



## Item No. 9 Town of Atherton

### **CITY COUNCIL STAFF REPORT – CONSENT CALENDAR**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**THROUGH: GEORGE RODERICKS, CITY MANAGER**

**FROM: DOUGLAS KIM, SUSTAINABILITY COORDINATOR**

**DATE: NOVEMBER 17, 2021**

**SUBJECT: ADOPTION OF A MEMORANDUM OF UNDERSTANDING  
ESTABLISHING MONITORING AND ENFORCEMENT  
RESPONSIBILITIES FOR DISPOSABLE FOOD SERVICE WARE.**

### **RECOMMENDATION**

It is recommended that Council approve a Memorandum of Understanding (MOU) with the County of San Mateo on the monitoring and enforcement of the Disposable Food Service Ware ordinance.

### **BACKGROUND**

On June 17, 2020, the City Council adopted Municipal Code Ordinance 645 establishing regulations for disposable food service ware and food service ware accessories under Chapter 8.56 of the Municipal Code. Food service ware include containers, bowls, plates, trays, cups, lids, straws, utensils, napkins, and other items designed for single use with prepared foods. Food service ware accessories include straws, stirrers, napkins, condiment packets, utensils, and other small items that accompany prepared foods. The ordinance requires food service facilities to use natural fiber-based compostable food ware instead of single-use plastic products and regulates the distribution of single-use food ware accessories. The ordinance is in alignment with the County's multi-jurisdictional effort to reduce the waste, greenhouse gasses, and use of resources associated with single-use food service ware. To date, 14 jurisdictions in the county are partnering with the County's "Foodware Aware" program and have adopted similar ordinances.

### **ANALYSIS**

Because Town Ordinance 645 is part of a larger countywide effort to reduce use of disposable food service ware, there is a desire for uniform regulation, monitoring, and enforcement of these requirements. Given the County's resources and ability to do so in a consistent, cost-effective manner, an MOU is needed to confirm roles and responsibilities. Like other jurisdictions that have adopted MOUs, the agreement includes the following general tasks:

Tasks to be Completed by the Town:

- Adopt an ordinance in its municipal code (completed June 17, 2020, Ordinance 645);
- Enter into an MOU (this document) with the County for enforcement within the Town; and
- Authorize the County to enforce the municipal code including the authority to hold hearings, issue citations, or assess administrative fines on behalf of the Town.

Tasks to be Completed by the County:

- Provide education and enforcement services for the Town; and
- Hire a consultant to provide education services within partner jurisdictions.

This MOU allows the Town to join the growing list of jurisdictions leading the effort to reduce single-use plastic and other food ware waste. A recently passed State bill (AB 1276) contains similar requirements and may require future refinements to this local program. The ordinance would be enforced starting March 25, 2022.

This MOU has been reviewed by and incorporates comments from the City Attorney's Office.

**NEXT STEPS**

Following approval of the MOU, staff will coordinate with the County on the continued implementation of the ordinance, including enforcement activities that would begin March 25, 2022. Outreach to the half-dozen or so food service facilities in the Town is ongoing.

**FISCAL IMPACT**

None.

**GOAL ALIGNMENT**

This report and its contents are in alignment with the following Council Policy Goals:

- Goal E – Strengthen Community Engagement and Transparency
- Goal F – Be Forward-Thinking, Well-Managed, and Well-Planned

**PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,400 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

**COMMISSION/COMMITTEE FEEDBACK/REFERRAL**

This item \_\_\_ has or X has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month)
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)

**ATTACHMENTS**

1. Memorandum of Understanding
2. Ordinance 645

**MEMORANDUM OF UNDERSTANDING BETWEEN  
TOWN OF ATHERTON AND COUNTY OF SAN MATEO FOR  
DISPOSABLE FOOD SERVICE WARE ORDINANCE  
EDUCATION AND ENFORCEMENT ACTIVITIES**

THIS MEMORANDUM OF UNDERSTANDING (MOU), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the County of San Mateo, hereinafter called "the County" and the "Town of Atherton", hereinafter called "the Town;

**W I T N E S S E T H:**

WHEREAS, the County's Board of Supervisors repealed and replaced the existing County ordinance banning polystyrene disposable food service ware by food vendors (Municipal Code Chapter 4.107) with the Disposable Food Service Ware Ordinance (Ordinance) on February 25, 2020; and

WHEREAS, to promote consistency within jurisdictions throughout San Mateo County and leverage economies of scale, the County has offered to lead the education and enforcement efforts for the Ordinance in the incorporated cities of San Mateo County; and

WHEREAS, the Town's Council adopted the Ordinance 645, on June 17, 2020 and authorizes the County to provide education and enforcement services within the Town's jurisdiction.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

**1. Duties of the Town**

The County will lead education and enforcement efforts for the Ordinance if the City satisfies the following criteria:

- a) Keeps as part of its municipal code either a reference incorporating the Ordinance in its entirety or an ordinance that contains each of the provisions of the Ordinance.
- b) Authorizes the County to enforce the municipal code provisions adopted pursuant to subsection a) above, including authorization to hold hearings, issue citations, and assess administrative fines on behalf of the City.
- c) Remains a party to this MOU.

**2. Services to be Performed by the County**

A. The County shall provide education and enforcement services for the Town as described in Exhibit A, attached hereto and incorporated by reference herein.

- B. The County shall hire a consultant to provide education services within jurisdictions in San Mateo County that adopt the Ordinance. If appropriate, interested cities will also have the option of entering into contractual agreement with the same consultant for education services specifically relating to provisions that *go beyond* and that fall outside the Ordinance.
- C. The County shall only provide education and enforcement services for the Ordinance within the Town’s jurisdiction if it has determined that it has adequate resources to do so.
- D. The County shall only offer to provide education and enforcement for services relating directly to the provisions of the Ordinance. If the Town adds new provisions that *go beyond* the existing provisions of the Ordinance, the County may, at its discretion, offer to provide education and enforcement services, pending further assessment by the County. The assessment will involve evaluating the alignment of the objectives of the Town’s “add-on” provisions with those of the Ordinance and the level of effort and resources required for education and enforcement services.

As an alternative, if the County elects not to offer education and enforcement services for the “add-on” provisions, the Town can administer, implement, and fund its own education and enforcement services specifically for the “add-on” provisions. Specific to education services, if Town policy allows and the Town chooses to do so, the Town can enter into a separate contractual agreement with the same consultant that will be providing education services for the Ordinance, as referenced in Section 2.B. above.

**3. Consideration**

The benefit of this MOU to the Town is the opportunity to join a growing number of local governments that are leading the effort around reducing single-use plastic and other food ware waste. An additional benefit includes the implementation of education and enforcement efforts for the Ordinance within the Town’s jurisdiction with minimal spending of resources by the Town.

The benefit of this MOU to the County is the implementation of a uniform, standardized, and coordinated effort throughout the incorporated and unincorporated areas of San Mateo County.

**4. Relationship of Parties**

It is expressly understood that this is an agreement between two independent entities, the County and the Town, and that no individual agency, employee, partnership, joint venture, or other relationship is established by this MOU. The intent by both the County and the Town is to create an independent collaborative relationship.

**5. Hold Harmless**

The County shall indemnify, defend, and hold harmless the Town and its officers, agents, employees, and servants against all damages, claims, liabilities, losses, and other expenses, including without limitation attorneys’ fees and related costs, whether or not a lawsuit or other

proceeding is filed, to the extent that they arise out of (1) the negligence or willful misconduct of County staff in performing the enforcement services described in this memorandum of understanding; or (2) any allegation that the promotional or educational materials produced or used by County staff pursuant to this memorandum of understanding infringe any third-party right of any kind, including without limitation, any intellectual property right.

The Town shall indemnify, defend, and hold harmless the County and its officers, agents, employees, and servants against all damages, claims, liabilities, losses, and other expenses, including without limitation attorneys' fees and related costs, whether or not a lawsuit or other proceeding is filed, to the extent they arise out of (1) the act of adopting ordinance No. 645 establishing food service ware regulations; or (2) any acts or omissions by Town staff in implementing ordinance No. 645. that arise out of Town staff's negligence or willful misconduct; or (3) any allegation that the promotional or educational materials produced by Town staff pursuant to this memorandum of understanding infringe any third-party right of any kind, including without limitation, any intellectual property right.

A party seeking indemnity and defense under this section shall provide the indemnifying and defending party with prompt notice of any claim and give control of its defense and settlement to the indemnifying and defending party. The party seeking indemnity and defense shall also cooperate in all reasonable respects with the indemnifying and defending party, its insurance company, and its legal counsel in its defense of such claim. The obligation to defend and indemnify pursuant to this section shall not cover any claim in which there is a failure to give the indemnifying and defending party prompt notice, but only to the extent that such lack of notice prejudices the defense of the claim. The indemnifying and defending party may not settle any potential suit hereunder without the other party's prior written approval, which will not to be unreasonably withheld, conditioned, or delayed. If a party who owes indemnity and defense under this section fails to promptly indemnify and defend a covered claim, the other party shall have the right to defend itself, and in such case, the party owning indemnity and defense shall promptly reimburse the other party for all of its associated costs and expenses.

The obligations imposed by this section shall survive termination or expiration of the MOU.

**6. Amendment of MOU and Merger Clause**

This MOU, including the Exhibit attached hereto and incorporated herein by reference, constitutes the sole MOU of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the MOU conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any exhibit and/or attachment to this MOU, the provisions of this body of the MOU shall prevail. Any prior MOU, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and will become effective when signed by both parties.

**7. Records**

The County shall maintain and preserve all records relating to this MOU in its possession and those of any third-party performing work related to this MOU for a period of five (5) years from the termination of this MOU.

**8. Assignability**

The County shall have the right to assign this MOU or any portion thereof to a third party or subcontract with a third party to perform any act required under this MOU without the prior written consent of the Town.

**9. Notices**

Any written notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited with the United States Postal Service, postage prepaid, or when transmitted by email communication, addressed:

In the case of the County, to:

Carolyn Bloede, Director  
County of San Mateo Office of Sustainability  
455 County Center, 4th Floor  
Redwood Town, CA 94065  
Email: cbloede@smcgov.org

In the case of the Town, to:

George Rodericks, Town Manager  
Town of Atherton  
80 Fair Oaks Lane  
Atherton, CA 94027  
Email: grodericks@ci.atherton.ca.us

**10. Controlling Law and Venue**

The validity of this MOU, the interpretation of its terms and conditions, and the performance of the parties hereto shall be governed by the laws of the State of California. Any action brought to enforce this action must be brought in the Superior Court of California in and for the County of San Mateo.

**11. Term and Termination**

- A. The term of this MOU shall commence on December 17, 2021 and shall automatically be renewed from year to year on the same terms and conditions without any further action of the Parties.
- B. This MOU may be terminated without cause by the Town or the County’s Director of Office of Sustainability or his/her designee at any time upon thirty (30) days written notice to the other Party.

C. This MOU may also be terminated for failure to comply with the terms and conditions of the MOU by the Town or the County upon seven (7) days written notice to the other Party of its failure to comply with the terms and conditions of the MOU and that Party's failure to initiate remedial action.

**12. Authority**

The parties warrant that the signatories to the MOU have the authority to bind their respective entities.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

**COUNTY OF SAN MATEO**

**TOWN OF ATHERTON**

By: \_\_\_\_\_  
Carolyn Bloede  
Director, Office of Sustainability

By: \_\_\_\_\_  
George Rodericks  
Town Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A - SCOPE OF ACTIVITIES

The below education and enforcement activities relating to the County of San Mateo's (the County) Disposable Food Service Ware Ordinance (Ordinance) will be conducted by the County and the Town of Atherton (the Town) within the Town's jurisdiction.

### **I. Education and Outreach**

1. The County will conduct education and outreach to food facilities that operate in the Town's jurisdiction that may be impacted by the Ordinance. Per the Ordinance, the County will focus efforts only on entities that are defined as a "food facility" under the California Retail Food Code.<sup>1</sup> These entities are required to have a health permit with the County's Environmental Health Services (EHS) to serve food and beverages to the public. The County's Office of Sustainability (OOS) will collaborate with EHS to identify food facilities in the Town jurisdiction that will be impacted.
2. The County will conduct education and outreach to the general public in the Town's jurisdiction.
3. The County will develop a *standardized* and *uniform* education and outreach strategy that will be rolled out in the Town's jurisdiction as well as in unincorporated areas of the county and other cities in the county that adopt the Ordinance. The County may utilize a combination of standardized strategies for education and outreach activities, which may include, but is not limited to development and distribution of educational materials (e.g., flyers, posters, resource guide that will have information on compliant disposable food ware products, signs, banners, etc.), mailers, phone calls, emails, social media posts, videos, newspaper ads, door-to-door visits, pilot and implementation of behavior change campaigns, etc.
4. As needed, the Town will supplement the County's efforts for the Ordinance with any additional education and outreach activities that are tailored to the Town's needs and managed by Town staff (e.g., Town's social media accounts, Town website, Town newsletter, internal Town sustainability activities, etc.).

### **II. Enforcement**

1. The County will conduct enforcement of the Ordinance within the Town's jurisdiction utilizing a compliant-based system. The County will respond to complaints or referrals from the public and/or from Town staff and work with food facility operators to investigate and resolve reported issue(s).
2. The County will follow enforcement provisions detailed in the County's Municipal Code [Chapter 1.40 – Administrative Remedies](#) to correct violations of the Ordinance committed in the Town's jurisdiction.

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<sup>1</sup> Although public schools are defined as a food facility under the California Retail Food Code, they are exempt from complying with the Ordinance based on the fact that the State has the sole authority to dictate their operations.

3. The County will lead the effort in reviewing requests for exemptions submitted by food facilities and approve them, as needed, in whole or in part, with or without conditions.
4. The County will keep detailed records of enforcement in the Town's jurisdiction for a minimum of five (5) years.
5. The County will notify the Town promptly about any related issues that arise that require Town assistance or lead in resolving the issue(s) related to noncompliance.
6. The Town will work with the County on any related issues that arise that require Town assistance or lead in resolving the issue(s) related to noncompliance.

**ORDINANCE NO. 645**  
**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON**  
**ADOPTING A NEW CHAPTER 8.56 “DISPOSABLE FOOD SERVICE WARE” OF THE**  
**ATHERTON MUNICIPAL CODE**

The City Council of the Town of Atherton does hereby ordain as follows:

SECTION 1: Chapter 8.56 “Disposable Food Service Ware” is hereby added to read as follows within Exhibit A.

SECTION 2: California Environmental Quality Act (CEQA) Finding. This Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15061 (b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the provisions contained herein may have a significant effect on the environment. Further, the Ordinance is also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 of Title 14 of the California Code of Regulations as actions taken by regulatory agencies to assure the maintenance, restoration, enhancement of natural resources, or protection of the environment.

SECTION 3: Severability. If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 8.36, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 4: Effective Date. This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption. However, the mandatory provisions of this Ordinance, except for Section 4.107.050 (a)(1), shall only become operative and subject to enforcement one year (365 days) after the effective date.

Introduced on the 20th day of May, 2020.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the 17<sup>th</sup> day of June, 2020 by the following vote:

  
 Rick DeGolia, Mayor  
 Town of Atherton

ATTEST:

  
 Anthony Suber, City Clerk

APPROVED AS TO FORM:



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Mona Ebrahimi, City Attorney

EXHIBIT A  
Chapter 8.56 “Disposable Food Service Ware”

**Chapter 8.56**  
**“DISPOSABLE FOOD SERVICE WARE”**

**SECTIONS:**

<b>8.56.010</b>	<b>Statement of Findings and Purpose</b>
<b>8.56.020</b>	<b>Applicability</b>
<b>8.56.030</b>	<b>Definitions</b>
<b>8.56.040</b>	<b>Distribution of Disposable Food Service Ware Accessories</b>
<b>8.56.050</b>	<b>Standards and Required Use of Disposable Food Service Ware</b>
<b>8.56.060</b>	<b>Recordkeeping and Inspection</b>
<b>8.56.070</b>	<b>Automatic Exemptions</b>
<b>8.56.080</b>	<b>Case-by-Case Consideration of Requests for Hardship Exemption</b>
<b>8.56.090</b>	<b>Enforcement</b>

**8.56.010 Statement of Findings and Purpose**

- A. The Town finds and declares as follows:
- B. The production, management, and consumption associated with disposable food service ware, typically used for only a few minutes before being discarded, have significant environmental impacts, including environmental contamination; consumption of precious resources such as energy and water; emissions of greenhouse gases; air and water pollution; litter on streets; and plastic pollution in waterways and oceans.
- C. Disposable food service ware constitutes a substantial portion of the litter found within San Mateo County and the rest of the Bay Area. These types of food service ware are commonly littered or blown out of trash receptacles and migrate through the storm drain system where they eventually end up in the ocean and the county’s beaches and creeks.
- D. Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors. Polystyrene, often referred to by the trademark, Styrofoam, has also become a problematic environmental pollutant given its non-compostable and nearly non-reusable nature.

The most effective ways to reduce the negative environmental impacts of disposable food service ware include, in order of priority, using reusable food service ware; using natural-fiber

based compostable materials, many made from renewable resources such as bamboo, wheat stalk/stem, and sugarcane that do not contain toxic chemicals; and recycling food service ware. When products are reused and recycled, natural resources are spared, less energy is used for the production of new products, and premium landfill space is preserved. When compostable products are turned into compost, they can reduce water use and lessen the need for fertilizer at the site where the compost is applied (e.g., gardens, yards, farm land, etc.), which can also lead to cost savings since less/no fertilizers need to be purchased.

- E.
- F. Compostable food service ware such as cups, plates, clamshell containers, and utensils are now made from paper, sugarcane stalk, bamboo, wheat stalk/straw, and other blends of natural plant fibers. As these products degrade, they pose less of a danger to the environment.
- G. Even with the emergence of compostable plastics, which are derived from renewable biomass sources such as plants and microorganisms, there are limited certified types of compostable plastic that biodegrade in a marine environment.
- H. Certain disposable food service ware, including compostable paperboard containers, may contain fluorinated chemicals, also known as per- and polyfluorinated alkyl substances (PFAS), which are synthetic chemicals commonly used in disposable food service ware to repel water and grease. Fluorinated chemicals pose a public health risk as they have been linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty, and obesity.
- I. Plastics in waterways and oceans break down into smaller pieces, called microplastics, that do not biodegrade and are present in most of the world's oceans. Microplastics consumed by marine organisms make their way into animals' tissues and are beginning to show up in the fish that humans consume. Plastic debris also attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish and other seafood that is eventually sold for human consumption.
- J. Reduction of disposable food service ware in the environment will advance compliance with federal, state, and county clean water mandates, including the County's Municipal Regional Stormwater Permit requirement, by helping to reduce trash and litter in stormwater discharges.
- K. Understanding the importance of and need for reducing plastic litter, the Town adopted this Ordinance to help further reduce the amount of litter entering the county's storm drains, creeks, the bay, and the ocean.
- L. The Town does, accordingly, find and declare that it should restrict the use by food facilities of polystyrene-based disposable food service ware and require the replacement of non-compostable or non-recyclable disposable food service ware with compostable alternatives that are non-plastic, natural fiber-based, and free of all intentionally added fluorinated chemicals, when and where possible.

#### **8.56.020 Applicability**

- A. The provisions of this Chapter shall apply to Food Facilities as defined in Section 8.56.030 of this Chapter and all Town owned and operated facilities.

**8.56.030 Definitions**

For purposes of this Chapter, the following terms have the following definitions:

- 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 composability. 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. “Disposable” means designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple reuse.
- E. “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.
- F. “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.
- G. “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.
- H. “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 Chapter.

- I. “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.
  3. On-site food scrap composting.
- J. “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.
- K. “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.
- L. “Non-Compostable” means not meeting the definition of Compostable set forth in this Chapter.
- M. “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.
- N. “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.
- O. “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.

- P. “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.
- Q. “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.

**8.56.040 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
  - 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.

**8.56.050 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 Chapter 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 Chapter 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 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 Office of Sustainability website and in the Office. 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 County Manager or designee’s satisfaction that the product complies with the requirements detailed in Subsections (a), (b), (d), and (e).

#### **8.56.060 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 365 days from the Ordinance effective date, 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 Chapter 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 County during regular business hours by County employee or County-designated staff authorized to enforce this Chapter. 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 County shall be a violation of this Chapter.

#### **8.56.0170 Automatic Exemptions**

- A. Prepackaged Food is exempt from the provisions of this Chapter.
- B. Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this Chapter.
- C. Disposable Food Service Ware that is entirely Aluminum Foil-based is exempt from the provisions of this Chapter.
- D. If the County determines that a reasonably feasible Disposable Food Service Ware that complies with Section 4.107.040 (a), (b), (d), and (e) of this Chapter does not exist, these items will be exempt from the abovementioned provisions of this Chapter until the County determines that a reasonably feasible alternative is available on the market for purchase. The County will have a current list of these exempted Disposable Food Service Ware posted on the Office of Sustainability website with hard copies available in the Office.
- E. Certain Disposable Food Service Ware Accessories for beverage orders, specifically, straws and cup sleeves, shall be exempt from Section 4.107.030 (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 4.107.030 (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.

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

- A. Grounds for an exemption. An exemption from any of the provisions of this Chapter may be granted by the County Manager or designee upon demonstration by a Food Facility to the satisfaction of 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 4.107.040 (a), (b), (d), and (e) does not exist for a specific application.
  2. Imposing the provisions of this Chapter 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 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 Chapter shall include all information deemed necessary by the 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 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 County Manager or designee. Information about the application process for requesting an exemption will be available on the Office of Sustainability's website and in the Office.

#### **8.56.090 Enforcement.**

- A. The City Manager or designee may enforce this Chapter.
- B. Notwithstanding the Section 8.56.090(A), the County's County Manager or designee may also enforce this Chapter for so long as the Town and the County have entered into a Memorandum of Understanding providing for the County's enforcement of this Chapter.
- C. A violation of this Chapter is an infraction and is also punishable by administrative fines as set forth in Chapter 1.40 of the County of San Mateo Municipal Code.
- D. Violation of this Chapter is a public nuisance subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures contained in this ordinance code and state law including, but not limited to, an action for abatement or injunctive relief.
- E. This Section shall not be interpreted to limit any otherwise available civil or administrative remedies under law.