

ORDINANCE NO. 1129

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO ADDING
NEW CHAPTER 10 TO TITLE 5 (SANITATION AND HEALTH) REGULATING SINGLE-USE
FOOD SERVICE WARE

WHEREAS, the Town of San Anselmo's Sustainability Commission held a meeting on May 29, 2018, and unanimously recommended that the Town Council adopt an ordinance to regulate single-use food service ware; and

WHEREAS, the Town Council received a presentation from the Sustainability Commission and discussed a draft single-use food service ware ordinance at its meeting of September 11, 2018; and

WHEREAS, the Town Council requested additional information and directed the Sustainability Commission members to do additional outreach to the Town's business community; and

WHEREAS, on November 13, 2018, the Town Council received the requested information from the Sustainability Commission and staff and reviewed this proposed ordinance; and

WHEREAS, the Town Council seeks to protect the health and safety of its citizens, the natural environment and the Town economy; and

WHEREAS, the Town Council finds the provisions of this ordinance consistent with the goals and policies of the Town's General Plan and Climate Action Plan;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES
ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the Town. The Town Council hereby finds that under Section 15061(b)(3) of the CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 2. Title 5 (Sanitation and Health) is amended to add a new Chapter 10 as follows:

5-10.01 – Findings and Intent

The San Anselmo Town Council hereby finds:

- (a) The Town of San Anselmo has a desire and duty to protect its natural environment and the health of its citizens and economy. Our throw-away culture is leading to a proliferation of plastics in our food, air, and drinking water. According to the 2017 Clean Water Fund review, 67% of trash entering San Francisco Bay is food and beverage packaging.

- (b) The Town of San Anselmo is committed to reducing waste and carbon emissions contributing to the Town’s zero-waste goals. Food service ware items made from plastics are lightweight and can be picked up by the wind creating waste that easily travels from land to inland waterways. It breaks down into small pieces in the ocean. Mistaken for food by birds and other marine wildlife, when ingested, these plastics can impact animals’ digestive tracts, often leading to death. Furthermore, marine plastic has been detected in seafood sold for human consumption.
- (c) Eliminating the use of polystyrene (“EPS”) and polypropylene products and other non-compostable single-use food service ware, including plastic utensils and plastic straws, maximizes the operating life of landfills and will help to lessen the economic and environmental costs of managing waste. Businesses may benefit by this cost savings while also boosting customer satisfaction. This will also help protect the Town’s environment from contamination and degradation making it a cleaner, healthier town for all residents and visitors.
- (e) Single-use food service ware may threaten public health because many types contain many additives that are known or suspected carcinogens or endocrine disruptors, such as phthalates, perchlorate, and fluorinated chemicals. These additives are known to leach from food service ware into the food and beverages they contain.
- (d) Fluorinated chemicals, also known as per- and polyfluorinated alkyl substances (“PFAS”), are synthetic chemicals commonly used in and on single-use service ware products to repel water and grease. A 2018 Center for Environmental Health study found that 57% of tested food service ware contained significant levels of fluorinated chemicals. Fluorinated chemicals are extremely persistent in the environment, leach into food, and can be taken up from soil into food. In 2016, the FDA rescinded its approval for use of three such fluorinated chemicals from food contact materials due to associated heightened risks of cancer, toxicity, and other health effects. Other PFAS chemicals have similar chemical structures, and may pose similar risks.
- (e) WM Earthcare™, as the Town’s current compost facility, plays a vital role in the Town’s commitment to meet its zero-waste goals of reducing waste and lowering carbon emissions. Using food service ware items made from materials approved by WM Earthcare™ is an opportunity to take more significant steps toward those goals.

5-10.02 – Definitions

As used in this chapter, the following terms are defined in this section:

Compostable means all materials in the product or package will break down into or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) according to the standards set by the compost facility selected by the Town’s waste hauler (WM Earthcare™ at the time of ordinance adoption) and/or the Town’s hauler. “Compostable” also includes a plastic-like material if the material meets the BPI (Biodegradable Products Institute) and ASTM Standard Specification for compostability and the product is labeled in accordance with California Public Resources Code Section 42357 *et seq.* for easy identification of compostable products meeting the BPI and ASTM Standard Specification for compostable plastics.

Customer means any person obtaining Prepared Food from a Food Vendor.

Disposable Food Service Ware means all containers, bowls, plates, trays, cups, lids, straws, forks, spoons, knives, napkins, and other like items that are designed for one-time a single use for Prepared Foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Vendors. The term “Disposable Food Service Ware” includes Disposable Food Service Ware Accessories and does not include items composed entirely of aluminum, or polystyrene foam coolers and ice chests.

Disposable Food Service Ware Accessories means all types of single-use items usually provided alongside Prepared Food in single-use plates or cups, including but not limited to utensils, chopsticks, napkins, cup lids, cup sleeves, food or beverage trays, condiment packets and saucers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks designed for a single use for Prepared Foods.

Fluorinated Chemical means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as perfluoroalkyl and polyfluoroalkyl substances, or PFAS chemicals. California warns that this chemical is known to cause cancer.

Food Vendor means any restaurant, bar, Retail Food Vendor, or food truck, or private school meal provider located or operating within the Town of San Anselmo.

Municipal Compost Facility means the compost facility used by the Town’s waste hauler for composting organic material (WM Earthcare™ at the time of ordinance adoption).

Polypropylene means a plastic made from monomers and produced from a process called polymerization. Monomers, single sequence molecules, such as ethylene and propylene are produced from natural gas and oil. Plastic utensils are typically made from Polypropylene or Polystyrene.

Polystyrene & Polystyrene Foam means and includes blown polystyrene and expanded and extruded foams (EPS) which are thermoplastic petrochemical materials 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, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make items such as cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons and ice chests. Polystyrene is also used to make plastic utensils.

Prepared Food means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption and includes takeout food. For the purpose of this section, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance.

Planning Director means the Planning Director of the Town of San Anselmo or the Planning Director’s designee.

Restaurant, for the purposes of this section, means any establishment located within the Town of San Anselmo that sells Prepared Food for consumption on, near, or off its premises by a Customer including itinerant restaurants, pushcarts, farmers market and vehicular Food Vendors.

Reusable Food Service Ware means food service items that are sufficiently durable and washable to allow for multiple uses and are not conventionally disposed of after a single use, including tableware, drink vessels, to-go containers, and straws.

Schools means all public and private schools in San Anselmo that serve food and use disposable service ware, including all preschools, grade schools, high schools, colleges and graduate schools.

Single-use Straw means a tube for transferring a beverage from its container to the mouth of the drinker that is intended for a single-use.

Take Out Bag means a Recyclable Paper Carryout Bag as defined in section 5-9.01 of the Code.

Town Facilities means any building, structure or vehicle owned or operated by the Town of San Anselmo.

Town Manager means the Town Manager for the Town of San Anselmo or the Town Manager's designee.

5-10.03 – Disposable Food Service Ware Regulations.

- (a) All Food Vendors, all Schools and the Town are strongly encouraged to provide Reusable Food Service Ware in place of Disposable Food Service Ware.
- (b) All Food Vendors and all private schools are prohibited from providing Prepared Food to Customers in Disposable Food Service Ware that uses any forms or parts of polypropylene or polystyrene materials or materials that contain Fluorinated Chemicals including Take-Out Bags.
- (c) All persons in charge of Town Facilities are prohibited from using or purchasing Disposable Food Service Ware that uses any forms or parts of polypropylene or polystyrene materials or materials that contain Fluorinated Chemicals for use at Town Facilities.
- (d) All Food Vendors that use wood stirrers, toothpicks, beverage plugs, and cocktail sticks must provide Compostable wood stirrers, toothpicks, beverage plugs, and cocktail sticks. All Food Vendors providing straws must provide Single-use Straws made of compostable paper. Strict compliance is not required in instances where it would interfere with accommodating for any person's medical needs.

5-10.04 - Customer Request for Accessories - Disposable Food Service Ware Accessories must be provided only upon Customer request or by self-serve including: straws, sleeves, lids, stirrers, beverage plugs, utensils, condiment packets and napkins.

5-10.05 – Compostable Food Service Ware Regulations.

- (a) All Food Vendors and all private schools shall use Compostable Food Service Ware and Take-Out Bags that are accepted by Municipal Compost Facility. Limited exceptions to this requirement will be made in accordance with sections 5-10.07.
- (b) All Town Facilities will use Compostable Food Service Ware that is accepted by Municipal Compost Facility. Agents, contractors, and vendors doing business with the Town that involves food service shall use the same Compostable Food Service Ware in Town Facilities or for Town-sponsored events. Limited exceptions to this requirement will be made in accordance with sections 5-10.07.
- (c) If a service ware item is not available in a material that can be composted by the Municipal Compost Facility (following WM Earthcare guidelines), an alternative item made of Compostable material must be used.
- (d) Conventional plastic straws must be made available to disabled individuals upon request.

5-10.06 – Polystyrene Foam Coolers Prohibited

The sale of Polystyrene (EPS) foam coolers, ice chests and Disposable Food Service Ware made from EPS is prohibited within the Town of San Anselmo. Coolers and ice chests that do not have exposed polystyrene and that are designed for reuse are exempt from the provisions of this chapter.

5-10.07 – Exemptions

The following exemptions shall apply to this chapter:

- (a) Entities packaging prepared foods outside the Town of San Anselmo are exempt from the provisions of this chapter; provided, however, such persons are encouraged to follow the provisions of this chapter.
- (b) Food Vendors shall be exempt from the provisions of this chapter for no more than one year if the Town Manager or his or her designee finds that an undue hardship exists. The phrase “undue hardship” shall be construed to include, but not be limited to, situations where a Food Vendor can demonstrate to the satisfaction of the Town Manager or his or her designee that there is significant difficulty or significant expense incurred by satisfying the requirements of this chapter, which difficulty or expenses directly impacts the Food Vendor’s ability to conduct business or deprives the Food Vendor of a legally protected right.
 - 1. “Significant difficulty” will be established based on, but not limited to, the Food Vendor’s documented list of suppliers contacted, reasons the Food Vendor has determined that no acceptable Disposable Food Service Ware is available at a commercially reasonable price, and/or reasons that the regulations are particularly burdensome to the Food Vendor.
 - 2. “Significant expense” will be based on, but not limited to, demonstrating that the 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 Vendor based on the type of operation(s)

affected, the overall size of the business, the number, type and location of its facilities and the impact on the overall financial resources of the Food Vendor. In determining whether a significant expense has been established, the Town Manager or his or her designee shall consider the ability of the Food Vendor to recover the additional expense by increasing its prices, the availability of tax credits and deductions, and/or outside funding.

- (c) Disposable Food Service Ware composed entirely of aluminum is exempt from the provisions of this chapter.
- (d) Emergency Supply and Services Procurement. The Town Manager or his or her designee may, exempt Food Vendors, persons operating Town facilities and agents, contractors, and vendors doing business with the Town, from the provisions of this section for the immediate preservation of the public peace or health or safety due to an emergency or natural disaster.

5-10.08 Enforcement

- (a) The Town Planning Director or his or her designee has primary responsibility for enforcement of this chapter.
- (b) If the Planning Director or his or her designee determines that a violation of this chapter has occurred; he or she may issue a written warning notice to the Food Vendor specifying that a violation of this chapter has occurred, identifying a required compliance date, and notifying the Food Vendor of the fines to be assessed in the event of future violations. The Town Council shall establish fines for violation of this chapter by resolution.
- (c) Any Food Vendor that violates or fails to comply with any of the requirements of this chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.
- (d) Any violation of the provisions of this ordinance is hereby declared a public nuisance and shall be subject to abatement in the manner set forth in Title 1 Chapter 2.
- (e) The remedies provided in this section shall be cumulative and not exclusive. If the Town adopts additional Municipal Code enforcement mechanisms, the Town may use those mechanisms to enforce this ordinance.
- (f) The Town Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

SECTION 3. Severability. The Town Council hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4. Inclusion in the San Anselmo Municipal Code. It is the intention of the San Anselmo Town Council that the text in Section 2 be made a part of the San Anselmo Municipal Code and that the text may be renumbered or relettered and the word "Ordinance" may be changed to "Section",

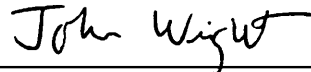
"Chapter", or such other appropriate word or phrase to accomplish this intention.

SECTION 5. Effective date. This Ordinance shall go into effect on June 1, 2019 and shall be posted or published as required by State law.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the San Anselmo Town Council on November 13, 2018, and was adopted at a regular meeting of the San Anselmo Town Council on November 28, 2018, by the following vote:

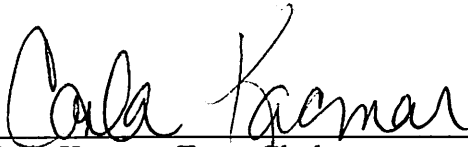
AYES: Wright, Brown, Coleman, Greene, Colbert
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:



John Wright, Mayor

ATTEST:



Carla Kacmar, Town Clerk