

**Section 12**

This Ordinance shall take force and be in effect January 1, 2021.

