

ORDINANCE NO. \_\_\_\_\_  
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA

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**ORDINANCE REPEALING CHAPTER 4.107 OF THE SAN MATEO COUNTY ORDINANCE CODE AND  
ADOPTING A NEW CHAPTER 4.107 REGULATING THE USE OF SINGLE-USE DISPOSABLE FOOD SERVICE  
WARE BY FOOD FACILITIES**

The Board of Supervisors of the County of San Mateo, State of California,

**ORDAINS** as follows:

**SECTION 1. Findings.**

The Board of Supervisors finds and determines that:

- (a) The production, management, and consumption associated with single-use disposable food service ware, typically used for only a few minutes before being discarded, has significant environmental impacts, including environmental contamination; consumption of precious resources such as energy and water; emissions of greenhouse gases; air and water pollution; litter on streets, in waterways, and in the ocean; and plastic pollution.
- (b) Non-compostable, non-recyclable, and polystyrene-based disposable food service ware constitutes a substantial portion of the litter within San Mateo County. These types of food service ware are commonly littered or blown out of trash receptacles and migrate to the storm drain system and eventually to the ocean as well as the county's beaches and creeks.
- (c) Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors. Polystyrene, often referred to by the trademark, Styrofoam, has also become a problematic environmental pollutant given its non-compostable and nearly non-reusable nature.
- (d) The most effective ways to reduce the negative environmental impacts of single-use disposable food service ware include, in order of priority, reusing food service ware; using compostable materials made from renewable resources such as paper, bamboo, and sugarcane that do not contain toxic chemicals; and recycling food service ware. When products are reused and recycled, natural resources are spared, less energy is used for the production of new products, and premium landfill space is preserved. When compostable products are turned into compost, they can reduce water use and lessen the need for fertilizer at the site where the compost is applied (e.g., gardens, yards, farm land, etc.).
- (e) Compostable food service ware such as cups, plates, clamshell containers, and utensils are now made from paper, sugarcane stalk, bamboo, wheat stalk and straw, and other blend of plant fibers. As these products degrade, they pose less of a danger to the environment and are not a permanent blight on the landscape.
- (f) Even with the emergence of compostable plastics, which are derived from renewable biomass sources, such as plants and microorganisms, there are limited certified types of compostable plastic that biodegrade in a marine environment.

- (g) Certain single-use disposable food service ware, including compostable paperboard containers, may contain fluorinated chemicals, also known as per- and polyfluorinated alkyl substances (PFAS), which are synthetic chemicals commonly used in and on single-use disposable food service ware to repel water and grease. Fluorinated chemicals pose a public health risk as they have been linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty and obesity.
- (h) Plastics in waterways and oceans break down into smaller pieces, called microplastics, that do not biodegrade and are present in most of the world's oceans. Microplastics consumed by marine organisms make their way into animals' tissues and are beginning to show up in the fish that humans consume. Plastic debris also attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood, and salt that is eventually sold for human consumption.
- (i) Reduction of disposable food service ware in the environment will advance compliance with federal, state and county clean water mandates, including the County's regional stormwater permit requirement goal, by helping to reduce litter in stormwater discharges.
- (j) Understanding the importance of and need for reducing plastic litter, the County adopted a plastic bag ban ordinance in 2012. Adopting this Ordinance will help further reduce the amount of litter entering the county's storm drains, creeks, the bay and the ocean.
- (k) This Board does, accordingly, find and declare that it should restrict the use by food facilities of polystyrene-based disposable food service ware and should require the replacement of non-compostable or non-recyclable disposable food service ware with intentionally fluorine-free, non-plastic compostable or recyclable food service ware alternatives, when and where possible.

**SECTION 2. Chapter 4.107 of the San Mateo County Ordinance Code is hereby repealed and replaced in its entirety by a new Chapter 4.107 to be entitled and to read as follows:**

#### **CHAPTER 4.107 REGULATING THE USE OF SINGLE-USE DISPOSABLE FOOD SERVICE WARE**

##### **4.107.010 – Application of Chapter.**

The provisions of this chapter shall apply only within the unincorporated areas of San Mateo County.

##### **4.107.020 - Definitions.**

For purposes of this chapter, the following terms have the following meanings:

- (a) "Aluminum Foil-based" means any food service ware composed entirely of aluminum, including but not limited to aluminum tray liners, aluminum foil, and aluminum foil baskets.
- (b) "Biodegradable Products Institute (BPI)" refers to a certification program that ensures that products and packaging displaying the BPI logo have been independently tested and verified accordingly to scientifically based standards to successfully break down in professionally managed industrial composting facilities.
- (c) "Compostable" means that an item or material (1) will break down, or otherwise become part of usable compost in a safe and timely manner and (2) is non-plastic. Non-plastic means a

product that is not derived from either petroleum or a biologically based polymer, such as corn or other plant sources (e.g., compostable plastics). Non-plastic includes, but is not limited to products made from paper, sugarcane, bamboo, wheat stems, pasta, etc.

- (d) "Disposable Food Service Ware" means single-use disposable products used for serving or transporting prepared, ready-to-consume food or beverages. This includes, but is not limited to plates, cups, bowls, trays, clamshell containers, boxes, utensils, straws, cup lids, food contact paper (e.g., wraps, bags, tray liners, etc.), and any other food contact 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 Facility's premises. The term "Disposable Food Service Ware" includes Disposable Food Service Ware Accessories. It does not include items that are entirely Aluminum Foil-based or Polystyrene coolers and ice chests or disposable packaging for unprepared or Prepackaged Food.
- (e) "Disposable Food Service Ware Accessories" include Disposable Food Service Ware such as straws, stirrers, cup lids, cup spill plugs, cup sleeves, condiment packets and cups, utensils (including chopsticks), cocktail sticks/picks, toothpicks, napkins, and other similar accessory or accompanying Disposable Food Ware used as part of food or beverage service or packaging.
- (f) "Food Facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, as defined by the California Health and Safety Code. It also includes both permanent and nonpermanent food facilities.
- (g) "Food Scrap Composting" means (1) self-hauling of food scraps to an existing permitted composting facility or a transfer station nearby that accepts food scraps that will transfer it to a composting facility on-site compost processing, (2) food scrap compost collection service provided by a curbside hauler, or (3) on-site food scrap composting.
- (h) "Fluorinated Chemicals" means perfluoroalkyl and polyfluoroalkyl substances (PFAS chemicals) or fluorinated chemicals, which for the purposes of food packaging are a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- (i) "Polystyrene-based" means and includes expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene [EPS]), and clear or solid polystyrene known as oriented polystyrene.
- (j) "Prepackaged Food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer and prepared at an approved source.
- (k) "Prepared Food" means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption. Prepared Food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.
- (l) "Recyclable" means any material that is accepted by a local waste collector that operates within the Food Facility's area, including but not limited to paper, glass, metal, plastic, and cardboard.

- (m) “Reusable Food Service Ware” means all food service ware, including plates, bowls, cups, trays, glasses, straws, stirrers, 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.
- (n) “Takeout Food” means Prepared Food requiring no further preparation, which is purchased to be consumed off a Prepared Food Vendor’s premises. Takeout Food includes Prepared Food delivered by a Food Facility or by a third-party delivery service.

**4.107.030 – Customer Request for Accessories**

- (a) Disposable Food Service Ware Accessories shall only be provided upon a consumer’s specific request, at a self-serve area, and/or at a dispenser.

**4.107.040 – Standards and Required Use of Disposable Food Service Ware.**

- (a) No Food Facility shall use Polystyrene-based Disposable Food Service Ware when providing Prepared Food.
- (b) Single-use disposable straws, stirrers, utensils, and cocktail/toothpicks shall be Compostable.
- (c) If Food Scrap Composting is available at the Food Facilities, Food Facilities shall use Compostable alternatives for the below Disposable Food Service Ware items that are accepted by the Food Facilities’ Food Scrap Composting program:
  - 1. Plates
  - 2. Bowls (of all sizes including, but not limited soup and salad bowls)
  - 3. Cups (of all sizes including, but not limited to beverage cups and accessory cups for condiments)
  - 4. Food trays
  - 5. Clamshells, boxes and other containers used for Takeout Food and leftover “doggie bags”

If Food Scrap Composting is not available at the Food Facilities, Food Facilities shall use Recyclable alternatives for items listed above that is accepted by the Food Facility’s recycling collection program.

- (d) Conforming alternatives for the Compostable Disposable Food Service Ware listed in Subsection (c) need to have been tested to breakdown in an industrial composting facility and shall be free of all intentionally added Fluorinated Chemicals. To verify, these items shall be certified by Biodegradable Products Institute (BPI) or another independent third party approved by the Director of the Office of Sustainability or his or her designee, in collaboration with local waste processors and haulers.
- (e) The County shall maintain a list of approved Disposable Food Service Ware sources and/or references to organizations that maintain regularly updated lists of products that meet the requirements detailed in Subsections (a) through (d) of this Section. This information shall be

available on the Office of Sustainability website and office. If a product is not included on the approved lists, the Food Facility wishing to use the product as Disposable Food Service Ware shall establish to the Office of Sustainability's Director or his or her designee's satisfaction that the product complies with the standards and specifications detailed in Subsections (a) through (d).

#### **4.107.050 – Exemptions.**

- (a) Prepackaged Food is exempt from the provisions of this Chapter.
- (b) Polystyrene coolers and ice chests intended for reuse are exempt from Section 4.107.040 of this Chapter.
- (c) Disposable Food Service Ware that are entirely Aluminum Foil-based is exempt from Section 4.107.040 of this Chapter.
- (d) If the County determines that a reasonably feasible Disposable Food Service Ware that complies with Section 4.107.040 (a) to (d) of this Chapter does not exist, these items will be exempt from the provision of this Chapter until an acceptable alternative is available on the market for purchase. The County will have a list of these exempted Disposable Food Service Ware available on the Office of Sustainability's website and office. This list will be updated on a regular basis.
- (e) Disposable plastic straws can be allowed for distribution by Food Facilities only when requested by consumers that require medical accommodations. For these specific cases, Food Facilities may maintain a small supply of plastic straws, which can be distributed upon request only by the consumers. Otherwise, straws must comply with details laid out in Section 4.107.040 (b).

#### **4.107.60 – Request for an Exemption.**

- (a) Grounds for an exemption. An exemption from any of the provisions of this Chapter may be granted by the County upon demonstration by a Food Facility to the satisfaction of the County that strict application of the requirements would cause undue hardship. Reasons may include, but are not be limited to the following:
  - a. Exemptions based upon an emergency response are automatic and are granted without the submission of a request for an exemption.
  - b. Situations unique to the Food Facility where a suitable alternative that conforms with the requirements detailed in Section 4.107.040 (a) through (d) does not exist for a specific application. Or, if a conforming item exists, imposing the provisions of this Chapter would cause undue financial hardship. Reasonable added cost for a conforming item as compared to a substantially similar non-conforming item shall not in itself constitute adequate grounds to support an exemption for such item.
- (b) Request for an exemption. A request for an exemption from the requirements of this Chapter shall include all information deemed necessary by the County to render a decision, including but not limited to documentation showing the factual support for the requested exemption. A request for an exemption may be approved by County, in whole or in part, with or without conditions. The application process for requesting an exemption will be available on the Office of Sustainability website.

#### 4.107.70 – Enforcement.

- (a) The [County Department TBD] or his or her designee may enforce this Chapter.
- (b) A violation of this Chapter is punishable by administrative fines as set forth in [Chapter 1.40](#).
- (c) This Chapter shall not be interpreted to limit the applicable criminal, civil or administrative remedies available under law for ordinance code violations. All available enforcement procedures and remedies under law remain applicable.
- (d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the [County Department TBD] or his or her designee after the hearing, the fine may be collected by any applicable means, including referral to County Revenue Services for collection.

#### 4.107.080 - Enforcement within Incorporated Areas of County of San Mateo.

The [County Department TBD] is hereby authorized to enforce Chapter 4.107 within an incorporated city within the County of San Mateo, if the governing body of that city does each of the following:

- (a) Adopts, and makes part of its municipal code:
  - a. Chapter 4.107 in its entirety by reference; or
  - b. An ordinance that contains each of the provisions of Chapter 4.107;
- (b) Authorizes, by ordinance or resolution, the [County Department TBD] to enforce the municipal code adopted pursuant to Subsection (a) of this section, such authorization to include, without limitation, the authority to hold hearings, issue citations or assess administrative fines within the city.

#### **SECTION 3. California Environmental Quality Act (CEQA) Finding.**

This Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15061 (b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the County of San Mateo) for the protection of the environment. Thus, this chapter is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

#### **SECTION 4. Severability.**

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 4.107, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the chapter. The Board of Supervisors hereby declares that it would have passed this Chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared

invalid or unconstitutional without regard to whether any portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

**SECTION 5. Effective Date.**

This Ordinance shall be effective thirty (30) days after adoption. However, the mandatory provisions of this Ordinance shall only become operative and subject to enforcement one year (365 days) after the date of adoption.

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