

## CHAPTER FOUR: BUSINESS ACTIVITIES

### Subchapter 4.13: SUSTAINABLE FOOD SERVICE WARE

#### 4.13.010 Findings and Purpose.

- (a) The use of single-use plastic disposable food service ware has been determined to have significant impacts on the environment, including environmental contamination, litter on streets, and plastic pollution in waterways and oceans; and
- (b) Polystyrene, also known as Styrofoam, has also become a problematic environmental pollutant given its non-compostable and nearly non-reusable nature; and
- (c) Many new compostable plastic alternatives contain fluorinated chemicals that have been linked to serious health issues including some cancers and thyroid disruption. These compostable plastics do not fully degrade in a marine environment and break down into microplastics, which are consumed by microorganisms and end up in the fish that we eat; and
- (d) The City Council of the Town of Colma does find and declare that it should regulate the use of disposable food service ware by food vendors.

#### 4.13.020 Definitions.

For purposes of this Subchapter, the following definitions apply.

- (a) "Aluminum Foil-based" means any Disposable 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. BPI-certified products meet the standards of the American Society for Testing Materials (ASTM) D6400 or D6868 for compostability. Starting on January 1, 2020, all BPI-certified products will also be required to have (1) a limit of 100 parts per million (ppm) total Fluorinated Chemicals as the upper threshold for acceptance and (2) no intentionally added Fluorinated Chemicals.
- (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 Natural Fiber-based or made from other materials approved by the County Manager or designee. Compostable items may include those that are made entirely of Natural Fiber or Natural Fiber-based items that are coated or lined with biologically based polymer, such as corn or other plant sources (e.g., compostable plastics), if certified by BPI or by another independent third party approved by the County Manager or designee.
- (d) "County" means the County of San Mateo.
- (e) "Disposable" means designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple reuse.

(f) "Food Service Ware" means food contact products used for serving, distributing, holding, packaging, and/or transporting Prepared Food including, but not limited to plates, cups, bowls, trays, clamshell containers, boxes, utensils, straws, lids, and food contact paper (e.g., wraps, bags, tray liners, etc.). The term "Food Service Ware" includes Food Service Ware Accessories.

(g) "Food Service Ware Accessories" include Food Service Ware such as straws, stirrers, cup spill plugs, cup sleeves, condiment packets, utensils (including chopsticks), cocktail sticks/picks, toothpicks, napkins, and other similar accessory or accompanying Food Service Ware used as part of food or beverage service or packaging. Detachable lids for beverage cups and food containers are not considered a Food Service Ware Accessory.

(h) "Fluorinated Chemicals" means perfluoroalkyl and polyfluoroalkyl substances (PFAS chemicals) or fluorinated chemicals, which are a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(i) "Food Facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food to the public for human consumption, as defined by the California Health and Safety Code Section 113789 or successor. It includes both permanent and temporary food facilities. Public schools are exempt from the provisions of this Subchapter.

(j) "Food Scrap Composting Method" means: (1) self-hauling of food scraps to a permitted composting facility or a transfer station that accepts food scraps that will be transferred to a permitted composting facility for on-site compost processing, (2) food scrap compost collection service provided by a curbside hauler, or (3) on-site food scrap composting.

(k) "Healthcare Facilities" mean places that provide healthcare to the public. Healthcare Facilities includes, but is not limited to hospitals, clinics, outpatient care centers, nursing homes, psychiatric care centers, medical offices, hospice homes, mental health and addiction treatment centers, orthopedic and other rehabilitation centers, urgent care, birth centers, etc.

(l) "Natural Fiber/Natural Fiber-based" means a plant or animal-based, non-synthetic fiber, including but not limited to products made from paper, sugarcane, bamboo, wheat stems/stalk, hay, wood, etc.

(m) "Non-Compostable" means not meeting the definition of Compostable set forth in this Subchapter.

(n) "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.

(o) "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.

(p) "Prepared Food" means food or beverages that undergo a cooking or food preparation technique on the Food Facility's premises for consumption by the public. Cooking or food preparation technique includes, but is not limited to the following:

- (1) Cooking methods, utilizing the application of heat, such as steaming, microwaving, simmering, boiling, broiling, grilling, frying, or roasting.
- (2) Beverage preparation, such as blending, brewing, steeping, juicing, diluting, or pouring.
- (3) Food preparation techniques, such as defrosting, rinsing, washing, diluting, cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing, decorating, or icing.

Prepared Food does not include raw eggs or raw, butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance.

(q) "Takeout Food" means Prepared Food requiring no further preparation, which is purchased to be consumed off a Prepared Food Facility's premises. Takeout Food includes Prepared Food delivered by a Food Facility or by a third-party Takeout Food Delivery Service.

(r) "Takeout Food Delivery Service" is a service that delivers Takeout Food from a Food Facility to a customer for consumption off the premises. This service can be provided directly by the Food Facility or by a third-party.

#### **4.13.030 Distribution of Disposable Food Service Ware Accessories.**

(a) No Food Facility shall provide any Disposable Food Service Ware Accessories except: (1) upon request by the consumer, (2) upon acceptance by the consumer after being offered by the Food Facility, or (3) at a self-serve area and/or a dispenser.

(b) Food Facilities shall only distribute Disposable Food Service Ware Accessories unbundled, as separate individual units.

(c) Takeout Food Delivery Services that utilize digital ordering/point of sale platforms, including but not limited to the internet and smart-phone, shall only offer Disposable Food Service Ware Accessories by providing clear options for customers to affirmatively request these items separate from orders for food and beverages. The default option on the digital ordering/point of sale platforms shall be that no Disposable Food Service Ware Accessories are requested. Each individual Disposable Food Service Ware Accessory (e.g., each fork, knife, condiment packet, napkin, etc.) provided with Prepared Food must be specifically requested by the customer in order for a Food Facility to provide it.

#### **4.13.040 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) Food Facilities shall only provide Disposable straws, stirrers, utensils, and cocktail/toothpicks (and the packaging that these individual items are wrapped in, if any) that are Compostable.

(c) Nothing in this Subchapter shall conflict or be construed to conflict with the Americans with Disabilities Act or any other applicable law concerning the rights of individuals with disabilities. In particular, nothing in this Subchapter shall restrict, or be construed to restrict, the provision by Food Facilities of Disposable Non-Compostable straws to individuals who may request the use of Disposable Non-Compostable straws to accommodate medical needs or disabilities. Healthcare Facilities may distribute Disposable Non-Compostable straws with or without request by a patient at the discretion of the Healthcare Facility staff based on the physical or medical needs of the patient.

(d) Food Facilities shall use Compostable items for the below Disposable Food Service Ware:

(1) Plates

(2) Bowls (of all sizes including, but not limited to soup and salad bowls and accessory bowls for condiments)

(3) Cups (of all sizes including, but not limited to beverage cups)

(4) Food trays

(5) Clamshells, boxes, deli containers, and other containers used for the sale and/or distribution of Prepared Food (e.g., Takeout Food, leftover "doggie containers", etc.)

(e) Compostable items for the Disposable Food Service Ware listed in Subsection (d) used by Food Facilities must have been tested to breakdown into compost in an industrial composting facility in a timely manner 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 County Manager or designee, in collaboration with local waste processors and haulers.

(f) For all other Disposable Food Service Ware not listed in Subsections (b) and (d), Food Facilities shall use only Disposable Food Service Ware that can be composted by the Food Scrap Composting method utilized by the Food Facility and/or accepted for recycling by the Food Facility's recycling collection service.

(g) The Town through 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), (b), (d), and (e) of this Section. This information shall be made available on the County Office of Sustainability website, in the County Office of Sustainability, and available from the Town upon request. If a product is not included on the approved lists, the Food Facility wishing to use a product as Disposable Food Service Ware shall establish to the City Manager through County Manager or designee's satisfaction that the product complies with the requirements detailed in Subsections (a), (b), (d), and (e).

#### **4.13.050 Recordkeeping and Inspection.**

- (a) Food Facilities shall keep complete and accurate record or documents of the below items.
  - (1) Commencing on the effective date of this Ordinance and ending on March 25, 2022, the purchase of all Disposable Food Service Ware, including Non-Compostable and Compostable items.
  - (2) The purchase of the acceptable Disposable Food Service Ware evidencing compliance with this Subchapter for a minimum period of three years from the date of purchase.
- (b) The record shall be made available for inspection at no cost to the Town through the County during regular business hours by Town or County employees or Town or County-designated staff authorized to enforce this Subchapter. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be made available at the Food Facility address.
- (c) The provision of false or incomplete information, records, or documents to the Town or County shall be a violation of this Subchapter.

#### **4.13.060 Exemptions.**

- (a) Prepackaged Food is exempt from the provisions of this Subchapter.
- (b) Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this Subchapter.
- (c) Disposable Food Service Ware that is entirely Aluminum Foil-based is exempt from the provisions of this Subchapter.
- (d) If the Town through the County determines that a reasonably feasible Disposable Food Service Ware that complies with Section 4.13.040 (a), (b), (d), and (e) of this Subchapter does not exist, these items will be exempt from the abovementioned provisions of this Subchapter until the Town through the County determines that a reasonably feasible alternative is available on the market for purchase. The Town through the County will have a current list of these exempted Disposable Food Service Ware posted on the County Office of Sustainability website with hard copies available in the County Office of Sustainability, and available from the Town upon request.
- (e) Certain Disposable Food Service Ware Accessories for beverage orders, specifically, straws and cup sleeves, shall be exempt from Section 4.13.030 (a) and may be distributed for safety reasons without the need for a request by the consumer or an offer by the Food Facility, specifically at drive-through areas of Food Facilities. Detachable lids are not considered a Disposable Food Service Ware Accessory, so Section 4.13.030 (a) does not apply to detachable lids.

(f) Temporary exemptions due to an emergency are automatic without the submission of a request for an exemption. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to natural disasters, emergencies due to the release of hazardous materials, emergencies associated with loss of power and/or water, or emergency medical response.

#### **4.13.070 Case-by-Case Consideration of Requests for Hardship Exemption.**

(a) **Grounds for an exemption.** An exemption from any of the provisions of this Subchapter may be granted by the City Manager through the County Manager or designee upon demonstration by a Food Facility to the satisfaction of the Town through the County that strict application of the requirements would cause undue hardship. An “undue hardship” includes, but is not limited to the following:

(1) A situation unique to the Food Facility where a suitable alternative that conforms with the requirements detailed in Section 4.13.040 (a), (b), (d), and (e) does not exist for a specific application.

(2) Imposing the provisions of this Subchapter would cause significant economic hardship. “Significant economic hardship” may be based on, but not limited to, demonstrating that suitable Disposable Food Service Ware is not available at a commercially reasonable price and the additional cost associated with providing the Disposable Food Service Ware is particularly burdensome to the Food Facility based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the Food Facility, and other factors. Reasonable added cost for a suitable item as compared to a similar item that the Food Facility can no longer use shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the City Manager through the County Manager or designee shall consider the following information: ability of the Food Facility to recover the additional expense by increasing its prices; the availability of tax credits and deductions; outside funding; and other options.

(b) **Request for an exemption.** A request for an exemption from the requirements of this Subchapter shall include all information deemed necessary by the Town and 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 the City Manager through the County Manager or designee, in whole or in part, with or without conditions. The duration of the exemption, if granted, shall also be determined by the City Manager through the County Manager or designee. Information about the application process for requesting an exemption will be available on the County Office of Sustainability’s website and in the County Office of Sustainability, and available from the Town upon request.

#### **4.13.080 Enforcement.**

The County of San Mateo, its officers, employees and agents are hereby authorized to enforce, on behalf of the Town of Colma, this subchapter of the Colma Municipal Code, and any

amendments thereto, within the jurisdictional boundaries of the Town of Colma. Such enforcement authority includes, without limitation, the authority to hold hearings, issue citations, or assess administrative fines for violations of this Subchapter within the geographical limits of the Town of Colma.

Any violation of this subchapter is declared to be a public nuisance and can be enforced through various provisions of the Colma Municipal Code including this subchapter, subchapter 1.05 and subchapter 2.01. Any violation can also be enforced by the County or Town through any and all administrative, civil, or criminal enforcement remedies available under the law.