



Agenda Item No. 11f.

Staff Report

Date: June 15, 2023
To: Mayor Kuhl and Council Members
From: Rebecca Markwick, Planning and Building Director
Subject: Adoption of Ordinance No. 721 regarding Reusable Foodware

Recommendation:

It is recommended that the Town Council

1. Adopt Ordinance No. 721 amending Title 6 of the Ross Municipal Code regarding Reusable Foodware which was introduced at the May 11, 2023, Town Council meeting; and
2. Authorize the Town Manager to execute an agreement between the County of Marin and the Town of Ross regarding enforcement of the Reusable Foodware Ordinance

Background and Discussion:

On March 9, 2023, the Town Council directed staff to prepare an ordinance regarding Reusable Foodware. At the May 11, 2023, Town Council meeting the Ordinance was introduced. There was no public comment or Town Council member proposed changes.

Litter that is left on streets and sidewalks can collect in gutters, storm drains, and creeks and ultimately gets discharged into San Francisco Bay and other water bodies which results in a major environmental quality and compliance concern in Marin County and the entire Bay Area. Certain components of litter – including single-use plastic foodware – have been identified locally, regionally, and state-wide as being particularly problematic.

The Town of Ross is seeking to adopt a foodware ordinance to require foodware to be reusable or compostable and prohibit plastic foodware through this proposed Reusable Foodware Ordinance.

On May 10, 2022, the County of Marin adopted its Reusable Foodware Ordinance. The County conducted an extensive ordinance development process and created a model ordinance for jurisdictional adoption, with the goal that all jurisdictions in Marin would adopt this same ordinance. Adoption of this model ordinance would level the playing field for food facility operators across the County by adopting the same requirements, ensuring consistent enforcement, and minimizing confusion for consumers and food service providers. At the time of writing this staff report Tiburon, Fairfax, Larkspur, and San Anselmo, have adopted the

Ordinance and San Rafael, Sausalito, Mill Valley, and Novato have had the first reading of the Ordinance.

Proposed Ordinance:

The proposed ordinance would cover all entities selling prepared food to the public in the Town of Ross including restaurants, grocery stores and delis, bakeries, carry-out, quick services, farmers markets, food trucks, and any other business that requires a health permit.

The proposed ordinance contains six key features and uses the hierarchy of: reusables are best, natural-fiber compostable foodware is compliant, and single-use plastics, including bioplastics, are prohibited. The ordinance only allows fiber-based compostable foodware as compliant alternatives because the compost facility at the Redwood Landfill will not accept bioplastics given its status as an organic compost production facility.

The ordinance key features include:

1. Takeout disposable *foodware* must be natural-fiber compostable (no bio or “compostable” plastics). Takeout foodware must be certified by the Biodegradable Products Institute (BPI). Aluminum is allowed. “Foodware” means all containers, bowls, plates, food trays, cups, lids, boxes, and other like items that are used for prepared foods, including without limitation, foodware for takeout foods and/or leftovers from partially consumed meals prepared by food vendors.
2. Takeout *foodware accessories* must be natural-fiber compostable and available only “upon request” or at a self-serve takeout station. Food vendors shall provide plastic straws only on request, to accommodate any person's access needs. “Foodware 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.
3. Reusable foodware and utensils must be used if a customer is dining in at a restaurant. Natural-fiber compostable accessories can be provided upon request.
4. All food vendors shall charge customers twenty-five cents (\$0.25) at the point of sale for every non-reusable cup provided. Income from the non-reusable cup charge shall be retained by the food vendor. Exemptions are available for Cal Fresh/SNAP and WIC customers.
5. All food vendors who provide solid waste containers for customer use, must provide separate receptacles for solid waste, recyclables, and organics. Receptacles must have graphic-rich signage. This is a requirement of state laws AB 827 and SB 1383 and would enable customers and employees to properly sort waste.
6. Temporary exemptions will be provided via a Countywide list if compliant products are not available for certain foodware or foodware accessories.

Enforcement of the ordinance begins November 10, 2023, eighteen (18) months after adoption of the County ordinance on May 10, 2022 to give businesses time to switch sourcing of supplies

and deplete existing stock. As outlined in the Ordinance, the Town of Ross authorizes the County of Marin to enforce the ordinance on behalf of the Town of Ross.

Implementation:

The proposed ordinance would take a proactive approach via the County's Environmental Health Division by educating all retail food facility owners regularly of the requirements of the proposed ordinance and taking enforcement action only as necessary. This has the potential to result in greater overall levels of compliance, to allow for fairer competition among food vendors, and to have the benefit of staying power because there would be regular education and outreach on an annual basis. The Environmental Health Services Division (EHS) is in a unique position to provide proactive outreach during already scheduled visits to businesses as a part of its food program.

Enforcement will include written notice of non-compliance and a reasonable opportunity to correct, prior to issuance of any penalty. Should foodware or foodware accessories made of compliant compostable natural fiber not be commercially available, as determined by the EHS Director or their designee, the County may approve a temporary exemption of specific nonreusable foodware or foodware accessories items until they are made commercially available on behalf of the Town of Ross. The County will maintain a list, updated annually, with foodware and/or foodware accessories deemed not available commercially.

As part of adoption of the Foodware Ordinance the Town of Ross will enter into an agreement with the County of Marin to enforce the Reusable Foodware Ordinance. The agreement is included as Attachment 2 and some of the items that it includes are: the program definition and scope, responsibilities, terms of agreement and termination, compliance with law, indemnification, and obligations.

Environmental review (if applicable)

This action is categorically exempt from the California Environmental Quality Act (CEQA).

Fiscal Impact:

Financial impacts of implementation are expected to be minimal as a result of adopting the proposed Ordinance. If the Town of Ross adopts the County's model ordinance without changes (other than adding Town of Ross name and specific information), and within twelve (12) months of County adoption (by May 10, 2023), the County's Environmental Health Division will take on the role of enforcement through the food inspection program and the one-time enforcement fees would be waived. The County has acknowledged that not all Council calendars line up with the May 10, deadline. Because the Town of Ross initiated the process by identifying the two hearing dates (May 11th- Introduction and June 15th- Adoption) the County has agreed to waive the one-time enforcement fee. The intent is to encourage countywide adoptions of the ordinance.

Attachments

1. Ordinance No. 721
2. Agreement between the County of Marin and the Town of Ross regarding enforcement of the Reusable Foodware Ordinance

ATTACHMENT 1

ORDINANCE NO. 721
ORDINANCE OF THE TOWN OF ROSS TOWN COUNCIL
REQUIRING ALL FOOD FACILITY VENDORS TO USE REUSABLE FOODWARE
FOR DINE-IN OPERATIONS AND COMPLIANT COMPOSTABLE FOODWARE
FOR TAKE-OUT SERVICES

SECTION I. FINDINGS

WHEREAS, the Town of Ross has a desire and responsibility to protect the health, welfare, and safety of its citizens and economy. The proliferation of non-reusable (or disposable) foodware, packaging, and plastics has contributed to street litter, ocean pollution, marine, and other wildlife harm along with the greenhouse gas emissions from the production of the disposable materials.

WHEREAS, using reusable dishware significantly reduces the generation of unnecessary waste, and in most applications saves money, reduces disposal costs, and improves customer experience.

WHEREAS, reducing the generation of non-reusable foodware including plastic utensils, plastic cups, plastic clamshells, and plastic straws maximizes the operating life of landfills, reduces litter, and helps to lessen the economic and environmental costs of managing waste. This will also help protect the Town of Ross's environment from contamination and degradation, making it a cleaner, healthier region to all citizens and visitors.

WHEREAS, non-reusable foodware threatens public health because many types contain fluorinated chemical additives are known or suspected carcinogens or endocrine disruptors. These additives are known to leach from foodware into food and beverage containers and into compost, soil, and water.

WHEREAS, numerous jurisdictions in the San Francisco Bay Area and the State of California have adopted legislation reducing the use of non-reusable food packaging with local and national businesses successfully replacing single-use food packaging with affordable durable and reusable foodware or, when needed, compliant compostable fiber foodware products.

WHEREAS, on May 10, 2022, the County of Marin adopted a local Reusable Foodware Ordinance which includes language offering enforcement services via the Environmental Health Services Food Program for cities/towns adopting the same ordinance for the food vendors in their jurisdictions.

WHEREAS, the Town of Ross wishes to utilize the enforcement services offered by the County of Marin through the County's Environmental Health Services Food Program.

NOW, THEREFORE, based on the foregoing, the Town Council of the Town of Ross ordains as follows:

SECTION II. Title 6 Health and Sanitation of the Town of Ross Code is amended as follows:

Title 6 Section 6.20.010 – Reusable Foodware Ordinance

6.20.020- Definitions.

- (a) *“BPI Certified”* means those Compostable fiber Foodware 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.
- (b) *“Compliant Non-Reusable Foodware”* means that an item or product intended for disposal after one use and is: (1) accepted by the County of Marin through its composting collection program as Compostable as identified by the Deputy Director of Environmental Health Services or their designee; (2) is certified by either BPI Certified or other third party product certification recognized by the County of Marin through its Deputy Director of Environmental Health Services or their designee to ensure the item is free of harmful chemicals including but not limited to Fluorinated Chemicals, that may have been used in foodware manufacture, and is (3) made entirely of Natural Fiber, as defined that term is below, and including but not limited to paper, wood, or sugarcane fibers.
- (c) *“Compliant Foodware Accessory”* means that an item or material is (1) accepted in Marin County composting collection program as Compostable; and is (2) made entirely of Natural Fiber.
- (d) *“Compost Facility”* means compost facilities used by the Town of Ross’s current waste haulers for composting organic material.
- (e) *“Compostable”* means 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 Deputy Director of Environmental Health Services or designee.
- (f) *“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 County of Marin or the region. These products are considered non-compliant.
- (g) *“Town of Ross”* means the Town of Ross.
- (h) *“Town of Ross Facility”* means any building or structure owned, leased, or operated by the Town of Ross.

- (i) *“Customer”* means any person obtaining Prepared Food from a Food Vendor.
- (j) *“Director”* means the Marin County Deputy Director of Environmental Health Services or their designee.
- (k) *“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.
- (l) *“Effective Date”* means June 15, 2023.
- (m) *“EPS”* means expanded polystyrene, also known as Polystyrene Foam.
- (n) *“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.
- (o) *“Foodware”* means all containers, bowls, plates, food trays, cups, lids, boxes, and other like items that are used for Prepared Foods, including without limitation, Foodware for takeout foods and/or leftovers from partially consumed meals prepared by Food Vendors.
- (p) *“Foodware 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.
- (q) *“Food Vendor”* means a food facility as that term is defined in Health & Safety Code section 113789, or its successor, including but not limited to a restaurant, bar, grocery store, delicatessen, bakery, food service establishment (carry out, quick service, full-service), food truck, itinerant restaurant, pushcart, farmers market, caterer, microenterprise home kitchen operation, or cottage food operation, that sells Prepared Food to be consumed on and/or off the premises located or operating within the Town of Ross, except that for purposes of this ordinance the term “food vendor” shall not include a public or private school cafeteria.
- (r) *“Natural Fiber”* means a plant-based, non-synthetic fiber, including but not limited to paper, wood, bamboo, palm leaf, wheat straw, or sugarcane. Natural Fiber does not include plastic of any kind.
- (s) *“On Request”* means that only at the request of a customer shall the compliant product be provided.

- (t) *“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 (expandable 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, packing peanuts, and egg cartons.
- (u) *“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. For the purposes of this chapter, Prepared Food does not include raw, butchered meats, fish and/or poultry, which are sold from a butcher case or similar appliance.
- (v) *“Reusable or Durable”* Foodware and Foodware Accessories, including plates, bowls, cups, jars, trays, glasses, straws, stirrers, condiment cups, utensils, etc. that are manufactured of 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.
- (w) *“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.

16.20.030 - Dine-in Foodware regulations.

Food Vendors within the incorporated areas of Town of Ross:

- (a) Shall sell or provide food and beverages for consumption on the premises using Reusable Foodware and utensils (forks, spoons, knives, chopsticks) except as otherwise provided in section 16.20.040 (b);
- (b) May provide all other Compliant Foodware Accessories, which are made of Natural Fibers, including napkins, food wrappers, straws, stirrers, cocktail sticks, toothpicks, tray-liners, and plate-liners.
- (c) Shall offer condiments in reusable containers or dispensers rather than pre-packaged single-use condiment packets; and
- (d) Food Vendors will have until November 10, 2023, before enforcement of this regulation begins.

16.20.040 - Takeout Foodware regulations.

Food Vendors within the incorporated areas selling Takeout Food for consumption off premises:

- (a) Shall provide takeout food in Reusable Foodware, or compostable Natural Fiber Compliant Foodware, or items composed entirely of glass or aluminum;
- (b) Shall provide all other Compliant Foodware Accessories, which are made from Natural Fibers, including napkins, cup sleeves, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, and toothpicks only Upon Request or at self-serve stations; and
- (c) Takeout food bags shall be Reusable or paper.
- (d) Takeout Food delivery services shall provide the option for Compliant Foodware Accessories (forks, spoons, knives, chopsticks) and single-use condiments only On Request. A Food Vendor or a Takeout Food delivery service may include lids, spill plugs, and sleeves without request for Non-Reusable Cups for delivery.
- (e) Food Vendors shall provide plastic straws only On Request, to accommodate any person's access needs.

16.20.050 – Town of Ross purchasing, facilities, and Town of Ross sponsored events.

The following regulations apply to Town of Ross purchases, facilities, and Town of Ross - sponsored events:

- (a) All Town of Ross facilities that involve food service shall use Reusable Foodware and Compliant Foodware Accessories.
- (b) Town of Ross -managed concessions, Town of Ross -sponsored events, and Town of Ross-permitted events shall use Reusable Foodware or Compliant Foodware and Compliant Foodware Accessories.
- (c) These entities are prohibited from using Non-Reusable plastic foodware, including EPS/Polystyrene Foam, and Compostable or Biodegradable Plastics. No Town of Ross department shall purchase or acquire Non-Reusable plastic foodware for use at any Town of Ross facility. Organizations or individuals using Town of Ross facilities shall use Reusable or Compliant Foodware and Compliant Foodware Accessories.
- (d) The Town of Ross shall prohibit the use of EPS/Polystyrene Foam and Non-Reusable plastic foodware by vendors, franchisees, lessees, contractors, or other commercial food and beverage purveyors at all Town of Ross government center facilities, and Town of

Ross parks. Prohibited products include, but are not limited to, EPS/Polystyrene Foam and Non-Reusable plastic food containers, straws, bowls, plates, trays, utensils, clamshells, and cups which are not intended for reuse, on or in which any foods or beverages are placed or packaged.

- (e) As of the Effective Date, all Town of Ross departments that hold contracts, lease agreements, permits or other agreements that involve food service shall incorporate this prohibition into all new and renewed contracts, leases, permits, agreements, etc.
- (f) The use or distribution of EPS/Polystyrene Foam, and Non-Reusable plastic foodware at special events at Town of Ross facilities that are sponsored or co-sponsored by the Town of Ross shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event vendors, and any other party (including non-profit organizations) who have an agreement with one or more of the co-sponsors of the event to sell goods or beverages at the event or otherwise provide an event-related service.
- (g) 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 Town of Ross, shall specifically prohibit the usage and distribution of EPS/Polystyrene Foam and Non-Reusable plastic foodware.

16.20.060 - Non-Reusable cup charge.

- (a) All Food Vendors shall charge customers twenty-five cents (\$0.25) at the point of sale for every Non-Reusable cup provided unless they are exempt under this chapter.
- (b) Income from the Non-Reusable cup charge shall be retained by the Food Vendor.
- (c) Charges for Non-Reusable cups shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms, and/or menu boards. Customers placing orders by telephone shall be informed verbally of Non-Reusable cup charges.
- (d) All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code and as amended, or an electronic benefit transfer card (EBT) issued pursuant to section 10072 of the California Welfare and Institutions Code, and individuals with disabilities shall be exempt from the Non-Reusable cup charge.

16.20.070 - Separate waste receptacles required.

- (a) All Food Vendors who provide solid waste containers for customer use, must provide separate receptacles for solid waste, recyclables, and organics. Receptacles shall be colored black or grey for garbage, blue for recycling, and green for compost/organics.
- (b) To the extent possible given space constraints, all receptacles for solid waste, recyclables, and organics should be placed adjacent to one another.
- (c) Graphic-rich signage must be posted on or above each receptacle following the waste hauler's guidelines.

16.20.080 - Exemptions.

- (a) Entities packaging Prepared Foods outside Marin County are exempt from the provisions of this chapter; provided, however, such entities are urged to follow the provisions of this chapter.
- (b) Non-Reusable Foodware and Foodware Accessories composed entirely of aluminum is exempt from the provisions of this chapter.
- (c) Should Foodware or Foodware Accessories made of Compliant compostable Natural Fiber not be commercially available, as determined by Director or their designee, the County of Marin may approve temporary exemption of specific nonreusable Foodware or Foodware Accessories items until they are made commercially available. The County shall maintain a list, updated annually, with Foodware or Foodware Accessories deemed not available commercially.
- (d) For the immediate preservation of the public peace, health, or safety due to an emergency or natural disaster, the Town Council, or designee, may exempt Food Vendors, persons operating Town of Ross facilities and agents, contractors, and vendors doing business with the Town of Ross from the provisions of this chapter.

16.20.090 - Enforcement.

- (a) Compliance with this ordinance is required as of the Effective Date.
- (b) Enforcement of this chapter shall be pursuant to Town of Ross Code sections 16.20.030 through 16.20.080, inclusive.
- (c) Enforcement shall include written notice of non-compliance and a reasonable opportunity to correct, prior to issuance of any penalty.

- (d) It is found and determined to by the Town Council that the public interest, health, safety, and welfare of the residents of the Town require that the Marin County Environmental Health Services Division be designated as the enforcement agency of and within the Town of Ross and as such enforcement agency it is authorized with the enforcement of the provisions of this chapter and the Marin County Environmental Health Services division is vested, for the purposes of enforcing this chapter within Town of Ross, with all of the jurisdiction and powers vested in or available to said division by this Chapter and said health and safety code.
- (e) Enforcement of this chapter will begin on November 10, 2023. Enforcement will be the delegated to the Marin County's Environmental Health Services. Enforcement will progress on the regular inspection schedule of all covered Food Vendors in the County as described in this chapter.

16.20.100 - Violations

On behalf of the Town of Ross, the County of Marin may choose to undertake the following legal actions to correct and/or abate nuisances and violations of this ordinance. The Director of Environmental Health Services or their designee is authorized to promulgate regulations and take any and all other actions reasonable and necessary to enforce the provisions of this Article, including but not limited to, entering the premises of any food provider during regular business hours to verify compliance, and by the issuance of Administrative Citations. The remedies and penalties provided by this Article are cumulative and in addition to any other remedies available at law or in equity.

- (a) Administrative Citations.
Administrative citations may be issued for violations of this Chapter at the discretion of the Director of Environmental Health Services. The issuance of an administrative citation under this chapter shall not supersede or limit the remedies provided elsewhere in this Code or California law, including other administrative citation remedies. Issuance of an administrative citation may be exercised in place of, but shall not be considered a waiver of, the use of any other available enforcement remedy.
- (b) Process and Service of Citation.
 - 1. Prior to issuance of citation penalty, the County shall issue a violation warning letter to the facility operator and provide the facility operator thirty (30) days to correct the violation(s).
 - 2. The violation warning letter and/or citation shall be mailed to the food facility operator named in the facility's permit.
 - 3. The failure of any interested person to receive the violation warning letter and/or citation shall not affect the validity of the proceedings.

(c) Administrative Citation Penalty Schedule.

Following the violation warning letter described in Section 16.20.100(b)(1) above and thirty (30) day cure period, if the violations remains, the County may issue the following administrative penalties:

1. A fine not exceeding \$100.00 for the first violation;
2. A fine not exceeding \$200.00 for a second violation of the same Code provision within one year; and
3. A fine not exceeding \$500.00 for each additional violation in excess of two, of the same Code provision within one year.

(d) Response to Citation Penalty

Following receipt of citation penalty, food facility operator shall have thirty (30) days to pay the fine as indicated on the citation, or to request a waiver of payment of the penalty due to unique undue hardship. This waiver may be granted by the Director upon demonstration by a food facility operator to the satisfaction of the Director 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 of this chapter 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 Foodware or Foodware Accessories made of Compliant compostable Natural Fiber is not available at a commercially reasonable price and the additional cost associated with providing the Compliant Foodware or Foodware 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 Director 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.

(e) Nonpayment of Citation for More than One Year Deemed Nuisance.

Nonpayment of any assessed violation for longer than one year shall constitute a nuisance and be subject to the nuisance abatement procedures in Marin County Code Chapter 1.05, including payment of civil penalties of up to \$2,500 per violation per day and enforcement and other abatement costs incurred by the County.

SECTION III. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the Town of Ross. The Town Council hereby finds that under section

15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION IV: SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases, and the remaining portions of this ordinance shall continue in full force and effect unless amended or modified by the Town of Ross.

SECTION V: EFFECTIVE DATE AND PUBLICATION

This Ordinance shall take effect thirty days after its passage and a summary of the ordinance shall be published at least once in a newspaper of general circulation, printed and published in the County of Marin.

SECTION VI: VOTE

The foregoing ordinance was introduced by the Town Council of the Town of Ross on the 11th day of May 2023 and passed and adopted at a regular meeting of the Town Council held on this 15th day of June 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Beach Kuhl

ATTEST:

Cyndie Martel

ATTACHMENT 2

**AGREEMENT BETWEEN
COUNTY OF MARIN AND THE TOWN OF ROSS
REGARDING ENFORCEMENT OF THE FOODWARE ORDINANCE**

This AGREEMENT (AGREEMENT), made and entered into this 15th day of June, 2023, by and between the COUNTY OF MARIN, hereinafter referred to as "COUNTY", and TOWN OF ROSS, hereinafter referred to as "TOWN", both in the State of California, collectively the "PARTIES", for participation in the County Environmental Health Services (EHS) Reusable Foodware Ordinance Implementation and Enforcement Program (the "PROGRAM").

SECTION 1: RECITALS

- 1.1 Parties have the mutual desire and responsibility to protect the health, welfare, and safety of its citizens and economy. The proliferation of non-reusable (or disposable) foodware, packaging, and plastics has contributed to street litter, ocean pollution, marine, and other wildlife harm along with the greenhouse gas emissions from the production of the disposable materials.
- 1.2 Using reusable dishware significantly reduces the generation of unnecessary waste, and in most applications saves money, reduces disposal costs, and improves customer experience.
- 1.3 Non-reusable foodware threatens public health because many types contain fluorinated chemical additives are known or suspected carcinogens or endocrine disruptors. These additives are known to leach from foodware into food and beverage containers and into compost, soil, and water.
- 1.4 On May 10, 2022, COUNTY adopted a local Reusable Foodware Ordinance, and which includes language offering enforcement services via COUNTY'S Environmental Health Services for cities and towns in the County of Marin adopting the same ordinance for the food vendors in their jurisdictions.
- 1.5 TOWN (has/is) adopting a local Reusable Foodware Ordinance and wishes to utilize the enforcement services offered by COUNTY through COUNTY'S Environmental Health Services.
- 1.6 TOWN and COUNTY have determined that the public interest would be best served by the performance of these functions as provided in the Reusable Foodware Ordinance and as provided in this AGREEMENT.

SECTION 2: PURPOSE OF THE AGREEMENT

This AGREEMENT is entered into by and between the PARTIES to define the responsibilities of the PARTIES for the implementation enforcement of Reusable Foodware Regulations as defined in Title 6 within The Town of Ross.

SECTION 3: PROGRAM DEFINITION AND SCOPE

COUNTY shall act as the enforcement agency for the Reusable Foodware Ordinance, as detailed in Title 6 and as detailed in Title 6 enforcement of will begin on November 10, 2023.

AGREEMENT BETWEEN
COUNTY OF MARIN AND THE TOWN OF ROSS
REGARDING ENFORCEMENT OF THE FOODWARE ORDINANCE

TOWN participation in the Program is encouraged but completely voluntary. However, development and implementation of such a program requires staff time and resources which would be exacerbated if jurisdictions joined the Program piecemeal over the course of several years. To address these potential cost impacts, there will be a one-time fee to join the Program. However, to encourage and incentivize jurisdictions to join during the initial development phase, COUNTY will waive the on-boarding fee for any jurisdiction that opts into the program within twelve (12) months of the COUNTY'S adoption of the ordinance.

The one-time on-boarding fee was calculated based on the time and resources needed to revise COUNTY'S EHS Division systems to include additional businesses after the initial development period (estimated as 0.5 hours per food facility). The fee is scaled based on the number of food facility operators within the jurisdiction (see Table 1).

Table 1: Environmental Health Division One-Time Enforcement Program Fee for Reusable Foodware Ordinance

Jurisdiction	Number of Food Facilities	One-Time On-Boarding Fee
Belvedere	3	\$311
Corte Madera	58	\$6,003
Fairfax	45	\$4,658
Larkspur	49	\$5,072
Mill Valley	70	\$7,245
Novato	198	\$20,493
Ross	6	\$621
San Anselmo	56	\$5,796
San Rafael	322	\$33,327
Sausalito	70	\$7,245
Tiburon	31	\$3,209

If jurisdictions adopt the ordinance after the twelve (12) month period following COUNTY adoption, the EHS Division can still provide enforcement, but the fee would no longer be waived for those jurisdictions.

SECTION 4: RESPONSIBILITIES

4.1 Town of Ross SHALL:

- a. Town of Ross has or shall adopt a Reusable Foodware Ordinance in compliance with and mirroring the Reusable Foodware Ordinance adopted by the COUNTY on May 10, 2022.
- b. Pay the onboarding fee as detailed in Section 4 above within 30 (thirty) days of written request for payment by COUNTY, unless otherwise waived.

4.2 COUNTY SHALL:

- a. Act is enforcement agency for the Reusable Foodware Ordinance for the Town of Ross as detailed in its Reusable Foodware Ordinance and in this AGREEMENT.

AGREEMENT BETWEEN
COUNTY OF MARIN AND THE TOWN OF ROSS
REGARDING ENFORCEMENT OF THE FOODWARE ORDINANCE

- b. Provide updates to Town of Ross of any modifications to its Ordinance or modifications to the enforcement Program.

SECTION 5: TERM OF AGREEMENT AND TERMINATION.

5.1 This AGREEMENT shall remain in force unless terminated by either PARTY. Either PARTY may terminate this AGREEMENT by giving three (3) months written notice to the other PARTY.

5.2 In the event of termination of this AGREEMENT, any supplementary agreements may also be terminated in accordance with the termination provisions contained in such agreements.

5.3 If Town of Ross amends its Reusable Foodware Ordinance which, in the COUNTY'S sole determination and discretion, does not comport with the COUNTY's Reusable Foodware Ordinance and Program, COUNTY may terminate this AGREEMENT at any time.

SECTION 6: COMPLIANCE WITH LAW.

In the performance of its obligations pursuant to this AGREEMENT, PARTIES shall comply with all applicable federal, state and local laws, ordinances and regulations in any manner affecting the performance of this AGREEMENT, and must at all times comply with such laws, ordinances, and regulations as they may be amended from time to time.

SECTION 7. INDEMNIFICATION AND GENERAL LIABILITY

TOWN shall indemnify, hold harmless, release and defend COUNTY, its officers, agents and employees from any and all liability, actions, claims, damages, costs or expenses, including attorneys' fees and the costs and expenses of suit which may be asserted by any complainant, arising in any respect, out of TOWN's negligent or intentional acts or omissions arising under or related to this AGREEMENT.

COUNTY shall indemnify, hold harmless, release and defend TOWN, its officers, agents and employees from any and all liability, actions, claims, damages, costs or expenses, including attorneys' fees and the costs and expenses of suit which may be asserted by any complainant, arising in any respect, out of COUNTY's negligent or intentional acts or omissions arising under or related to this AGREEMENT.

SECTION 8. OBLIGATIONS.

Termination of this AGREEMENT will not invalidate the indemnification obligations of Town of Ross to COUNTY and/or obligations properly incurred by Town of Ross before the termination date to the extent those obligations cannot be canceled.

SECTION 9. INTEGRATION.

This AGREEMENT represents the entire AGREEMENT of the PARTIES with respect to the subject matter thereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

SECTION 10. AMENDMENT.

Except as otherwise provided herein, this AGREEMENT may not be changed, modified or rescinded except in writing and approved by all parties hereto.

SECTION 11. INDEPENDENT AGENCY.

Each party performs the terms and conditions of this AGREEMENT as an entity independent of the other party. Each party's agents or employees shall not be agents or employees of the other party to this AGREEMENT.

SECTION 12. ASSIGNMENT.

This AGREEMENT may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

SECTION 13. BINDING ON SUCCESSORS, ASSIGNEES OR TRANSFEREES.

This AGREEMENT shall be binding upon the successor(s), assignee(s) or transferee(s) of Town of Ross. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this AGREEMENT other than as provided above.

SECTION 14. SEVERABILITY.

Should any part of this AGREEMENT be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decisions shall not affect the validity of the remainder of this AGREEMENT, which shall continue in full force and effect provided that the remainder of this AGREEMENT can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

SECTION 15. SUCCESSORS; NO THIRD-PARTY BENEFICIARIES.

Nothing in this AGREEMENT, whether express or implied, shall be construed to give any person or entity (other than the PARTIES hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this AGREEMENT or any covenants, conditions or provisions contained herein.

SECTION 16. CONTACTS AND NOTICES.

All notices under this AGREEMENT shall be in writing (unless otherwise specified) delivered to the parties by hand, by commercial courier service, or by United States mail, postage prepaid, addressed to the parties at the addresses set forth below or such other addresses as the parties may designate by notice.

AGREEMENT BETWEEN
COUNTY OF MARIN AND THE TOWN OF ROSS
REGARDING ENFORCEMENT OF THE FOODWARE ORDINANCE

For COUNTY:
Greg Pirie, Deputy Director, Environmental Health Services
County of Marin – Community Development Agency
3501 Civic Center Drive, Room 236
San Rafael, CA 94903

For Town of Ross:
Christa Johnson, Town Manager

31 Sir Francis Drake
Ross, CA 94957

COUNTY:

By: _____

Print Name

Print Title

APPROVED AS TO FORM:

By: _____
COUNTY Counsel

Town of Ross:

By: _____

Print Name

Print Title

APPROVED AS TO FORM:

By: _____
TOWN Attorney