

Executive summary

Title: Zero Waste Packaging 2020 Acceptable Materials, Exemptions List and Administrative Rules

Recommended action: Motion to approve the 2020 Acceptable Materials and Exemptions List and Administrative Rules.

Policy consideration: Does council wish to approve the recommended 2020 Acceptable Materials and Exemption List and Administrative Rules?

Summary: The Zero Waste Packaging ordinance went into effect on January 1, 2017. Each year staff reviews items that could be temporarily exempt (allowed), even though they are not recyclable or compostable, as well as administrative rules to guide implementation of the ordinance.

In 2019, there were three items on the exempt list and staff recommends keeping those exemptions. Unfortunately, due to a significant shift in compliant product availability, staff recommends adding two other material types. We hope this is just a short-term exception while the market adapts. The reasons for each exemption are provided in the discussion.

Existing exemptions – recommend to keep

1. Paper food wraps and liners (e.g. fast food wrappers)
2. Asian takeout pails (plastic-lined, fold-top style paper)
3. Portion cups and lids (rigid polystyrene #6, two ounce or smaller)

New exemptions – recommend to add

4. Modeled fiber products (e.g. clamshells, containers, bowls, etc.)
5. Paper plates

The recommended 2020 Administrative Rules keep in effect the 2019 rules for catering on city property and remove two rules which were incorporated directly into the ordinance during the amendment process in June 2019.

Strategic priority consideration: St. Louis Park is committed to continue to lead in environmental stewardship.

Supporting documents: Discussion

Zero Waste Packaging 2020 Acceptable Materials and Exemptions List
Zero Waste Packaging 2020 Administrative Rules

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Approved by: Tom Harmening, city manager

Discussion

Background: The Zero Waste Packaging (ZWP) ordinance went into effect on January 1, 2017. The ordinance requires that restaurants and food trucks utilize packaging that is recyclable or compostable. It also requires that restaurants with seating have appropriate waste disposal options for items used on-site (in-house). Since 2017, city staff have prepared a list of temporarily exempt items that are not recyclable or compostable, but which are being allowed due to limited compliant alternatives. In addition, administrative rules are written to clarify certain aspects of the ordinance. These are reviewed annually and presented to council. A written report with the following recommendations was provided to council during the October 28, 2019, study session.

Present considerations: In preparation for 2020, staff have reviewed the current temporary exemptions and administrative rules and are proposing changes to both.

Exemptions

For 2020, staff proposes to keep the three material exemptions from 2019 and add two additional material categories. The exemptions, and reasoning, are as follows:

1. **Paper food wraps and liners:** These are commonly used to line reusable food baskets and wrap items such as sandwiches, burgers and tacos. They are not compostable due to various grease barriers, which may be plastic, foil or chemical. Most options that would be compostable do not offer the same grease resistance or leak-proof properties. Given the lack of compostable options, staff recommend they continue to be exempted.
2. **Asian takeout pails:** These plastic-lined, fold-top style paper containers are an industry standard for many Asian restaurants, including several in St. Louis Park. In the past, staff had identified two options meeting the compostable requirement, but both had very limited availability through special order requiring high quantity purchases, so the decision was made to exempt these items. In 2019 staff learned that one of those options lost its third-party verification for composability, limiting availability further. Given the lack of a compostable version of these pails, staff recommend they continue to be exempted.

There has been a request made to remove this exemption. The following is the timeline of that request and staff response.

- April 2019: During the ordinance amendment process, a request was made by Zero Waste West Metro Minnesota (ZWWMM), a local advocacy group, to remove the exemption. Staff noted the request and explained the discussion would be revisited in the fall during the normal exemption review process.
- June 2019: A petition created by ZWWMM was given to Mayor Spano with signatures from 24 restaurants, also requesting the change. On June 27, city staff sent a letter to 21 of the businesses (three were outside St. Louis Park) informing them of the city's exemption process and the opportunity to provide additional comments in the fall.
- September 2019: On September 27, an email soliciting feedback on existing exemptions or requests for new exemptions was sent to the city's Zero Waste

- Packaging email list, which included any petition signers that provided the email. It is important to note that no additional comments were received regarding the pails.
- October 2019: On October 17, staff met with representatives from ZWWM to share the staff recommendation to continue the exemption. Staff also contacted restaurants in town that may be impacted by the removal of the exemption; seven of the ten utilize these pails and the majority of them are small businesses. There are approximately 115 restaurants total in the city.
3. **Portion cups (two ounce or smaller) and lids:** While compliant alternatives exist for the rigid polystyrene (#6, PS) portion cups, they have several limitations.
- *Recyclable options* – available, but recyclability is limited due to food contamination and size. If these cups aren't clean (as is often the case when used for condiments) they are too dirty to recycle. Additionally, small items like portion cups are difficult for recycling facilities to sort properly, often ending up in the trash or as a contaminant in glass.
 - *Compostable* – available, but functionality varies depending on use. Many compostable plastics cannot be used for hot condiments, such as nacho cheese.
4. **Molded fiber products:** As you may have heard, many of the molded fiber compostable products currently on the market will be losing their third-party certification through BPI, effective January 1, 2020. This is due to a class of chemicals called perfluoroalkyl and polyfluoroalkyl substances (PFAS), or fluorinated chemicals, which are used to provide moisture and grease resistance. Examples of these products include clamshells, salad bar containers and bowls. These are being used in many local restaurants that are affected by the ZWP ordinance. Given this situation and the lack of replacement products which will meet compostable standards by the start of 2020, staff recommends a new temporary exemption on these products.

The issue of PFAS has been growing over the last few years. BPI made the decision to end certification for any products which have intentionally added PFAS or have levels over 100 ppm total fluorine when tested. City staff have reached out to product manufacturers to gather more information on how they are responding to this loss of certification. Several are in the process of developing PFAS-free products, but few, if any, will be widely available by the start of 2020. In September, city staff convened a meeting with individuals from the City of Minneapolis, City of St. Paul, Hennepin County, Minnesota Department of Health (MDH), Minnesota Pollution Control Agency and Specialized Environmental Technologies (the compost facility where city curbside organics are processed) to discuss the issue and how the various entities could work together in addressing the challenges presented by PFAS in food packaging. MDH provided background on PFAS for the group, and discussion followed on strategies that could be taken. The consensus was to allow the non-certified items to be used for 2020, under an exemption, with the assumption that the manufacturers will have products available in the near future. This approach seeks to limit disruption for businesses and residents, but also closely monitors product developments. City staff intend to stay in regular contact with product manufacturers, third-party certification/approval programs, the compost facility and other local government entities during this time.

5. **Paper plates:** For the same reason as molded fiber products, this exemption would apply to any paper plate. This exemption would not extend to polystyrene (#6) foam plates.

It will continue to be a requirement that a food establishment utilizing any of the exempt materials must inform customers that the items are not recyclable or compostable. The business must clearly indicate to customers that the items must be placed in the garbage. This shall be done in print, such as on menus, posted signage or directly on the packaging.

Administrative rules

Updates made to Chapter 12 during the ordinance amendment process earlier in 2019 added two of the previous administrative rules directly to the ordinance. Therefore, only one rule will remain for 2020.

- As in 2019, for any catering taking place at city-owned facilities where organics and recycling collection containers are available, caterers who provide single-use food service items will need to ensure they follow the ordinance. This applies to city-sponsored events or private events. This same expectation has been in place for food trucks from the beginning and is a reasonable expectation for catering at city-owned facilities. This will ensure that event locations such as the ROC, the Rec Center, City Hall and Westwood Hills Nature Center are minimizing trash generated during events.

Catering activities which take place on private property or at city-owned facilities without organics and recycling will be exempt from the ordinance.

2020 changes to the ordinance which enhance our ordinance

In addition, staff wish to note the following changes to the ordinance which were adopted in 2019. While these are separate from the annual exemption process, they will also take effect in 2020.

- Effective January 1 for all food establishments
 - **Compostable utensils:** Food establishments will be required to utilize compostable utensils, when not providing reusable options.
 - **Straws by request:** Food establishments shall no longer provide straws to customers, unless requested. A front-of-house straw dispenser or other self-serve setup will meet the requirement of the ordinance.
- Effective January 1 for food trucks and July 1 for all other food establishments
 - **Compostable cup labeling:** Food establishments will need to ensure that all compostable cups and containers are labeled to indicate compostability.
 - **Cup and container lids:** Food establishments will need to ensure that lids used for compostable cups and containers are compostable and lids used for recyclable cups and containers are recyclable.

Next steps: Upon council approval, the list of acceptable materials and exemptions will be shared with impacted businesses immediately via email and a written letter in December 2019.