ORDINANCE NO. 1136

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO AMENDING CHAPTER 10 TO TITLE 5 (SANITATION AND HEALTH) REGULATING SINGLE-USE FOODWARE

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 foodware; and

WHEREAS, the Town Council adopted Ordinance 1129 the single use foodware ordinance on November 28, 2018, after holding public meetings on the draft on September 11, 2018 and November 13, 2018; and

WHEREAS, the Town of San Anselmo's Sustainability Commission held a meeting on April 22, 2019, and unanimously recommended that the Town Council adopt an ordinance to amend Ordinance 1129 to clarify its terms and add additional provisions; and

WHEREAS, the Town Council seeks to amend Ordinance 1129 to clarify its terms and add additional provisions; 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 State 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) Chapter 10 is hereby amended 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 has led to a proliferation of single-use disposable foodware, packaging and plastics contributing to major street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.

(b) The Town of San Anselmo is committed to reducing waste and carbon emissions contributing to the Town's zero-waste goals. Foodware 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, it can impact their 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 foodware 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 our Town's environment from contamination and degradation making it a cleaner, healthier town to all citizens and visitors.

(d) Single use foodware threatens public health because many types contain Fluorinated chemical additives that are known or suspected carcinogens or endocrine disruptors. These additives are known to leach from foodware into the food and beverages they contain and into soil and water.

5-10.02 – Definitions

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

*Compostable* means all disposable products certified by BPI (Biodegradable Products Institute - A third party organization that reviews and certifies compostable products that meet ASTM D6400 and ASTM 6868 conditions for compostability) or Fluorinated Free and are accepted by the Town's Municipal Compost Facility.

*Disposabe Cup* means a beverage cup designed for single-use to serve beverages such as water, hot and cold drinks, and alcoholic beverages.

*Disposable Foodware* means all containers, bowls, plates, trays, cups, lids, straws, forks, spoons, knives, napkins, boxes and other like items that are designed for single-use for Prepared Foods, including without limitation, foodware for takeout foods and/or leftovers from partially consumed meals prepared by Food Vendors.
Disposable Foodware Accessories means all types of single-use items usually provided alongside Prepared Food in plates and cups, including but not limited to utensils, chopsticks, napkins, cup lids, cup sleeves, food or beverage trays, condiment containers and saucers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks.

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 Prop 65 lists as reproductive toxicants PFOA and PFOS (two types of PFAS Chemicals).

Food Vendor means any restaurant, Private School, bar, grocery store, delicatessen, bakery, food service establishment (carry out, quick service, full-service), food truck, itinerant restaurants, pushcart, farmers market or other similar establishments, selling Prepared Food to be consumed on and off the premises located or operating within the Town of San Anselmo.

Full-Service Restaurant means restaurants where 90% or more of the food or beverages are served on the premises and meals are typically paid for after they are eaten, with limited food being taken out of the establishment.

Municipal Compost Facility means Compost Facility at WM Earthcare at Redwood Landfill, or the facility used by the Town’s current waste hauler for composting organic material.

Polystyrene & Polystyrene Foam means thermoplastic petrochemical materials in the form of blown polystyrene, expanded and extruded foams (EPS).

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.

Private Schools means private schools in San Anselmo including all preschools, grade schools, high schools, colleges and graduate schools.

Reusable Foodware means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that are manufactured of durable materials and specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and are safe for washing and sanitizing according to applicable regulations.

Takeout Food means Prepared Food which is purchased to be consumed off the Food Vendor’s premises. Takeout Food includes Prepared Food carried out by the customer or delivered by a Food Vendor or by a Takeout Food Delivery Service.

Takeout Food Delivery Service is a third-party delivery service which picks up Takeout Food from a Food Vendor and delivers it to the customer for consumption off the premises.

5-10.03 – Dine-In Foodware Regulations

The following regulations apply to Prepared Food served by Food Vendors on their premises within
the Town of San Anselmo:

(a) Food Vendors shall only sell or provide food and beverages for consumption on the premises using Reusable Foodware except as otherwise provided in this section.

(b) Food Vendors may provide Compostable disposable paper food wrappers, sleeves, bags, napkins, straws, trays and plate-liners; and/or foil wrappers.

5-10.04 – Takeout Foodware Regulations.

The following regulations apply to Takeout Food served by Food Vendors for consumption off the Food Vendor’s premises:

(a) Food Vendors shall only provide Takeout Food in Reusable Foodware or Compostable Disposable Foodware, or items composed entirely of aluminum.

(b) Takeout food bags shall be paper or comply with Title 5, Chapter 9 (regulations for single-use carryout bags).

(c) All Disposable Foodware, including Disposable Accessory items, must be either 1) Fluorinated Chemical-free or 2) certified by the BPI (Biodegradable Products Institute); and accepted by the Municipal Compost Facility.

(d) If a Compostable Disposable Foodware item is not available, an alternative Foodware item made of other materials, except Polystyrene foam and Polystyrene foodware, may be substituted.

5-10.05 - Foodware Accessory Regulations

The following regulations apply to Food Vendors’ Foodware Accessories:

(a) When reusable Foodware Accessories cannot be used, Food Vendors shall provide Compostable Disposable Foodware Accessories only upon customer request or at self-serve stations. Food Vendors offering condiments are encouraged to use dispensers rather than pre-packaged disposable condiment packets.

(b) Food Vendors and Takeout Food Delivery Services must provide options for customers to affirmatively request Disposable Foodware Accessories separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smartphone and other digital platforms, telephone and in-person. A Food Vendor or a Takeout Food Delivery Service may include lids, spill plugs and sleeves without request for Disposable Cups for delivery.

(c) All Food Vendors shall provide only upon request or have a small supply at a self-serve station, single use “plastic” straws, to accommodate any person’s access needs. There must be clear signage displaying “plastic straws are available upon request.”

(d) If a Compostable Foodware Accessory item is not available, an alternative Accessory item made of other materials, except Polystyrene, may substituted.
5-10.06 – Town Purchases and Town Sponsored Events

The following regulations apply to Town of San Anselmo purchases and Town-sponsored events:

(a) The Town of San Anselmo shall not purchase any Disposable Foodware or Disposable Foodware Accessories that are not Compostable.

(b) Food service at Town-sponsored events shall comply with the Takeout Foodware Regulations set forth in Section 5-10.04.

5-10.07 – Disposable Cup Charge

The following regulations apply to all Food Vendors except for Full Service Restaurants:

(a) Food Vendors shall charge customers twenty-five cents ($0.25) for every Disposable Cup provided unless they are exempt under this section.

(b) Income from the Disposable Cup charge shall be retained by the Food Vendor.

(c) All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, and individuals with disabilities shall be exempt from the Disposable Cup charge.

(d) Charges for the Disposable Cups shall be identified separately on any post-sale receipt provided and, pre-sale, be clearly identified to the customer on media such as menus, electronic ordering platforms, and/or menu boards. Customers placing orders by phone shall be informed verbally of Disposable Cup charges.

(e) Private Schools are exempt from this section.

5-10.08 – Polystyrene (EPS) Prohibited

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

(b) Disposable Foodware and Disposable Accessories made from EPS are prohibited within the Town of San Anselmo.

5-10.09 - Separate Disposable Foodware Waste Receptacles

(a) All Food Vendors except for Full-Service Restaurants must provide one set of three easily accessed receptacles for discarded items to be composted, recycled, and, if needed, to be landfilled or otherwise wasted.

(b) To the extent possible given space constraints, all three bin receptacles should be placed
adjacent to one another.

(c) Signage must be posted on or above each receptacle following the Town waste hauler's guidelines.

5-10.10 - 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 two years 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 Reusable or Disposable Foodware 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 Foodware is not available at a commercially reasonable price and the additional cost associated with providing the Reusable or Disposable Foodware 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 Foodware 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 a declared emergency or natural disaster.

5-10.11 - Enforcement

(a) The Town Planning Director or his/her designee has primary responsibility for enforcement of this chapter.

(b) Food Vendors shall have until December 31, 2019, to bring their businesses into compliance with this chapter. After December 31, 2019, anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Title 1 Chapter 6 or charged with an infraction.

(c) Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers under this Chapter.

(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 Town Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

(f) The remedies and penalties provided in this section are cumulative and not exclusive. If the Town adopts additional Municipal Code enforcement mechanisms, the Town may use those mechanisms to enforce this ordinance.

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 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 June 11, 2019, and was adopted at a regular meeting of the San Anselmo Town Council on June 25, 2019, by the following vote:
AYES: Brown, Greene, Wright, Coleman, Colbert

NOES: None

ABSENT: None

ABSTAIN: None

Matt Brown, Mayor

CARLA KACMAR

Carla Kacmar, Town Clerk