

ORDINANCE NO. _____

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA AMENDING TITLE 9 OF THE SANTA ROSA CITY CODE BY ADDING CHAPTER 9-24, REUSABLE AND COMPOSTABLE FOOD WARE AND LITTER REDUCTION ORDINANCE

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Findings and Purpose. The City Council finds and declares as follows:

- A. The City of Santa Rosa has a duty to protect the natural environment and health and safety of residents. The production and use of non-reusable, single-use disposable food ware, packaging and plastics (SUDs) is a major contributor to street litter, ocean pollution, marine and other wildlife harm and green house gas emissions.
- B. The production, consumption and disposal of SUDs contributes significantly to the depletion of natural resources and causes plastics to enter our waterways and oceans.
- C. Eighty percent of marine debris originates on land, primarily as urban runoff. Marine plastic degrades into pieces and particles of all sizes and is present in the world's oceans at all levels.
- D. Marine microplastic has been detected in seafood sold for human consumption and has also been detected in human consumption items such as bottled water, honey, sea salt and more.
- E. In 2017, the Russian River Watershed Association conducted an analysis of trash in the Russian River. The study revealed that of the total litter items collected (2,578) over sixty percent (60%) were single-use plastic items of some variety (plastic wrappers, plastic bags, Polystyrene Styrofoam food packaging, lids/straws, etc.). Polystyrene products alone accounted for approximately 10% of the total litter items collected.
- F. Reducing the generation of non-reusable, single-use disposable food ware including plastic utensils, plastic cups, plastic clamshells, plastic straws and disposable food ware maximizes the operating life of landfills, reduces litter, and helps reduce the economic and environmental costs of managing waste. This will also help protect the City's environment from contamination and degradation making it a cleaner and safer place to all citizens and visitors.
- G. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks, waterways and other public places be reduced.
- H. The City of Santa Rosa must reduce solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Master Plan goals. Reduction of single-use disposable food ware furthers this goal.
- I. This Chapter is consistent with City of Santa Rosa's 2012 Climate Action Plan, the County of Sonoma Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

Section 2. City Code Amendment. Chapter 9-24, City of Santa Rosa Reusable and Compostable Food Ware and Litter Reduction Ordinance, is hereby added to Title 9 of the Santa Rosa City Code to read as follows:

“9-24.010 Title.

This Ordinance shall be known as the "City of Santa Rosa Reusable and Compostable Food Ware and Litter Reduction Ordinance."

9-24.015 Definitions.

Unless the context requires otherwise, the terms defined in this Ordinance shall have the following meanings and are capitalized in the Ordinance text:

- (A) “Biodegradable” means capable of being broken down or decomposed into harmless products by the action of living organisms and bacteria.
- (B) “BPI Certified” means those compostable fiber food ware products that have been certified by the Biodegradable Products Institute (BPI) to safely and readily biodegrade in an industrial composting facility in the typical processing time. As of January 1, 2020, BPI ensures all certified products are fluorinated chemical free.
- (C) “City” means the City of Santa Rosa
- (D) “City Facility” means any building or structure owned, leased, or operated by the City of Santa Rosa
- (E) “Commercially Available” means that a product is made available for purchase through commercial procurement.
- (F) “Compliant Food Ware” means that an item or material is (1) BPI certified (2) commercially available to food vendors and is (3) made up of paper or natural plant fibers. For the purposes of this Chapter natural paper or fiber-based food and beverage containers with a PLA coating or lining are considered compostable. Compostable Plastics are not compliant.
- (G) “Compliant Food Ware Accessory” means that an item or material is (1) made entirely of paper or natural plant fibers and (2) commercially available to food vendors.
- (H) Compost” means a mixture that consists largely of decayed organic matter and is used for fertilizing and conditioning land.
- (I) “Compost Facility” means compost facilities used by the City’s current waste hauler for composting organic material.
- (J) “Compostable Plastics or Biodegradable Plastics” means the disposable products developed from polylactic acid (PLA), which require a specific set of conditions to compost and/or biodegrade that do not exist in the City or the region. These products are considered non-compliant.
- (K) “County” means the County of Sonoma
- (L) “Customer” means any person obtaining Prepared Food from a Food Vendor
- (M) “Dine In” means offering on-site services intended for food and beverage consumption on the food provider’s premises.
- (N) “Disposable (or non-reusable) Cup” means a beverage cup designed for single use

- to serve beverages such as water, hot and cold drinks, and alcoholic beverages.
- (O) “Effective Date” means January 1, 2022, unless the Order of the County of Sonoma Health Officer C19 is still in effect. If the Order of the County of Sonoma Health Officer C19 is still in effect on January 1, 2022 the effective date of the Ordinance will be ninety days (90) after Health Order C19 is no longer in effect.
- (P) “EPS” means expanded polystyrene, also known as Polystyrene Foam
- (Q) “Fluorinated Chemical” means a class of fluorinated organic compounds containing at least one (1) fully fluorinated carbon atom, also known as perfluoroalkyl (PFOA) and polyfluoroalkyl (PFOS) substances, or PFAS chemicals. California Prop 65 lists PFOA and PFOS as reproductive toxicants.
- (R) “Food Ware” means all containers, bowls, plates, food trays, cups, lids, boxes, and other like items that are used for Prepared Foods, including without limitation, Food Ware for takeout food and or/leftovers from partially consumed meals prepared by Food Vendors.
- (S) “Food Ware Accessories” means types of items usually provided alongside Prepared Food including but not limited to forks, spoons, knives, chopsticks, napkins, cup sleeves, food wrappers, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, toothpicks, tray-liners, and plate-liners.
- (T) “Food Vendor” means all vendors as described in the California Retail Food Code section 113789. This includes but is not limited to a: restaurant, bar, grocery store, delicatessen, bakery, food service establishment (carry out, quick service, full-service), food truck, itinerant restaurants, pushcart, farmers market, caterer, microenterprise home kitchen operations, cottage food operations, selling Prepared Food to be consumed on and off the premises located or operating within the City.
- (U) “Natural Fiber” means a plant-based, non-synthetic fiber, including but not limited paper, wood, or bamboo. Natural Fiber does not include plastic of any kind.
- (V) “On Request” means that only at the request of a customer shall the compliant product(s) be provided.
- (W) “Per- and Polyfluoroalkyl” or “PFAS” means a group of man-made chemicals that includes PFOA, PFOS, GenX, and many other chemicals. PFAS have been manufactured and used in a variety of industries around the globe. These chemicals are very persistent in the environment and in the human body meaning they don’t break down and accumulate over time. There is evidence that exposure to PFAS can lead to environmental health effects such as reproductive, developmental, liver, kidney and immunological effects.
- (X) “Polylactic Acid” or “PLA” means a polymer made from renewable resources, typically including corn starch, tapioca roots or sugarcane. PLA has a wide array of industrial uses and is specifically used in the food service industry to prevent greasy or liquid based food and beverages from leaking out of the food and beverage container. For the purposes of this Chapter, food and beverage

containers that are composed of Natural Fiber and contain a PLA coating and/or lining are considered compostable.

- (Y) “Polystyrene Foam” means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) 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 (expanded bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene Foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, coolers, packaging peanuts, and egg cartons.
- (Z) “Prepared Food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of the Food Vendor and includes Takeout Food.
- (AA) “Reusable or Durable” Food Ware and Food Ware Accessories, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups, utensils, etc. that are manufactured or 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.
- (BB) “Takeout Food” means food or beverages requiring no further preparation to be consumed and which generally are purchased to be consumed off the premises of the Food Vendor.

9-24.020 Prohibited Products.

Food Vendors within the city limits of Santa shall not sell, procure, distribute or otherwise give away Food Ware and Food Ware Accessory products containing:

- (A) Polystyrene (Styrofoam)
- (B) Plastic
- (C) Compostable Plastic
- (D) PFAS

9-24.025 Dine-in Food Ware regulations.

Food Vendors within in the city limits of Santa Rosa:

- (A) Shall sell or provide food and beverages for consumption on the premises using Reusable Food Ware and Food Ware Accessories (plates, forks, spoons, knives, etc.) except as otherwise provided in section 9-24.020(B);
- (B) Shall provide all other Compliant Food Ware Accessories, including napkins, cup sleeves, food wrappers, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, toothpicks, tray-liners and plate-liners;
- (C) Shall offer condiments in bulk dispensers rather than pre-packaged single-use condiment packets.

9-24.030 Takeout Food ware regulations.

Food Vendors within the city limits of Santa Rosa:

- (A) Shall provide Takeout Food in Reusable Food Ware, Compliant Food Ware, or items composed entirely of aluminum;
- (B) Are prohibited from providing Food Ware and Food Ware Accessories that are not Compliant Food Ware (such as EPS/Polystyrene foam, plastic food ware, plastic Food Ware accessories, Food Wware containing PFAS)
- (C) Shall provide Food Ware Accessories such as napkins, cup sleeves, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks only Upon Request or at self-serve stations; and
- (D) Shall not provide Takeout bags composed of plastic and must be paper only. Customers are encouraged to bring their own reusable bag to takeout food.
- (E) Shall provide options for customers to affirmatively request Compliant Food Ware 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 Non-Reusable Cups for delivery.
- (F) Food Vendors are encouraged but not required to charge customers receiving to-go Food Ware Accessories twenty-five cents (\$0.25). Food vendors are also encouraged but not required to provide a twenty-five cent (\$0.25) credit to customers bringing in their own hygienic reusable Food Ware containers for to-go items.

9-24.035 City purchasing and City sponsored events.

The following regulations apply to City purchases, facilities, and City-sponsored events:

- (A) All City facilities shall use Reusable Food Ware and Compliant Food Ware Accessories.
- (B) City-managed concessions, City-sponsored events, and City-permitted events shall use Reusable Food Ware or Complaint Food Ware and Compliant Food Ware Accessories.
- (C) Food Ware that is not Reusable Food Ware, Compliant Food Ware, or Compliant Food Ware Accessories (such as EPS/Polystyrene foam, plastic Food Ware and plastic Food Ware Accessories, PFAS Food Ware) are prohibited.
- (D) As of the Effective Date, City departments shall incorporate this prohibition into all new and renewed contracts, leases, permits, agreements, etc.
- (E) Written agreements with any vendor, including non-profit organizations, to sell food or beverages at an event that is sponsored or co-sponsored by the City, shall specifically include the requirement for the use of Compliant Food Ware and Compliant Food Ware Accessories only.

9-24.040 Prohibited retail sales.

No retail or special event promoter shall sell, rent or otherwise provide the following products made from Polystyrene Foam, except as exempted in Section 9-24.050:

- (A) Coolers, ice chests, or similar containers, unless they are wholly encapsulated or encased within more durable material so as to be reusable.
- (B) Packaging peanuts or other packaging materials

9-24.045 Three-bin waste stream containers required.

- (A) All Food Vendors who provide solid waste containers for customer use, must provide three separate containers for solid waste (garbage), recyclables, and organics. Color guidelines should be consistent with Santa Rosa's franchised hauler collection program: grey/black for solid waste, blue for recycling and green for organic.
- (B) To the extent possible given space constraints, all containers for solid waste, recyclables and organics should be placed adjacent to one another.
- (C) Graphic-rich signage must be posted on or above each container following the franchised waste hauler's guidelines.

9-24.050 Exemptions.

- (A) Entities packaging prepared foods outside the City are exempt from the provisions of this chapter; provided, however, such persons are urged to follow the provisions of this chapter.
- (B) Non-Reusable Food Ware composed entirely of aluminum is exempt from the provisions of this chapter.
- (C) Should Food Ware or Food Ware Accessories made of Compliant Natural Fiber not be commercially available, as determined by the City, the City shall not enforce the requirements in sections 9-24.030(A) and 9-24.030(B) on such items until they are made commercially available. Products containing PFAS are always prohibited.
- (D) Notwithstanding the prohibition on retail sales of products containing Polystyrene Foam, in which Polystyrene Foam is included for insulating or flotation purposes and is completely encased in more durable material are exempt from the provisions of this Chapter. Examples include surfboards, boats, life preservers, construction materials, craft supplies and durable coolers not principally composed of polystyrene.
- (E) For the immediate preservation of the public peace, health, or safety due to an emergency or natural disaster, the City Manager, or designee, may exempt Food Vendors, persons operating City facilities and agents, contractors and vendors doing business with the City, from the provisions of this Chapter.

9-24.055 Waivers: process to obtain.

- (A) The City Manager or his/her designee shall grant waivers based upon documentation provided by the applicant that the requirements of this chapter would create an undue financial hardship or practical difficulty not generally

available to other persons in similar circumstances.

- (B) The City Manager or his/her designee shall act on a waiver application no later than 120 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.
- (C) Waivers may be granted for a specified term of one (1) year. During the waiver term, the Food Vendor shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Food Vendor demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become complaint, compliance remains infeasible, an additional waiver of up to one (1) additional year for a total of two (2) years may be granted. Waivers shall not be granted past a two-year timeframe and Food Vendors will be expected to comply with the regulations.
- (D) The City Manager or his/her designee shall have full discretion to verify the waiver application including independent verification and site visits. The City Manager's decision to grant or deny a waiver will be put in writing and its determination considered final.

9-24.060 Enforcement and penalties.

- (A) Compliance with this ordinance is required as of the Effective Date.
- (B) Enforcement shall first include a written notice of non-compliance and a reasonable opportunity to correct. Food Vendors will have 60 days from the written notice date to become compliant. Food Vendor's not in compliance after the written notice's 60-day timeframe will be subject to the Administrative Citation Penalty Schedule set forth in section 9-24.060(B)
- (C) Enforcement of this chapter will begin on the Effective Date. Enforcement will be the responsibility of the City's Code Enforcement Division.

9-24.065 Legal remedies.

The City may choose to undertake the following legal actions to correct and/or abate nuisances and violations of this ordinance. The City Manager or his or her designee is authorized to enforce the provisions of this ordinance by the issuance of Administrative Citations.

- (A) Administrative Citations
 - a. At the discretion of the City Manager, anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter 1-28.010 of the Santa Rosa City Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
 - b. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
 - c. The remedies and penalties provided in this section are cumulative and not exclusive.
- (B) Administrative Citation Penalty Schedule
 - a. A fine not exceeding \$100.00 for the first violation

- b. A fine not exceeding \$200.00 for a second violation of the same Code provision within one year; and
- c. A fine not exceeding \$500.00 for each additional violation in excess of two, of the same Code provision within one year.
- d. If continued willful violations occur the City reserves the right to suspend vendors use permit.

(C) Service of Citation

- a. The citation shall be mailed to the Food Vendor
- b. The failure of any interested person to receive the citation shall not affect the validity of the proceedings.”

Section 3. Environmental Determination. The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)3 in that the Council finds there is no possibility that the implementation of this ordinance may have significant effects on the environment.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 5. Effective Date. This ordinance shall take effect on the 31st day following its adoption.

This ordinance was introduced by the Council of the City of Santa Rosa on _____, 2021.

IN COUNCIL DULY PASSED AND ADOPTED this ____ day of _____, 2021.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
City Clerk

APPROVED: _____
Mayor

APPROVED AS TO FORM:

City Attorney