

ORDINANCE NO. 3590 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

**AMENDING CHAPTER 14 OF THE MONTEREY CITY CODE
RELATED TO GARBAGE AND REFUSE TO PROHIBIT USE OF PLASTIC
BEVERAGE STRAWS AND AMEND THE DEFINITION OF DISPOSABLE FOOD
SERVICE WARE TO INCLUDE STRAWS, UTENSILS, STIRRERS, AND CUP LIDS
THEREBY REQUIRING THESE PRODUCTS TO BE COMPOSTABLE OR
RECYCLABLE AND AMEND THE CODE TO CLARIFY MULTIFAMILY DWELLINGS
ARE NOT REQUIRED TO PROVIDE ORGANIC WASTE RECYCLING SERVICES
CONSISTENT WITH STATE LAW**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, the rate of plastics production growth has outstripped most other man-made materials, increasing by 620% since 1975;

WHEREAS, only 9% of the plastic produced to date has been recycled, and annual recycling rates in the U.S. have stagnated at around 9% since 2012;

WHEREAS, plastic does not sufficiently biodegrade but instead breaks down into smaller pieces that can turn into microplastic, which is becoming more prevalent in the ocean and has been shown to enter the marine food chain;

WHEREAS, the legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 and subsequent additions and amendments thereto (California Public Resources Code Section 40000 *et seq.*) has declared that it is within the public interest to authorize, and to require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions, and has established a Solid Waste management process, which requires cities and other local agencies to implement plans for source reduction, reuse, and recycling as part of their integrated waste management practices;

WHEREAS, the City of Monterey has adopted regulations pertaining to the collection, transportation, and disposal of Solid Waste and recyclables produced within the City;

WHEREAS, the City desires to amend Chapter 14 of the Monterey City Code to bring the City's Solid Waste and recycling regulations into conformance with its current practices related to the collection, transportation, and disposal of solid waste and recyclables, and to enable the City to continue its compliance with the goals of the California Integrated Waste Management Act; and

WHEREAS, the City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CCR, Title 14, Chapter 3 (CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency for the protection of the environment because it will strengthen the City's regulations regarding the distribution and sale of single-use plastic products that harm the environment. Thus, this Ordinance is categorically exempt CEQA Guidelines section 15308 (Class 8) as an action by a regulatory agency for the protection of the environment. Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact an environmental resource of

hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The proposed ordinance restricts the use of plastic food service ware and will only impact sensitive environments in a positive manner and will not otherwise impact a resource of hazardous or critical concern.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. The proposed ordinance restricts the use of plastic food service ware. No cumulative impact is anticipated.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The proposed ordinance restricts the use of plastic food service ware. No significant effect due to unusual circumstance is anticipated.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). The proposed ordinance restricts the use of plastic food service ware. Therefore, impacts to scenic highways would not occur.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. The proposed ordinance is not related to any project site listed pursuant to Government Code section 65962.5. The ordinance would have no impact to hazardous waste sites.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The proposed ordinance restricts the use of plastic food service ware and does not impact historical resources.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2. Monterey City Code, Chapter 14, Article 1, section 14-3.1, subsection (g) is renumbered as subsection (h) of the same section and subsection (f) is renumbered as subsection (g) of the same section.

SECTION 3. A new subsection (f) of section 14-3.1 of Article 1 of Chapter 14 of the City Code, shall hereby be added to read as follows:

“This section does not require a business that is a multifamily dwelling to arrange for the organic waste recycling services for food waste generated by habitants of the multifamily dwelling.”

SECTION 4. Monterey City Code, Chapter 14, Article 3, section 14-15(g) is amended to delete “shall mean” and replace it with “means,” and to replace the reference to the “Public Works Director” with “Community Development Director,” so that as amended Section 14-5(g) shall read:

“Director” means the Community Development Director, or his/her designee.

SECTION 5. Monterey City Code, Chapter 14, Article 3 is hereby repealed in its entirety and replaced as follows:

ARTICLE 3.

ENVIRONMENTALLY ACCEPTABLE FOOD SERVICE WARE.

Sec. 14-15. The provisions of this Article shall become operative April 22, 2019.

Sec. 14-15.1. Definitions.

Unless otherwise expressly stated, whenever used in this Article the following terms shall have the meanings set forth below:

(a) “Affordable Alternative” means a Compostable or Recyclable product that costs up to 15 percent more than the purchase cost of the non-compostable or non-recyclable alternative(s).

- (b) "ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.
- (c) "City" means the City of Monterey.
- (d) "City Facility" means any building, structure or vehicle owned and operated by the City of Monterey, its agents, agencies, and departments.
- (e) "City Contractor" means any Person who has a contract with the City entered into after the Operative Date who provides Prepared Food while performing the contract.
- (f) "Compostable" means all the materials in the product or package will break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner. Compostable Disposable Food Service Ware must meet ASTM standards for compostability and any compostable product containing a bio-plastic or plastic-like material must be clearly labeled-as compostable in accordance with California Public Resources Code section 42357 et seq. and all state and federal labeling laws pertaining to the identification of compostable products.
- (g) "Dine-In Services" means Prepared Food provided to a customer for consumption on the provider's premises.
- (h) "Dine-Out Services" means Prepared Food provided to a customer for consumption not on the provider's premises.
- (i) "Director" means the Community Development Director, or the designee of the Community Development Director.
- (j) "Disposable" means designed or intended for a single use or few uses, or not intended for reuse, in contrast with Reusable products.
- (k) "Food Provider" means any vendor located or providing food within the City which provides Prepared Food on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, supermarket, delicatessen, food/catering truck or vehicle, including vendors located outside of the City when delivering Prepared Food into the City.

(l) "Food Service Ware" means products used in the restaurant and food service industry for consuming, packaging, serving, and transporting ready-to-consume food and beverages, including but not limited to, utensils, straws, beverage stirrers, plates, bowls, cups, cup lids, trays, boxes, clamshells, packaging, and containers.

(m) "Operative Date" means April 22, 2019.

(n) "Person" means an individual, entity, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.

(o) "Plastic" a material derived from either petroleum or a biologically based polymer, such as corn or other plant sources.

(p) "Polystyrene Foam" means and includes expanded polystyrene that 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). To include but not limited to polystyrene foam plate, bleached paperboard plate with low density polyethylene coating and bleached paperboard plate with polystyrene coating.

(q) "Prepared Food" means food or beverage prepared for consumption using any cooking or food preparation technique. This does not include any raw uncooked meat, poultry, fish or eggs unless provided for consumption without further food preparation.

(r) "Recyclable" means any material that is accepted by the City or special district recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs.

(s) "Reusable" means designed or intended for more than a single use or few uses, or intended for reuse, in contrast to Disposable.

(t) "Special Event Participant" means a Person providing Prepared Food at any special event (as that term is used in Article 1 of Chapter 32 of this Code), regardless of size, sponsored by any Person, commercial or non-profit organization, group, or individual, which is held within the City of Monterey, regardless of whether the Prepared Food is prepared within or outside of the Monterey City limits.

(u) "Straw" means a tube through which beverages, slurries, smoothies, and similar ingestible products may be ingested by the consumer.

Sec. 14-16. Prohibited Disposable Food Service Ware.

(a) **City Facilities.** All Persons within, at, or upon any City Facility are prohibited from:

- (1) **Distributing Prepared Food using Polystyrene Foam,**
- (2) **Distributing Plastic Straws, except when a consumer self-identifying as a person with a disability making the use of a Plastic Straw necessary specifically requests a Plastic Straw, whereupon the Person shall provide a Plastic Straw to the consumer, and**
- (3) **Distributing Disposable Food Service Ware that is not Recyclable or Compostable unless there is no Affordable Alternative.**

(b) **Food Providers, City Contractors, and Special Event Participants.** Food Providers, City Contractors, and Special Event Participants are prohibited from:

- (1) **Using or distributing Polystyrene Foam for Prepared Food or in any Food Service Ware,**
- (2) **Using or distributing Plastic Straws, except when a consumer self-identifying as a person with a disability making the use of a Plastic Straw necessary specifically requests a Plastic Straw, whereupon the Food Provider, City Contractor, or Special Event Participant shall provide a Plastic Straw to the consumer, and**
- (3) **Using or distributing any Disposable Food Service Ware when providing Dine-In Services, unless the consumer requests a Straw, whereupon a Food Provider may distribute a Straw that is Compostable such as one made from paper, sugar cane, pasta, or bamboo, though not a Plastic Straw, except when a consumer self-identifying as a person with disability making the use of a Plastic Straw necessary specifically requests a Plastic Straw, whereupon the Food Provider, City Contractor, or Special Event Participant shall provide a Plastic Straw to the consumer.**

- (4) When providing Dine-Out Services, using or distributing Disposable Food Service Ware that is not Compostable or Recyclable, unless:
 - (A) A consumer self-identifying as a person with a disability making the use of a Plastic Straw necessary specifically requests a Plastic Straw, whereupon the Food Provider, City Contractor, or Special Event Participant shall provide a Plastic Straw to the consumer.
 - (B) There is no Affordable Alternative to Disposable Food Service Ware that is not Compostable or Recyclable, whereupon the Food Service Provider may use or provide Disposable Food Service Ware that is not Compostable or Recyclable, though this exception shall not permit the use or distribution use of a Plastic Straw.

Sec. 14-17. Additional Obligations Under This Article.

Food Providers or other Person required by Article 1 of Chapter 19 of this Code to have a license transact business, shall state on its annual business license renewal form that it is compliant with all provisions of this Article.

Sec. 14-18. Encouraged and Voluntary Use of Reusable Compostable, or Recyclable Food Service Ware.

- (a) All Persons, including supermarkets and vendors, are encouraged to eliminate the use of Polystyrene Foam for packaging of food and other items that are not Prepared Food.
- (b) All Persons are encouraged to use and distribute Reusable, rather than Disposable, Food Service Ware, even when not required to do so. When it is necessary to use or distribute Disposable Food Service Ware, all Persons are encouraged to use and distribute Disposable Food Service Ware that is Compostable or Recyclable, even when not required to do so.

Sec. 14-19. Application for Exemption.

(a) Application. A Person may apply for an exemption from the requirements set forth in Section 14-16 of this Article for one non-renewable one-year period. The application must be in writing and must include all information necessary for the Director to make a determination, including but not limited to a statement of the supporting facts made under penalty of perjury and documentation showing factual support for the exemption. The Director may require the

applicant to provide additional information and may deny the application if the applicant fails to provide it.

(b) **Determination by Director.** The City may, within its discretion, approve a Food Provider's or City Contractor's application for exemption from the requirements set forth in Section 14-16 of this Article for a non-renewable, one-year period only upon a finding and determination that Section 14-16 would create an undue hardship upon the applicant not generally applicable to other Food Provider's or City Contractor's in similar circumstances. The Director may, within its discretion, deny the application in whole, approve the application in whole, or approve the application in part and/or with conditions. The Director shall prepare a written decision to grant or deny a one-year exemption, which decision shall be final.

Sec. 14-20. Enforcement and Remedies.

Violations of this Article shall be enforced as follows:

- (a) The Director shall be primarily responsible for enforcing this Article.
- (b) The Director, in accordance with applicable law including Title 13 of Part 3 of the California Code of Civil Procedure, may inspect the premises of any Food Provider to verify compliance, provided that the Premises is located within the City.
- (c) For a first violation of the provisions of this Article, the City shall provide notice to the Person(s) violating this Article that a violation has occurred.
- (d) For any violation after the first violation, the Director, the Director's designees, officers of the Police Department, or attorneys of the City Attorney's Office, shall have the authority to take any one or more of the following actions:
 - (1) Issue an administrative citation pursuant to Article 2 of Chapter 1 of the Monterey City Code, including the imposition of a fine pursuant to the City's Administrative Citation Fine Schedule, as it may be amended.
 - (a) Food Providers, Special Event Participants, and any other Person who violates any provision of this Article in connection with a special event (as

that term is used in Article 1 of Chapter 32 of this Code), shall be assessed a progressive administrative fine, which shall increase in amount depending upon the number of persons at said special event, in accordance with the City's Administrative Citation Fine Schedule.

- (2) Prosecute the violation as a criminal infraction or a misdemeanor.
- (3) Petition a court of competent jurisdiction for injunctive and/or declaratory relief;
- (4) Seek any other remedy available at law, in equity, and/or by statute.

SECTION 6: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 7: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 18th day of December, 2018, by the following vote:

AYES:	4	COUNCILMEMBERS:	Albert, Haffa, Williamson, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	1	COUNCILMEMBERS:	Smith
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

Mayor of Monterey

City Clerk thereof

