

ORDINANCE 2021-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, AMENDING TITLE 5 OF THE SAN MARCOS MUNICIPAL CODE TO PROVIDE FOR THE RULES AND REGULATIONS GOVERNING THE DISTRIBUTION, SALE, AND USE OF SINGLE USE PLASTIC FOOD SERVICE WARE AND OTHER PLASTIC PRODUCTS AS SPECIFIED.

WHEREAS, the City of San Marcos is committed to ongoing efforts to reduce the usage of products that are harmful to the environment;

WHEREAS, the City of San Marcos strives to foster a successful business climate, and the City will continue partnering with the businesses that operate within the city to help them thrive here;

WHEREAS, the City of San Marcos seeks to encourage and promote long-lasting reusable products as ultimately the most effective approach to reducing single-use plastic pollution;

WHEREAS, the City of San Marcos is committed to listening to community feedback and provides drafts of this ordinance to affected industry sectors for comment prior to any action before the City Council was recommended;

WHEREAS, the City of San Marcos is committed to protecting the beauty as well as cleanliness of its parks, waterways, open space, facilities, roadways, and community in general from litter;

WHEREAS, this ordinance aims to support the City of San Marcos' Climate Action Plan since single-use plastics contribute to greenhouse gas (GHG) emissions via materials extractions, product production and waste disposal;

WHEREAS, the City of San Marcos has considered the capacity of its waste hauler to process certain types of organic material, including compostable single-use food service ware, in its anaerobic digester which began operations in early 2021;

WHEREAS, the City of San Marcos seeks to encourage the usage of products that do not have a detrimental effect on the natural environment and can be disposed of in the existing curbside pickup program available to commercial and residential accounts within the City of San Marcos;

WHEREAS, the California Coastal Commission has developed “A Plan of Action from The Plastic Debris Project” in 2006, which recommends that local governments impose limits, bans, and prohibitions on materials that more commonly become litter and marine debris;

WHEREAS, the City is aware that the California State Legislature has considered and may again consider in the near future legislation that would address similar materials and products;

WHEREAS, the City of San Marcos is in the process of reviewing and modifying its procurement policies to implement the purchase of recyclable materials and products where operationally feasible and financially viable, according to requirements from the State of California implemented through the California Department of Resources, Recycling, and Recovery;

WHEREAS, this ordinance is not a “project” as defined under Section 15378 of the California Environmental Quality Act Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000 – 15387, hereinafter “CEQA Guidelines”), and is therefore not subject to environmental review pursuant to Guidelines Section 15060(c)(3). In the event this activity is found to be a project, it is exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken “to assure the maintenance, restoration, enhancement and protection of the environment;”

WHEREAS, the City of San Marcos seeks to amend Title 5 with the addition Chapter 5.75 to provide for the rules and regulations governing the distribution, sale, and use of single use plastic food service ware and other plastic products as specified.

NOW, THEREFORE, the City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally and by the Charter of the City of San Marcos, specifically does ordain as follows:

Section 1. All of the above statements are true; and

Section 2. That Title 5 (Business Regulations) is amended to include Chapter 5.75, titled DISTRIBUTION, SALE, AND USE OF SINGLE USE PLASTIC FOOD SERVICE WARE AND OTHER PLASTIC PRODUCTS AS SPECIFIED which reads as follows:

#### CHAPTER 5.75

#### DISTRIBUTION, SALE, AND USE OF SINGLE USE PLASTIC FOOD SERVICE WARE AND OTHER PLASTIC PRODUCTS AS SPECIFIED

SECTIONS:

5.75.010 Purpose and Intent.

5.75.020 Defined.

5.75.030 Prohibition of use of Expanded Polystyrene Food Service Wares.

5.75.040 Distribution of Food Service Ware Accessories.

5.75.050 Distribution of Food Service Ware.

5.75.060 Exemptions.

5.75.070 Enforcement.

5.75.080 Administrative Remedies.

5.75.010 Purpose and Intent. The purpose of this Chapter is to establish standards and procedures for the protection of the City's environment, its economy, and the health of its residents and visitors by promoting environmentally sustainable practices throughout the City by controlling the use and distribution and disposal of certain non-recyclable single use plastic products by City departments, City contractors, food servicers, and grocery stores within the City of San Marcos.

5.75.020 Defined. For the purposes of this Chapter only, the terms below shall be defined as follows:

"Condiment" means relishes, spices, sauces, confections, or seasonings, that requires no additional preparation, and that is used on a food item, including, but not limited to, chutney, dressings, ketchup, mustard, mayonnaise, sauerkraut, salsa, syrup, jam, jelly, salt, spreads, sugar, sugar substitutes, pepper, or chili pepper.

"City" Means the City of San Marcos.

"City Facility" means any building, structure, property, park, open space, or vehicle, owned, leased, or operated by the City, its agents, agencies, departments, or franchisees.

"City Contractor" means any person that enters into an agreement with the City to furnish products or services to or for the City, the restrictions placed herein being operative on such entities when they are engaged providing goods or services to or for the City only.

"City-Sponsored Event" means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.

"Compostable" means materials in the product or package are fiber-based and will break down into, or otherwise become a part of, usable compost (e.g., soil conditioning material, mulch) in a safe and timely manner. Products or packages made with plastics, either petroleum based or biological based, or made with fluorinated chemicals shall not be considered compostable. Any product that cannot be composted by the City's franchise waste hauler shall not be considered

compostable. Inversely, any product that can be composted by the City's franchise waste hauler shall be considered compostable.

"Customer" means any person obtaining Prepared Food from a Restaurant or Food Provider or Food Service Provider, as defined.

"Disposable Food Service Ware" or "Disposables" means single-use, disposable products used for serving or transporting "Prepared Food" (see definition below), including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, or any other container in or on which Prepared Foods are placed or packaged for consumption. This definition excludes single use disposable straws, cup lids, and utensils.

"Disposable Food Service Ware Accessory" means all types of single-use, disposable products used in accessory to Disposable Food Service Ware, including but not limited to straws, condiment cups, cup lids, stirrers, splash sticks, cocktail sticks, toothpicks, and utensils.

"Distribute" means to provide or offer to provide an item, either as a separate transaction or as part of a transaction for another item, regardless of whether compensation is received.

"Event" means an organized recreational activity that includes 25 or more participants.

"Expanded Polystyrene" or "EPS" means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam. EPS is sometimes called "Styrofoam", a Dow Chemical Co. trademark form of polystyrene foam insulation.

"Food Provider" or "Food Service Provider" means any Person or establishment that provides or sells Prepared Food within the City to the general public to be consumed on the premises or for take-away consumption. Food Provider or Food Service Provider includes but is not limited to (1) a grocery store, supermarket, delicatessen, restaurant, drive-thru, café, cafeteria, coffee shop, snack shop, public food market, farmers' market, convenience store, or similar fixed place where Prepared Food is available for sale on the premises or for take-away consumption; and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food Provider also includes any organization, group or individual that regularly provides Prepared Food to its members or the general public as a part of its activities or services.

"Food Tray" means a tray commonly used for packaging food for retail sale to a Customer.

"Non-recyclable" means products that cannot be processed by the City's franchise waste hauler at its recycling facility.

"Non-Recyclable Disposable Food Service Ware" means Disposable Food Service Ware that is Non-Recyclable.

"Person" means any person, business, corporation, or event organizer or promoter; public, nonprofit or private entity, agency or institution; or partnership, association or other organization or group, however organized.

"Plastic" means made predominately of plastic derived from either petroleum or a biologically based polymer.

“Plastic Alternative” means non-plastic materials that are either recyclable or compostable.

“Plastic Disposable Food Service Ware Accessories” means Disposable Food Service Ware Accessories made of plastic that are not recyclable nor compostable.

“Polystyrene” means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The Recycle Code for polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies to all Polystyrene Food Service Ware, regardless of whether it exhibits a Recycle Code.

“Prepared Food” means any food or beverage that is (1) ready to consume without any further food preparation, alteration, or repackaging; and (2) prepared, provided, sold, or served by a Food Provider using any cooking, packaging, or food preparation technique. Prepared Food may be eaten either on or off the Food Provider’s premises. For purposes of this ordinance, Prepared Food does not include (1) any raw uncooked meat, poultry, fish, or eggs, unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers’ markets, and other food vendors.

#### 5.75.030 Prohibition of Expanded Polystyrene Food Service Wares.

- (a) City Facilities, City departments, City-managed concessions, City-sponsored or co-sponsored events, City permitted events and all franchises, contractors, organizations, non-profits, and vendors acting directly with or on behalf of the City are prohibited from selling, distributing, or using Disposable Food Service Ware made of EPS within the City. This section shall only apply to City franchises, contractors, organizations, non-profits, and vendors when they are actively providing goods or services to or for the City.
- (b) Food Service Providers are prohibited from selling, distributing, or using Disposable Food Service Ware made of EPS within the City.
- (c) The effective date of the prohibition under this section 5.75.030(b) is January 1, 2024.

#### 5.75.040 Distribution of Food Service Ware Accessories.

- (a) City Facilities, City departments, City-managed concessions, City-sponsored or co-sponsored events, City permitted events and all franchises, contractors, organizations, non-profits, and vendors acting directly with or on behalf of the City are prohibited from selling, distributing, or using Plastic Disposable Food Service Ware Accessories. This section shall only apply to City franchises, contractors, organizations, non-profits, and vendors when they are actively providing goods or services to or for the City.
- (b) Food Providers are prohibited from the distribution of Plastic Disposable Food Service Ware Accessory products.
- (c) A Food Provider may only provide Plastic Alternative Disposable Food Service Ware Accessory products upon request by the customer, or upon offer to the customer, or at

self-serve stations, except that cups for drive-thru, takeout, or delivery by a Food Provider may include tops, spill plugs, and sleeves without request. This provision shall apply to all orders including but not limited to delivery, takeout, and drive-thru orders. Cups for drive-thru, takeout or delivery may include plastic lids, spill plugs and sleeves with or without request, for safety purposes.

- (d) The effective date of the prohibition under this section 5.75.040(b)-(c) is July 1, 2022.

#### 5.75.050 Distribution of Food Service Ware.

- (a) City Facilities, City departments, City-managed concessions, City-sponsored or co-sponsored events, City permitted events and all franchises, contractors, organizations, non-profits, and vendors acting directly with or on behalf of the City are prohibited from selling, distributing, or using Disposable Food Service Ware that is not either Recyclable or Compostable. This section shall only apply to City franchises, contractors, organizations, non-profits, and vendors when they are actively providing goods or services to or for the City.
- (b) Food providers and food service providers are prohibited from selling, distributing, or using Disposable Food Service Ware products that are not either Recyclable or Compostable.
- (c) The effective date of the prohibition under this section 5.75.050(b) is July 1, 2023.

#### 5.75.060 Exemptions.

- (a) The following are exempt from the provisions of this chapter:
  - 1. Prepared Food and/or products prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits.
  - 2. Prepared Food provided by San Marcos Unified School District under its official food service program.
  - 3. Prepared Food, Disposable Food Service Ware, or Disposable Food Service Accessories brought by individuals for personal consumption or use to City facilities, including, but not limited to, City parks, provided the City facility is being used for individual recreation or similar purposes and such facility use is not part of an event.
  - 4. Notwithstanding any other provision of this chapter, and in recognition that plastic straws, utensils, and other plastic accessories may provide basic accommodation for persons with disabilities or medical conditions to eat or drink, food or beverage establishments in the City of San Marcos must provide Disposable Food Service Ware or Disposable Food Service Accessory upon request to any consumer who requires the use of same due to a disability or medical condition. Nothing in this chapter shall conflict, or be construed to conflict, with the Americans with Disabilities Act, the Unruh Act, the Disabled Persons Act, or other applicable laws concerning the rights of individuals with disabilities. In particular, nothing in this chapter shall restrict, or be construed to restrict, the availability of single-use plastic straws to individuals who may require and request the use of single-use plastic straws.

5. Public Health and Safety. The City Manager or designee may exempt a Food Provider or beverage provider when there is a public health and safety requirement or medical necessity to use the product.
  6. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and food providers may be exempt from the provisions of this chapter.
- (b) The City Manager or designee may exempt any Person from any or all of the requirements of this chapter for a period of time consistent with the provisions of section 5.75.060(b)(2), below, if the conditions of the chapter would cause an undue hardship following the operative date of any of the prohibitions codified in this chapter, as follows:
1. An application for an exemption detailing why the requirement constitutes an undue hardship shall be filed in writing with the City Manager or his/her designee. An exemption application shall include all information necessary for the City to make its decision including, but not limited to, documentation showing the factual support for the claimed exemption. The City may require the applicant to provide additional information as necessary to reach a determination on the exemption request.
  2. The City Manager or his/her designee may approve the exemption for a maximum of two years, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include the following circumstances:
    - i. There are no reasonable alternatives to food service ware and food service ware accessories designated in sections 5.75.030, 5.75.40, and 5.75.050 for reasons that are unique or cost prohibitive to the applicant; or
    - ii. Compliance with the requirements of this chapter would deprive a Person of a legally protected right. The exemption may be extended for additional terms of up to one year each, upon a showing of the continuation of the legal right.
  3. The City Council may by resolution establish a fee for exemption applications. The application fee shall be an amount sufficient to cover the costs of processing the exemption application.

#### 5.75.070 Enforcement.

- (a) The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, investigating violations, issuing fines, and entering the premises of any food provider during business hours.
- (b) Enforcement of this chapter shall initially be pursuant to chapter 1.14.030 of this Code (Administrative Citations and Fines).
- (c) Each violation of this chapter shall be considered a separate offense.
- (d) The remedies and penalties provided in this chapter are cumulative and not exclusive, and shall not preclude the City from pursuing any other remedies. The City Attorney

may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulations or administrative procedure developed to effectuate the same.

- (e) The City shall provide information about this chapter to new businesses and existing businesses during the business license application or business license renewal process.

#### 5.75.080 Administrative Process.

- (a) Any Person violating, causing, or maintaining a violation of any provision of this chapter may be issued an administrative citation assessing a civil fine as provided in this section. The procedures for the imposition, enforcement, collection, and administrative review of civil fines shall be in addition to, and not in lieu of, any other legal remedy established by law and available to the City to address violations of this chapter.
- (b) Upon a first violation of any provision of this chapter, the City Manager or his/her designee shall issue a written warning notice of violation to the offending retail establishment. The warning notice of violation shall specify the violation(s), a date by which the violation(s) must be ceased and abated, and the penalties in the event of future violations. If, after the specified correction period following the written warning, the violation is not ceased or abated, the City Manager or his/her designee may issue an administrative citation assessing fines in accordance with this section.
- (c) Each separate violation following the issuance of a warning notice of violation shall be subject to the following administrative fines which shall be cumulative with each day that a violation occurs constituting a separate violation:
  - 1. A fine not exceeding \$100.00 for the first violation following the issuance of a warning notice.
  - 2. A fine not exceeding \$200.00 for the second violation following the issuance of a warning notice.
  - 3. A fine not exceeding \$500.00 for each additional violation that occurs following the issuance of a warning notice.
- (d) Each administrative citation issued for a violation of this chapter shall at a minimum contain the information specified in Chapter 1.14 Administrative Citations and Fines, and any Person receiving an administrative citation may contest the citation, and shall be entitled to an administrative hearing, pursuant to the procedures set forth in that chapter.

Section 3. This ordinance and any of its provisions shall be null and void upon the adoption of any state or federal law or regulation imposing the same, or essentially the same, limits on the use of prohibited products as set forth by this ordinance. This ordinance is intended to be a proper exercise of the city's police power, to operate only upon its own officers, agents, employees and facilities and other Persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed with that intent.

Section 4. If any section, sentence, clause, or phrase of this ordinance is determined to be invalid, illegal, or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance. The City



Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause, or phrase thereof, regardless, of the fact that any one or more sections, subsections, sentences, clauses, or phrases to be declared unconstitutional.

Section 5. This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance, or the title thereof, as a summary as required by state law.

SECTION 6. The City Council finds that this ordinance is not a “project” as defined under Section 15378 of the California Environmental Quality Act Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000 – 15387, hereinafter “CEQA Guidelines”), and is therefore not subject to environmental review pursuant to Guidelines Section 15060(c)(3). In the event this activity is found to be a project, it is exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken “to assure the maintenance, restoration, enhancement and protection of the environment.”

INTRODUCED at a regular meeting of the City Council of the City of San Marcos held on the \_\_\_\_ day of \_\_\_\_\_, 2021, and thereafter,

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos held on the \_\_\_\_ day of the \_\_\_\_\_, 2021, by the following roll call vote:

AYES:

NOES:

ABSENT:

APPROVED:

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Rebecca D. Jones, Mayor

ATTEST:

APPROVED AS TO FORM:

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Phillip Scollick, City Clerk  
City of San Marcos

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Helen Holmes Peak, City Attorney  
City of San Marcos

