



## Staff Report

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**File #:** TMP-1605, **Version:** 1

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**MEETING DATE:**

OCTOBER 12, 2021

**SUBJECT:**

ORDINANCE 2021-1507 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, AMENDING TITLE 5 OF THE SAN MARCOS MUNICIPAL CODE TO ADD CHAPTER 5.75 (DISTRIBUTION, SALE, AND USE OF SINGLE USE PLASTIC FOOD SERVICE WARE AND OTHER PLASTICS PRODUCTS AS SPECIFIED)

**Recommendation**

INTRODUCE Ordinance 2021-1507 to modify San Marcos Municipal Code Title 5 to add Chapter 5.75 to regulate and govern the distribution, sale, and use of single use plastic food service ware and other plastic products as specified.

**Board or Commission Action**

Not Applicable

**Relevant Council Strategic Theme**

Good Governance

**Relevant Department Goal**

Not Applicable

**Introduction**

At its May 25, 2021 Council Goal Setting Workshop, the City Council met to discuss the needs of the community as the State of California's COVID-19 shut-down orders were lifted and the economy reopened. At this meeting, the City Council gave direction to Staff to restart efforts to establish policies that control the distribution, sale and use of single use plastics.

Several City policies are aimed at the reduction and regulation of solid waste, seeking to both reduce litter in the City as well as to best manage the waste-stream to increase recycling and decrease the amount of waste sent to landfills. Goal LU-16 of the 2012 General Plan's Land Use and Community Design Element (Element 2) is to "reduce the amount of solid waste material entering regional landfills with an efficient and innovative waste management program." Policy 16.2 in that same document, directs City Staff to "[i]ncrease recycling, composting, source reduction, and education efforts throughout the city to reduce the amount of solid waste requiring disposal at landfills."

This item is before City Council to introduce Ordinance 2021-xxxx amending xxxx of the San Marcos Municipal Code regarding the sale, distribution and use of single use plastics.

## **Discussion**

There are three goals of the proposed single use plastics reduction ordinance. First, the ordinance aims to reduce the amount of litter that ends up in the gutter, on the sidewalks, in the parking lots, the parks and open space, and the waterways of San Marcos by requiring businesses to ask before automatically providing certain disposal products to customers. Second, the ordinance aims to increase diversion of waste from the landfill by requiring that these items generated at restaurants and grocery stores be recyclable or compostable. Third, the ordinance aims to promote a sustainable San Marcos both in terms of financial sustainability for the members of the San Marcos business community as well as in terms of environmental sustainability for the City's open space and waste-stream.

With this threefold goal in mind, Staff developed target materials and product types which are recommended for regulation in terms of sale, distribution, and use. Staff makes these recommendations based on analysis of prevailing business practices, available alternative products, and existing materials' impact on the environment and tendency to be littered. The target materials and product types are as follows:

### **Materials:**

- Non-recyclable: products that cannot be processed by the City's franchise waste hauler at its recycling facility
- Non-compostable: products that cannot be composted by the City's franchise waste hauler at its anaerobic digester facility.
- Expanded Polystyrene or "EPS" or "Styrofoam": polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid form. EPS is sometimes called Styrofoam", a Dow Chemical Co. trademark form of polystyrene foam insulation.

### **Product Types**

- Disposable Food Service Ware: single use, disposable products including but not limited to plates, bowls, trays, wrappers, platters, cartons, condiment containers, cups.
- Disposable Food Service Ware accessories: 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.

The impacted businesses and organizations are identified as follows:

- City departments, City-managed concessions, City-sponsored and co-sponsored events, City permitted events and all franchises, contractors, organizations, non-profits and vendors acting directly with or on behalf of the City;
- Food Provider or Food Service Provider meaning 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.

Considering that businesses purchase in bulk the above mentioned products, the implementation phase of this ordinance was carefully crafted to allow businesses ample time to use up their existing stock of products. With this in mind, the following implementation timeline is recommended:

- July 1, 2022: Disposable Food Service Ware Accessories required to be either compostable or recyclable and provided only upon request, upon offer to customer, or at customer self-serve stations. Orders for drive-thru, takeout or delivery that use a cup may include plastic lids, spill plugs and sleeves with or without request.
- July 1, 2023: Disposable Food Service Ware required to be either compostable or recyclable.
- January 1, 2024: Expanded Polystyrene or “Styrofoam” Disposable Food Service Wares prohibited for sale, use, or distribution within the City. Unprepared foods packaged and sold using EPS packaging **not** included in prohibition.

In July 2021, Staff shared a draft of this ordinance with the San Marcos Chamber of Commerce, the California Restaurant Association, and the California Grocers Association. A copy was also distributed to Surfrider and Oceana, environmental advocacy organizations. Staff received feedback from the California Restaurant Association via the Chamber of Commerce, which commented favorably on the ordinance while requesting implementation no sooner than one-year following adoption - Staff is recommending the above reviewed phased approach. Staff also received positive comments from the Chamber of Commerce, which held a workshop with its member businesses to review the draft ordinance. Lastly, the City received positive and constructive comments from both Surfrider and Oceana.

In order to ensure the fair and reasonable implementation of the City’s rules and regulations governing the sale, use, and distribution of single use plastics, an exemption application will be developed according to section 5.75.060(b) of the ordinance. This section allows Staff to exempt any business from any or all of the sections of the ordinance for up to two years from the operative date of the section if the applicant can demonstrate undue hardship. Exemptions can also be granted by City Staff during a locally declared emergency, or for when there is a public health and safety requirement or medical necessity to use a certain, otherwise not allowed, product. Exempted automatically are the following: the San Marcos Unified School District’s official food service program and the usage of products as necessary to by persons to accommodate a disability or medical condition.

Staff will be developing and implementing technical assistance to provide impacted businesses with an understanding of the timeline for regulations to come into effect, the allowable products as well as wholesalers and providers of those products, and other methods to comply with this proposed set of rules and regulations in a cost-effective manner that will impact their business operations as little as possible. The primary focus of this technical assistance program will be the development and dissemination of an “alternative acceptable products” list that will include information on products that are allowable under the proposed ordinance and are as close as possible to the price point of products that are to be disallowed.

Enforcement of the proposed ordinance will be on a complaint-received basis. Upon receiving a complaint alleging violation of the proposed ordinance, Staff will visit the establishment, make contact with the

management, and substantiate or invalidate the complaint. If the complaint is substantiated, Staff will issue a written notice of violation outlining the date of the offense, the nature of the violation, and a date by which the violation must be ceased and abated. If, after the specified correction period following the written warning, the violations have not ceased or been corrected, Staff may issue an administrative citation assessing fines in accordance with the proposed ordinance. Staff's focus on the initial visit will be to provide the technical assistance described above, in an attempt to assist the business to comply is the most cost-effective way possible in an effort to disrupt their business practices as little as possible.

### **Environmental Review**

The proposed ordinance is exempt from the provisions of 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" and pursuant to Section 15061 (b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

### **Fiscal Impact**

Staff anticipates that during the implementation period, outreach and education efforts by existing staff will reduce the need for enforcement efforts, which are anticipated to be conducted by existing staff. Thus, there are presently no anticipated fiscal impacts associated with this ordinance.

### **Attachments**

Attachment 1 - Proposed Ordinance 2021-XXXX Amending Title 5 of the San Marcos Municipal Code to Add Chapter 5.75 (Distribution, Sale, and Use of Single Use Plastic Food Service Ware and Other Plastics Products as Specified)

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Reviewed by: Helen Holmes Peak, City Attorney  
Approved by: Jack Griffin, City Manager