

ORDINANCE NO. 1579

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CARLOS REPEALING SAN CARLOS MUNICIPAL CODE CHAPTER 8.27 – DISPOSABLE FOOD SERVICE WARE, AND ADOPTING A NEW CHAPTER 8.27 - DISPOSABLE FOOD SERVICE WARE, REGULATING THE USE OF DISPOSABLE FOOD SERVICE WARE BY FOOD FACILITIES TO ALIGN WITH NEW STATE LAWS.

The City Council of the City of San Carlos does ordain as follows:

SECTION 1:

WHEREAS, the San Carlos City Council adopted Ordinance No. 1573, also known as the “Disposable Food Service Ware Ordinance” on October 25, 2021 with the purpose of reducing single-use plastic and other food service ware waste, improving the health and safety of San Carlos community members, and helping keep the city’s waterways clean and safe; and

WHEREAS, the Ordinance will go into effect and subject to enforcement on October 1, 2022; and

WHEREAS, the San Carlos Climate Mitigation and Adaptation Plan includes Strategy 26 to require food facilities use non-plastic, compostable food service ware when distributing prepared food; and

WHEREAS, on October 5, 2021, AB 1276 was signed into law by Governor Gavin Newsom. AB 1276 restricts the distribution of single-use foodware accessories by restaurants and other food facilities; and

WHEREAS, on October 5, 2021, AB 1200 was signed into law by Governor Gavin Newsom mandating that no person shall distribute, sell, or offer for sale in the state any food packaging (including single-use foodware) that contains regulated perfluoroalkyl and polyfluoroalkyl substances (“PFAS”); and

WHEREAS, the Ordinance includes requirements that are well aligned with many of the requirements on foodware in AB 1276 and AB 1200. However, some discrepancies exist. As such, the Ordinance must be amended to ensure alignment with requirements in both State bills; and

WHEREAS, the City Council does, accordingly, find and declare that it should repeal and replace in its entirety Chapter 8.27 of the San Carlos Municipal Code to ensure the City’s requirements around single-use foodware accessories distribution and PFAS regulation in single-use foodware align with the State of California’s requirements; and

SECTION 2: The City Council hereby repeals Chapter 8.27 of the San Carlos Municipal Code and adopts a new Chapter 8.27 to be numbered and entitled and to read as follows:

CHAPTER 8.27 REGULATING THE USE OF DISPOSABLE FOOD SERVICE WARE

8.27.010 – Definitions.

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

- (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) "Compostable" means that an item or material:
 - 1. Meets standards for compostability from a certified/approved independent third-party approved by the City Manager or designee, in collaboration with local waste processors, haulers, and/or other entities, as needed; and/or
 - 2. Is any variation of acceptable materials that will break down or otherwise become part of usable compost in a safe and timely manner as determined by the City Manager or designee, in collaboration with local waste processors, haulers, and/or other entities, as needed; and
 - 3. Is Natural Fiber-based. 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, but not limited to corn or other plant sources (e.g., compostable plastics), if certified/approved by independent third parties approved by the City Manager or designee.

"Compostable" does not include items made entirely/primarily of biologically based polymer (e.g., PLA, PHA, or other compostable plastic), even if labeled or certified as compostable.
- (c) "Disposable" means designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple reuse.
- (d) "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 and Standard Condiment in Disposable packaging.
- (e) "Food Service Ware Accessories" include different types of Food Service Ware such as straws, stirrers, Utensils, condiment cups and packets, cocktail sticks/picks, toothpicks, napkins, cup spill plugs, cup sleeves, 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.
- (f) "Perfluoroalkyl and Polyfluoroalkyl substances (PFAS)" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
- (g) "Perfluoroalkyl and Polyfluoroalkyl substances (PFAS) Restrictions" mean either of the following:
 - 1. PFAS has not been intentionally added to a product or product component.
 - 2. The presence of PFAS in a product or product component is below 100 parts per million, as measured in total organic fluorine.
- (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, or (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) "Standard Condiment" means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, and includes different types such as ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, and sugar/sugar substitutes.
- (q) "Takeout Food" means Prepared Food that is purchased to be consumed off a 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 for online food ordering and delivery of Prepared Food from a Food Facility to a customer. This service can be provided directly by the Food Facility or by a third-party.
- (s) "Utensils" include different types of instruments used to assist the consumption of food, specifically, forks, knives, spoons, sporks, chopsticks, and tongs.

8.27.020 – Distribution of Disposable Food Service Ware Accessories and Standard Condiment.

- (a) Except as provided in Subsections (b) and (c), Food Facilities, for on-premise dining and off-premise dining (e.g., Takeout Food Delivery Service, catering off-site, etc.), shall not provide any Disposable Food Service Ware Accessories or Standard Condiment in Disposable packaging to a consumer unless the specific type of Disposable Food Service Ware Accessory (including different types of Utensils) or specific type of Standard Condiment is requested by the consumer.

- (b) Food Facilities may ask a drive-through consumer if the consumer wants a specific type of Disposable Food Service Ware Accessory (including different types of Utensils), if the item is necessary for the consumer to consume Prepared Food or to prevent spills of or safely transport Prepared Food.
- (c) Food Facilities that are located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, may ask a walk-through consumer if the consumer wants a specific type of Disposable Food Service Ware Accessory (including different types of Utensils), if the item is necessary for the consumer to consume Prepared Food or to prevent spills of or safely transport Prepared Food.
- (d) Disposable Food Service Ware Accessories and Standard Condiment in Disposable packaging provided by Food Facilities for use by consumers shall not be bundled or packaged in a manner that prohibits a consumer from taking only the type of Disposable Food Service Ware Accessory (including different types of Utensils) or type of Standard Condiment desired without also having to take a different type of Disposable Food Service Ware Accessory or type of Standard Condiment. Food Facilities cannot distribute Disposable Utensils that are bundled or packaged together. Each type of Utensil (e.g., fork, spoon, knife, etc.) must be specifically requested by the consumer in order for a Food Facility to provide the item(s).
- (e) Nothing in this Chapter shall prohibit a Food Facility from making unwrapped Disposable Food Service Ware Accessories available to a consumer using refillable self-service dispensers that dispense different types of Disposable Food Service Ware Accessories one item at a time to allow for Disposable Food Service Ware Accessories to be obtained.
- (f) Nothing in this Chapter shall prohibit a Food Facility from making Standard Condiment available to a consumer using refillable self-service dispensers to allow for Standard Condiment to be obtained. Food Facilities that offer Standard Condiment are encouraged to use bulk dispensers for the condiments rather than condiments packaged for single-use.
- (g) Takeout Food Delivery Services shall provide consumers with the option to proactively request the different types of available Disposable Food Service Ware Accessories (including different types of Utensils) and the different types of Standard Condiment from a Food Facility serving Prepared Food. The default option on the digital ordering/point-of-sale platforms of Takeout Food Delivery Services shall be that no Disposable Food Service Ware Accessories or Standard Condiment are requested.
- (h) Takeout Food Delivery Services shall provide Food Facilities the ability to tailor the digital ordering/point-of-sale platforms so that Food Facilities can customize and itemize the different types of available Disposable Food Service Ware Accessories (including different types of Utensils) and the different types of available Standard Condiments for consumers to proactively select.
- (i) If a Food Facility uses any Takeout Food Delivery Service, the Food Facility shall customize its menu with an itemized list and/or provide options of the different types of available Disposable Food Service Ware Accessories (including different types of Utensils) and the different types of available Standard Condiments for consumers to proactively select. Only those specific types of Disposable Food Service Ware Accessories (including different types of Utensils) or specific types of Standard Condiment proactively requested by the consumer shall be provided by the Food Facility. If a consumer does not request any Disposable Food Service Ware Accessories or Standard Condiment, no Disposable Food Service Ware Accessories or Standard Condiment shall be provided by the Food Facility for delivery of Prepared Food. Pursuant to Subsection (d), each type of Utensil (e.g., fork, spoon, knife, etc.) offered by the Food Facility shall also be listed individually, unbundled on the menu and provided by the Food Facility for delivery along with the Prepared Food only if requested by the consumer.

8.27.030 – 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 when providing Prepared Food:
 - 1. Plates
 - 2. Bowls (of all sizes including, but not limited to soup and salad bowls)
 - 3. Cups (of all sizes including, but not limited to beverage and accessory cups for Standard Condiments)
 - 4. Food trays and food boats
 - 5. Boxes
 - 6. Hinged or lidded containers (e.g., clamshells), deli containers, and other containers used for the sale and/or distribution of Prepared Food
- (e) Commencing on the effective date of this Chapter up until December 31, 2022, for the Compostable Disposable Food Service Ware listed in Subsection (d), Food Facilities shall use items that meet Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Restrictions. To verify the PFAS Restrictions, Food Facilities shall use items that are certified/approved by independent third parties approved by the City Manager or designee, in collaboration with local waste processors and haulers, as needed.
- (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, unless a feasible alternative does not exist.
- (g) The City shall maintain a list of approved Disposable Food Service Ware and/or references to resources 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 public by the Office of Sustainability. If a product is not included on the approved list, the Food Facility wishing to use a product as Disposable Food Service Ware shall establish to the City Manager or designee's satisfaction that the product complies with the requirements detailed in Subsections (a), (b), (d), and (e).

8.27.040 – Recordkeeping and Inspection.

- (a) Food Facilities shall keep complete and accurate record or documents of 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 City during regular business hours by City employee or City-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 City shall be a violation of this Chapter.

8.27.050 – 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 or recyclable glass is exempt from the provisions of this Chapter.
- (d) If the City 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 all or select requirements of the abovementioned provisions of this Chapter until the City determines that a reasonably feasible alternative is available on the market for purchase. The County will have a current list of these temporarily exempted Disposable Food Service Ware made public by the Office of Sustainability.
- (e) 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.

8.27.060 – 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 City Manager or designee upon demonstration by a Food Facility to the satisfaction of the City 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 City Manager or designee may 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 City 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 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 or designee. Information about the application process for requesting an exemption will be made available to the public by the Office of Sustainability.

8.27.070 – Authorization of County Enforcement.

In addition to the City’s enforcement mechanisms set for in Title 1 of this code, the City of San Carlos authorizes the County of San Mateo to enforce this chapter of the municipal code, including, without limitation, the authority to act on requests for undue hardship exemptions, hold hearings, issue administrative fines and retain collected fines.

SECTION 3: 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 4: That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions of this Ordinance are severable, and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 5: This Ordinance shall be published and posted according to law and shall take effect and be in force on October 1, 2022.

I, Crystal Mui, City Clerk, hereby certify that the foregoing Ordinance was introduced by the City Council of the City of San Carlos on the 28th day of February, 2022 and passed and adopted at a regular meeting thereof held on the 14th day of March, 2022 by the following vote:

AYES, COUNCILMEMBERS:	<u>DUGAN, COLLINS, PARMER-LOHAN, RAK, MCDOWELL</u>
NOES, COUNCILMEMBERS:	<u>NONE</u>
ABSENT, COUNCILMEMBERS:	<u>NONE</u>


CITY CLERK of the City of San Carlos

APPROVED:


MAYOR of the City of San Carlos