



3 September 2021
Delivered via Email
To: San Marcos City Council

RE: ORDINANCE 2021-XXX OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, AMENDING TITLE 5 OF THE SAN MARCOS MUNICIPAL CODE TO PROVIDE FOR THE RULES AND REGULATIONS GOVERNING THE DISTRIBUTION, SALE, AND USE OF SINGLE USE PLASTIC FOOD SERVICE WARE AND OTHER PLASTIC PRODUCTS AS SPECIFIED.

The Surfrider Foundation is a non-profit, environmental organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people, through a powerful activist network. The Surfrider Foundation San Diego County Chapter has more than 2,500 members, many of whom live and work in San Marcos.

Oceana is the largest international advocacy organization focused solely on ocean conservation. Our offices around the world work together to win strategic, directed campaigns that achieve measurable outcomes that will help make our oceans more biodiverse and abundant. Oceana seeks to make our oceans more biodiverse and abundant by winning policy victories in the countries that govern much of the world's marine life.

Together, we submit the following comments and suggestions regarding the aforementioned draft ordinance.

Executive Summary

First and foremost, we sincerely appreciate the City of San Marcos' commitment to reducing pollution from single-use plastics. This draft ordinance is a vital first step to achieving that objective.

As we represent organizations with extensive experience in reading, drafting, and working with local governments on single-use reduction plastic ordinances, we read this draft ordinance very closely and would like to offer our perspective.

The good news is that the ordinance, as written, is very strong! Therefore, the suggestions we offer mainly serve to close any potential loopholes, clarify the law's intent for both restaurants and constituents, and offer a few potential additions for you to consider.

Below you will find a summary of our comments and recommendations. Each bookmark leads to a detailed explanation. Thank you for considering our suggestions.

- **[Section 5.75.020 “Definitions”](#)**
 - Add definitions for condiment, online food ordering platform, compostable, and reusable.
 - Insert additional language into definition for single-use food ware accessories
- **[Section 5.75.030, Prohibition of City use of Expanded Polystyrene Food Service Wares](#)**
 - We recommend 6-month phase-in period
- **[Section 5.75.40, Distribution of Food Service Ware Accessories](#)**
 - We recommend splitting into two sections, one re: the composition of food ware accessories and one re: their distribution (i.e. only upon request)
 - Strike out the “upon offer” as it weakens the ordinance
 - Include suggested language to ensure phone and online orders are covered by the ordinance
 - Address self-serve stations
- **[Section 5.75.050 Distribution of Food Service Ware](#)**
 - Replace prohibition of non-recyclable food ware with language that includes compostable and biodegradable products
- **[Section 5.75.060 Exemptions](#)**
 - Shorten the period from 2 years to 1 year
- **[Additional Recommendations re: Reusables](#)**
 - Include language explicitly allowing and encouraging customers to bring their own containers for takeout
 - Potentially mandate reusable tableware for in-person dining, but with a relatively lenient exemption platform
- **[Conclusion](#)**

RE: Section 5.75.020 “Definitions”

In an effort to clarify and strengthen the ordinance, we recommend the following additions and changes to this section of the ordinance.

Additions:

“Condiment” means relishes, spices, sauces, confections, or seasonings, that requires no additional preparation, and that is used on a food item, including, but not limited to, ketchup, mustard, mayonnaise, sauerkraut, salsa, syrup, jam, jelly, salt, sugar, sugar substitutes, pepper, or chile pepper.



“Online Food Ordering Platform” means the digital technology provided on a website or mobile application through which a consumer can place an order for pick-up or delivery of Prepared Food. Such platforms include those operated directly by Prepared Food Vendors, by companies that provide delivery of Prepared Meals to consumers, and by online food ordering systems that connect consumers to Prepared Food Vendors directly.

“Compostable” means materials in the product or package are fiber-based and will break down into, or otherwise become a part of, usable compost (e.g., soil conditioning material, mulch) in a safe and timely manner. Products or packages made with plastics, either petroleum or biological based, or made with fluorinated chemicals shall not be considered compostable. Any product that cannot be composted by the city’s franchise waste hauler shall not be considered compostable.

“Reusable” means designed and manufactured to maintain its shape and structure, and to be materially durable for repeated (at least 1,000 times each) sanitizing in water at 171 degrees Fahrenheit for at least 30 continuous seconds, washing via commercial dishwashing machine, and reuse.

Suggested edits to current Definitions (suggested additions are bolded):

“Single-Use Food Service Ware Accessory” means **all types of** single-use, disposable products used in accessory to Disposable Food Service Ware, including but not limited to straws, cup lids, stirrers, splash sticks, cocktail sticks, toothpicks, utensils, **condiment cups and packets, and napkins.**

RE: 5.75.030 Prohibition of City use of Expanded Polystyrene Food Service Wares

Based on our experience working with other San Diego County cities on similar EPS foam prohibitions, we recommend a 6-month phase in period which gives food providers ample lead time to deplete their existing stocks of EPS foam food service ware. Therefore, we recommend an effective date of the prohibition no later than June 1, 2022 (based on an October 2021 first reading by the City Council).

RE: 5.75.40 Distribution of Food Service Ware Accessories

In addition to addressing the distribution of food service ware accessories as the title implies - i.e. only “upon request by the customer” aka #SkipTheStuff - this Section also addresses their composition and prohibits food service ware accessories which are made from single-use plastic.



We applaud this strong language, but would also like to recommend splitting the “composition” language into a separate Section for clarification purposes. To achieve this end, we suggest leaving parts A and B mostly as-is, adding an effective date that matches that of the EPS foam Section (no later than June 2022), and re-naming the Section **Prohibition of Plastic Food Service Ware Accessory Products**.

Part C can then be turned into its own Section, retaining the original **“Distribution of Food Service Ware Accessories”** title and given an effective date of January 2022. Because the “request only” stipulation does not require food providers to replace their food service ware accessories, it should become effective much sooner than a plastic food service ware accessory or EPS foam prohibition.

Furthermore, we strongly suggest deleting the striked language below and adding the bold language to the request only section :

(c) A food provider may only provide Disposable Food Service Ware Accessory products upon request by the customer or ~~upon offer to the customer by the food provider~~. Upon customer request, a food provider may provide a Plastic Alternative Disposable Food Service Ware Accessory. This provision shall apply to takeout **regardless of whether ordered in-person, online or via phone, drive-thru, delivery and takeout food delivery service** orders. Cups for drive-thru, takeout or delivery may include plastic lids, spill plugs and sleeves with or without request, for safety purposes.

The “upon offer to the customer by the food provider” is an unnecessary addition, could be interpreted as a loophole, and essentially weakens the entire concept of a #SkipTheStuff ordinance.

The most important element of these ordinances is to achieve waste reduction by changing the culture around takeout from an *assumed* “opt-in” model to an “opt out” model for single-use food ware accessories. The point is for food providers to stop giving (and offering) these accessories unless the customer asks for them.

Furthermore, we recommend including delivery and online food ordering platforms to ensure consistency across the full spectrum of food providers, thus closing any additional loopholes or confusion among food providers and customers in San Marcos. A #SkipTheStuff ordinance only achieves its aim if all food providers and food service providers are required to comply.

Lastly, we have learned from our experiences with other #SkipTheStuff ordinances - namely your neighbors in Vista - that failing to include specific



language regarding *self-serve areas* can lead to confusion among council members, city enforcement staff and food providers.

Ideally, all items would be kept behind the counter and be provided upon request only. If that is not feasible for San Marcos, then our suggested best practice would be to clearly define what can and cannot be distributed via a self-serve station.

Los Angeles, for example, does NOT allow self-serve stations in their #SkipTheStuff ordinance:

C. ...A food or beverage facility shall:

2. Not provide self-serve/self-service Disposable Foodware Accessories dispensaries, or provide or offer Disposable Foodware accessories to a dine-in customer or takeout customer, except upon request. (Sec 196.02.C.2)

Arcata, CA does allow self-serve stations:

Accessory Foodware items shall be provided only upon request by the Customer or *at self-serve stations*, except that disposable cups for delivery by a Food Vendor or Food Provider may include tops, spill plugs, and sleeves without request. (Sec 5478.2.A)

Portland, OR allows self-serve stations but only for utensils, and only at establishments designed for counter service:

C. Exemptions. The following situations are considered exempt from the restriction on single-use Plastic Serviceware:

1. Cafeterias and Retail Food and Beverage Establishments designed for counter service may allow Customers to access a self-service station for plastic Utensils. (Section [17.103.310.C.1](#))

Regardless of what you'd like to aim for in San Marcos, the most important thing here is that self-serve stations are addressed. If feasible, requiring all food ware accessories to stay behind the counter is the best option.

RE: 5.75.050 Distribution of Food Service Ware

We applaud the strong language to prohibit non-recyclable disposable food service ware, however this Section could benefit from additional language covering compostable and biodegradable options, not to mention reusable food service ware. See our recommended language below:

- (a) City Facilities, City departments, City-managed concessions, City-sponsored or co sponsored



events, City permitted events and all franchises, contractors, organizations, non-profits, and vendors acting directly with or on behalf of the City are prohibited from selling, distributing, or using Disposable Food Service Ware that is **Non-Recyclable, Non-Compostable or Non-Biodegradable**. ~~Non-Recyclable Disposable Food Service Ware~~. This section shall only apply to City franchises, contractors, organizations, non-profits, and vendors when they are actively providing goods or services to or for the City.

(b) Food providers and food service providers are prohibited from selling, distributing, or using ~~Non-Recyclable Disposable Food Service Ware~~ Disposable Food Service Ware products that are **Non-Recyclable, Non-Compostable or Non-Biodegradable**.

By requiring only recyclable disposable food service ware, the City of San Marcos could unintentionally tie the hands of food providers who would otherwise opt for compostable or biodegradable options that are non-recyclable in nature.

Under the current language, many common plastic alternatives - paper plates, coffee cups, and drink cups to name a few - would technically become illegal because they are not recyclable. However, many of these items are compostable. With San Marcos making progress towards citywide curbside composting, we would hate to see this unintended preference towards more single-use plastic reliance.

Showing preferential treatment for recyclable plastics is not a policy goal for Surfrider or Oceana. Recyclable plastic pollution is equally harmful to our ocean, waves and beaches as non-recyclable plastic pollution. Source reduction of single-use plastics will always be at the forefront of our plastic policy recommendations; unfortunately, requiring disposable food service wares to be recyclable misses the mark in helping to achieve that aim.

Furthermore, even if a "recyclable" plastic item is disposed of properly, there is no guarantee that it will actually be recycled. The majority of San Diego County's recyclable plastics are shipped across the world to Southeast Asian countries like Vietnam, Indonesia, and the Philippines. At this time, real accountability is not in place to ensure these items are properly recycled. Exporting our waste to countries with less developed waste infrastructure, not to mention lax environmental regulations, should never be considered a sustainable solution to San Diego County's overreliance on single-use plastics.

We also recommend the same effective date for this provision as we do for the prohibition of EPS foam and Plastic Food Ware Accessories - no later than June 2022.

(c) The effective date of the prohibition under this 5.75.050(b) is **June 1, 2022**. (Insert date - allows for phase in process).

Lastly, we would like to see more promotion of reusables in the ordinance language. The objective of this ordinance and others of its ilk is to reduce single-use plastic pollution. Encouraging - and in certain cases, requiring - reusables is the single best



way to achieve that aim. Substituting EPS foam for a slightly better - but still plastic - alternative is a step in the right direction, but it's only half the battle. We will address this recommendation in detail in its own section.

RE: 5.75.060 Exemptions

Please see our recommendation for exemption (B)2:

2. The City Manager or his/her designee may approve the exemption for a maximum of ~~two years~~ **one year**, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include but not be limited to situations where:
 - i. ~~There are no reasonable alternatives to expanded polystyrene food service ware~~ **There are no acceptable alternatives to packaging with polystyrene foam containers** for reasons that are unique to the applicant; or

Based on our experience with other cities in San Diego County who have passed similar EPS foam prohibitions, we feel that one year is sufficient time for any food provider faced with undue hardship.

And since the decision to approve any exemptions stops at the City Manager's desk, we feel that "acceptable alternatives" offers stronger language than "reasonable."

Additional Recommendations re: Reusables

We would like to offer two suggestions of additional language re: preference and requirements for reusable food ware and food ware accessories. Our first suggestion is to add a Section that specifically allows reusable foodware for takeout orders. We suggest the language below, inspired by the City of Arcata's ordinance.

Reusable Customer Foodware.

A. Customers may provide their own Reusable Foodware for beverage and food service in accordance with the California Health and Safety Code. Food Vendors and Food Providers may refuse, at their sole discretion, any customer-provided Reusable Foodware that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage or food item, or that appears to be excessively soiled or unsanitary. If the Customer provided Reusable Foodware is rejected, the Food Vendor or Food Provider may instead require use of Reusable Foodware for consumption on the premises of the Food Service Establishment, or use of a Disposable Foodware item for a beverage or food item to be consumed off the premises of the Food Service Establishment.



Our second suggestion is to require reusable food ware for dining on premises after a phase-in period of 1 year. Please review the suggested language below:

A. All food served for consumption on the premises of a Food Service Establishment shall be served using Reusable Foodware, except that disposable paper food wrappers, foil wrappers, paper napkins, straws and paper tray- and plate liners shall only be allowed for dining on premises, provided they meet the Disposable Food Ware and Food Ware Accessory Standards at Sections 5.75.40 and 55.75.050.

B. Zoning permits and business licenses for Food Vendors applied for, renewed and/or deemed complete on or after the effective date of this Ordinance shall only be granted to Food Vendors that demonstrate compliance with Section ____A (above). Installation and/or maintenance of appropriate dishwashing capacity in conformance with Section ____A (above)) shall be included as a specific condition of approval for such permits and licenses.

We understand that if you choose to pursue this requirement, certain exemptions may be required for food providers with insurmountable space constraints, undue financial hardship, potential building code violations, high costs or unavailability of third party dishwashing services, capital and operational costs, lack of onsite or off-site dishwashing capacity, or inability to contract for services to wash, rinse, and sanitize reusable foodware, in order to comply with applicable provisions of the state's Health and Safety Code.

We would be happy to work with city staff on an exemption list that is appropriate to San Marcos. Regardless of exemptions, we consider this requirement to be one of the most effective tools for single-use plastic waste reduction (and waste reduction overall).

The encouragement, promotion, and normalization of long-lasting reusable products is ultimately the most effective approach to reducing single-use plastic pollution in any city.

Conclusion

On behalf of Surfrider Foundation, Oceana, and our thousands of supporters in San Diego County and nationwide, we thank the entire City Council and staff for drafting a plastic reduction ordinance for San Marcos. This ordinance is a giant step in the right direction for our neighborhoods, parks, beaches, and ocean. We truly believe that this ordinance, if approved by the council, would become the gold standard plastic reduction ordinance for non-coastal cities in San Diego County to follow!



Thank you for considering our suggestions. Our intention is to help the City of San Marcos achieve a measurable reduction in single-use plastic and other disposable waste and litter, without negatively impacting its business community. To do so would constitute a significant win for the entire city.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Silverstein".

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