



Agenda Item No. 12

Staff Report

Date: March 9, 2023

To: Mayor Kuhl and Council Members

From: Rebecca Markwick, Planning and Building Director

Subject: Building and Vehicle Electrification “Reach” Codes for Building Construction, Automatic Gate Safety and Reusable Foodware

Recommendation

It is recommended that the Town Council consider whether to direct staff to:

1. Analyze and prepare options for local building code amendments to adopt enhanced requirements promoting building and vehicle electrification; and promoting automatic gate safety; and
2. Proceed with the introduction of the Marin Model Reusable Foodware Ordinance.

Background

The Town of Ross works closely with other Marin jurisdictions, and the County. Recently there have been a few code amendments that the County of Marin has spearheaded that many Marin jurisdictions have adopted and/or brought to their Town/City Councils for direction. This report will provide background and options for the Town Council on three items: 1. Building and vehicle electrification, 2. Automatic gate safety and 3. The Marin Model Reusable Foodware Ordinance.

One: Building and Vehicle Electrification “Reach” Codes

California cities and counties are required to enforce minimum construction standards contained in the State Housing Law and in the California Building Standards Code. The most recent updates to the California Building Standards Code become effective on January 1, 2023. The Town Council adopted the 2022 Building Standards Code with local amendments on November 10, 2022.

The Town Council did not consider local amendments that would include energy efficiency “reach” codes that had been developed by Marin County through a collaborative process with most other Marin jurisdictions. Several other City/Town Councils adopted some or all of the model reach codes, and others indicated a commitment to reconsider the reach codes in 2023. The purpose of this agenda item is to gauge the Town Council’s interest in adopting any of the model reach codes or to participate with other jurisdictions in further analyzing or modifying the

model codes, particularly the ones proposed to affect single-family home remodels. It should be noted that the building code can be locally amended at any time, not just when adopting the triennial State Code update.

In 2022 Marin County spearheaded an effort to develop a model set of amendments that would exceed the base requirements of the California Building Standards Code (Title 24) for consideration for adoption by all or most of Marin's jurisdictions to have common building requirements for the benefit of staff, contractors, vendors and the public. This effort included a technical working group which included the Town's building inspector, focus group interviews with various developers including builders of affordable housing, and a public workshop. The model code approach was also the subject of a Marin County Civil Grand Jury Report which encouraged steps towards building electrification and the collaborative effort. The Town Council adopted a response to the Grand Jury Report on August 11, 2022 (**Attachment 1**). The Town Council expressed agreement with the findings of the Report and support for the collaborative process, indicated that the reach codes required additional staff analysis and public consideration and could be reconsidered in 2023.

The underlying purpose of the proposed reach codes is to implement programs of adopted Climate Action Plans to reduce the emission of greenhouse gases by reducing the burning of fossil fuels in buildings and vehicles. In the case of energy use in buildings, the electricity supply is becoming increasingly carbon-free due to higher levels of renewable power in the grid and more efficient electric home appliances and lighting. Even with increasing home charging of electric vehicles, the greenhouse gas emissions of electricity use in buildings decreased 76% between 2005 and 2018. Burning of natural gas for space and water heating in buildings now constitutes 34% of local greenhouse gas emissions, compared to only 5% for systems powered by electricity. In the case of transportation, the California Air Resources Board has mandated the sales of only electric vehicles after 2035. The proposed reach code enhances requirements for installation of electric vehicle charging infrastructure and chargers in new construction and electrical or parking lot upgrades to accommodate current and future EV use.

Town Policies on Building and Vehicle Electrification

The adopted Climate Action Plan 2010 includes the following action items:

3.3 Land Use and Transportation

Encourage the use of fuel-efficient and low GHG-emitting vehicles and driver behaviors.

- a. Encourage private development to provide prioritized parking for hybrid, electric and carpool vehicles.
- b. Adopt and implement a policy requiring limitations on idling for commercial vehicles, construction vehicles, buses and other similar vehicles, beyond state law, where feasible

3.4 Green Building, Energy Efficiency and Renewable Energy

As part of a green building ordinance, require energy efficiency audits for residences and businesses during major remodeling projects.

If available, participate in a countywide or regional property assessment district financing program to assist homeowners in funding installation of energy efficiency upgrades and renewable energy systems.

Summary of Proposed Marin County Building and Vehicle Electrification Reach Codes

In summary, Marin County's proposed reach codes include the following:

Electrification of newly constructed buildings

The proposed reach code would preclude the installation of natural gas infrastructure in newly constructed residential and non-residential buildings. The new 2022 State code requires that all new residential projects include either electric space heating or water heating as a first step in promoting electrification, but the proposed reach code goes further, requiring full electrification.

The model ordinance would exempt the following:

- Portable outdoor appliances (propane) for cooking and heating,
- Food service establishments (restaurants and commercial kitchens),
- New accessory dwelling units that are attached or within existing mixed-fuel residences,
- Emergency back-up generators for essential services buildings and multifamily buildings, and
- Projects that have previously received entitlements.

The draft ordinance also allows the Building Official to grant exceptions for:

- Affordable housing projects (100% affordable units) if costs of compliance are disproportionate to the overall project costs and decreases the level of affordability,
- Applicants who can demonstrate an equivalent GHG reduction to that of all-electric construction, and
- Applicants who can demonstrate that the building is unable to meet the Energy Code performance compliance standard using available technology.

Exemptions granted by the Building Official are required to pre-wire locations of gas appliances for future conversion to electric.

All-electric requirements have been adopted by Marin County, San Anselmo, Fairfax, San Rafael, Corte Madera, Petaluma and approximately 60 other California agencies. The Town of Tiburon is reviewing the draft ordinance and will bring it to their Town Council in April, and the City of Novato has not adopted a Reach Code.

Enhanced EV infrastructure requirements

The proposed reach code has differing requirements by type of construction:

Single-family and duplex

New construction: Compliance with CALGreen Tier 1 requirements, which include installation of a 208/240v circuit with a receptacle and 40-amp service for future EV charging in a new dwelling unit ("EV Ready"). The base State code only requires installation of conduit and capacity in the electrical service panel for a 40-amp circuit for future installation ("EV Capable").

Remodels: If a remodel/addition project proposes to upgrade the electrical service panel, a new 208/240v 40-amp circuit with a receptacle is required for future EV charging.

Multifamily

New construction: 15% of resident spaces with installed Level 2 chargers, 85% of resident spaces EV Ready (an installed circuit for 20-amp Low Power Level 2 receptacle).

Remodels: If a remodel/addition proposes to upgrade the electrical service panel, 20% of spaces require a new 208/240v circuit with receptacles and 40-amp service. If a parking lot is modified by removing paving and curbing, conduit must be run to at least 50% of the modified spaces OR conduit run to 20% of modified spaces and at least 5% must have installed Level 2 or 3 chargers.

Hotels and motels

Although the Town's current municipal code does not permit hotels and motels, this would be included in the amendment should the Town's municipal code change to allow for hotels or motels.

New construction: 10% of spaces with installed Level 2 chargers, 35% of spaces EV Ready (an installed circuit for 20-amp Low Power Level 2 receptacle) and 10% EV Capable.

Remodels: Same as multi-family when an upgrade to electrical service panel or parking lot occurs.

Non-residential

New construction: Compliance with CALGreen Tier 1 requirements, which include installation of Level 2 chargers on between 0 and 33% of total spaces (on a sliding scale based on number of spaces) and provide EV Capable conduit and panel capacity for between 0 and 55% of total spaces. For example, a new building with up to 25 parking spaces would have to provide 5 EV Capable spaces and no installed chargers. A building with up to 50 spaces would have to provide 11 EV Capable spaces and 2 spaces with Level 2 chargers.

Remodels: Same as multi-family when an upgrade to electrical service panel or parking lot occurs.

Enhanced energy requirements for additions/alterations of single-family residences

To address incremental electrification of the existing building stock in Marin, which far exceeds anticipated construction of new units, the model reach code requires that additions and alterations to conditioned space in single-family homes *which exceed 750 square feet* comply with a points-based system from a listing of allowable energy efficiency and electrification options. The optional efficiency measures include improvements such as lighting upgrades,

replacement of gas appliances with electric heat pump units, increasing insulation, air sealing, duct sealing and window replacement. Under the proposed point system, replacement of a gas water heater or gas space heater with an electric heat pump unit would easily exceed the point requirements for any remodel.

This requirement has been adopted by Marin County and Fairfax. San Rafael and Corte Madera City Councils have committed to reexamine the remodel amendments in 2023. Tiburon Town Council received a report on the Reach Code in January and directed staff to return with the code amendments.

Two: Gate Code Amendment

The Town of Ross adopted the State Building Code at the November 10, 2022, Town Council meeting. Subsequent to the adoption of the Building Code amendments, staff recognized that there are gate code regulations that were not included in the recent building code adoption that relate to gate safety. Staff learned that there is a gap in the uniform building code concerning rolling manual gates which can fall over and injure or kill if they lack a simple and inexpensive safeguard that staff recommends including in the Town of Ross building code.

Town staff is recommending that the Town Council provide direction to staff to add language in Title 15.05 pertaining to Automatic Vehicular Gates. The addition of the language will provide a safety measure for gates taller than 48 inches. The language of the code would read:

All Gates.

Any gate more than 48 inches (1219 mm) in width or more than 84 inches (2134 mm) in height shall meet the requirements of ASTM F1184, shall be installed per the manufacturer's recommendations, and shall be designed, constructed, and installed to meet all of the following:

1. Gate shall not fall over more than 45 degrees from a vertical plane when the gate is detached from supporting hardware.
2. Gate shall be balanced and not move under the gate's own weight or by gravity.
3. Rolling wheels shall be covered.
4. Gate shall have positive stops.

Three: Model Reusable Foodware Ordinance

The County of Marin's Sustainability Team provided the following summary of the proposed Model Reusable Foodware Ordinance:

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 model 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, to-go 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. The County shall maintain a list, updated annually, with foodware and/or foodware accessories deemed not available commercially.

Enforcement of the ordinance is scheduled begin on November 10, 2023, for the unincorporated areas of Marin County and jurisdictions that have adopted the County’s model ordinance prior to May 10, 2023, to give businesses time to adjust and deplete existing stock. Cities and Towns that adopt the County’s model ordinance can authorize the County’s Environmental Health Services to enforce the ordinance on behalf of the City or Town. Enforcement will progress on the regular inspection schedule of all covered food vendors in the City or Town incorporated areas. Enforcement would include written notice of noncompliance and a reasonable opportunity to correct, prior to issuance of any penalty.

Additional information about the Reusable Foodware Ordinance, including Information for Food Facilities, Frequently Asked Questions can be found on the County's Reusable Foodware Ordinance webpage: <https://www.marincounty.org/depts/cd/divisions/environmental-health-services/reusablefoodware-ordinance>

OPTIONS

As noted above, the Town Council has the authority to adopt local amendments to the California Building Standards Code to respond to local conditions and priorities. Any amendment to the Energy Code (Title 24 Part 6) requires subsequent approval by the California Energy Commission including submission of a cost-effectiveness study demonstrating that the increased costs of the required energy reduction measures is more than offset by cost savings over the life of the appliance or fixture. The County has already prepared such a study for all climate zones in Marin County for use by any jurisdiction therefore the Town of Ross would not have to prepare a cost effectiveness study.

Should the Town Council wish to consider adoption of some or all of the model reach codes, or some revised version thereof, the following options might be considered:

1. Direct staff to prepare draft code amendments for Town Council consideration that would preclude installation of gas infrastructure in newly constructed buildings with exemptions along the lines of those discussed above. Also include the enhanced EV charging requirements for newly constructed buildings.

Rationale:

- These amendments would be consistent with the programs identified in the adopted Climate Action Plan.
- The amendments would affect relatively few projects and have minimal impact on Town staffing since newly constructed buildings are relatively rare in Ross.
- The Town Council could prescribe holding a public workshop on the electrification reach codes for community education and feedback.

2. Direct staff to participate with other interested Marin jurisdictions in analyzing and possibly refining a proposed reach code addressing electrification requirements for larger remodels of single-family homes.

Rationale:

- These amendments would also be consistent with the programs identified in the adopted Climate Action Plan and would constitute an even greater portion of the Town's GHG reduction goal since so many more homes are remodeled than new buildings constructed in Ross.
- These amendments affect more homeowners and contractors and probably warrant more public discussion.

- Other Marin jurisdictions appear ready to further engage on considering the remodel regulations and also coordinating resources for residents and contractors summarizing permit requirements and rebate options.

3. Choose to take no action to further amend the 2022 California Building Standards Code and direct staff to monitor the experiences of local jurisdictions that adopt remodel standards and future updates for the 2025 state code.

Should the Town Council wish to consider adoption of the Automatic Vehicular Gate code the following options might be considered:

1. Direct Staff to return with the language stated above added to Title 15 of the Municipal Code.
2. Choose to take no action on amending Title 15.

Should the Town Council wish to consider adoption of the Marin County Model Reusable Foodware Ordinance the following options might be considered:

1. Direct Staff to return with the Marin County Model Reusable Foodware Ordinance as written or with modifications.
2. Direct Staff to take no action on the Marin County Model Reusable Foodware Ordinance.

Fiscal Impact

The Town would incur legal costs associated with the review of draft amendments and staff resources to prepare the amendments and handle any follow up action as directed by the Town Council such as public education.

ENVIRONMENTAL REVIEW

Amendment of the building code is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15378 of the CEQA Guidelines in that it does not constitute a project under CEQA, and if it were found to constitute a project, it would be exempt pursuant to the general rule set forth in CEQA Guidelines Section 15061 (b)(3).

Attachments

1. August 11, 2022 Staff Report regarding Town Council Response to Grand Jury Report and Matrix of Local Jurisdictions Reach Code Status
2. Draft Reusable Foodware Ordinance as provided by the County of Marin

ATTACHMENT 1



Agenda Item No. 10e.

Staff Report

Date: August 11, 2022

To: Mayor Kuhl and Council Members

From: Christa Johnson, Town Manager
Eric Robbe, Senior Building Inspector

Subject: Approve Responses to the Marin County Civil Grand Jury Report entitled *Electrifying Marin's Buildings: A Countywide Approach*.

Recommendation

It is recommended that the Town Council approve the Town of Ross response to the Marin County Civil Grand Jury Report entitled *Electrifying Marin's Buildings: A Countywide Approach*.

Background

On June 6, 2022 the Marin County Civil Grand Jury issued a report entitled *Electrifying Marin's Buildings: A Countywide Approach* which lays out findings and recommendations for local jurisdictions to reduce greenhouse gas emissions in the building sector (Attachment 2) through the Green Building "reach code" process.

The Town of Ross is required to respond to all Grand Jury reports. Penal Code section 933 states, in part, the following:

No later than 90 days after the Grand Jury submits a report regarding the operations of any public agency, the governing body of the public agency shall comment to the presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body.

To comply with this statute, the Town's response to the Grand Jury report must be approved by the Town Council and submitted to Judge James Chou of the Marin County Superior Court and the Foreperson of the Grand Jury by September 6, 2022. The following analysis will explain the draft response and rationale.

Discussion

Title 24, Part 11 of the California Code of Regulations, commonly known as CALGreen, was the first-in-the-nation mandatory green building standards code. It was developed by the California Building Standards Commission (CBSC) and is updated every three years. Local jurisdictions are required to adopt the new regulations during each three-year code cycle. CBSC developed these green building standards in an effort to meet the goals of California's landmark initiative Assembly Bill 32, which established a comprehensive program of strategies to reduce greenhouse gases (GHG). Jurisdictions may also opt to enact stricter local "reach codes" to achieve deeper GHG reductions for the local building stock. The CBSC just released the new 2022 CALGreen regulations in July and the Town will need to adopt them as well as any potential reach codes by November in order to take effect January 1, 2023. The Grand Jury's report addresses potential reach codes and makes recommendations about them in their report.

In their report, the Grand Jury investigated what Marin County Local jurisdictions are currently doing to address GHG emissions from the building sector, which comprises the second-largest source of emissions in local GHG inventories. The Findings and Recommendations can be found on page 18 of the Report. The Town has been asked to respond to Findings F1 -F6. In general, Town staff agrees with the findings in the report and therefore indicates agreement in the attached draft response.

The Town has also been asked to respond to Recommendation R1 -R3. The draft response states that further analysis is required for each recommendation in the report. As mentioned above, Town staff is currently collaborating with the County and other jurisdictions to analyze and develop potential reach codes. Additionally, Town staff has been meeting with building officials throughout the County to find synergies across jurisdictions. This includes consideration of all-electric requirements for new construction (recommendation R1) and additional energy efficiency requirements for remodels (recommendation R2). These reach codes are also under consideration by many other jurisdictions throughout California. Final reach code recommendations have not been developed yet and will require more analysis as well as considerable public engagement prior to finalizing recommendations to be brought to Council for deliberation this fall. Town staff believes further analysis is also required for recommendation R3 to determine if a Countywide Building Electrification Plan led by the County and the Marin Climate and Energy Partnership (MCEP) would be the most effective means of ensuring building decarbonization and if all jurisdictions will participate.

The Town's detailed draft response can be found in Attachment 1. Staff recommends that the Town Council approve the attached response to the Grand Jury Report.

Fiscal impacts

There is no fiscal impact associated with this action.

Alternative Actions

The Town Council may revise the draft response to the Grand Jury report.

Attachments

1. Draft Town of Ross Response to Marin County Civil Grand Jury Report
2. Marin County Civil Grand Jury Report: *Electrifying Marin's Buildings: A Countywide Approach*.
3. Correspondence from Marin Conservation League dated July 20, 2022.

Jurisdiction	New Construction	Single-Family Renovations (Additions and Alterations)		CALGreen (Title 24, Part 11)	
	All-Electric	Additional Energy Efficiency Requirements	Qualified Project	EV Infrastructure Measures	Non-Energy Measures
Unincorporated Marin County	All-Electric (no add'n energy efficiency req's)	Flexible Compliance Pathway	Single-Family, >750 Sq.ft.	Tier 1+	Tier 1
Fairfax	All-Electric (no add'n energy efficiency req's)	Flexible Compliance Pathway	Single-Family, >200 Sq.ft.	Tier 1+	Tier 1
Corte Madera	All-Electric (no add'n energy efficiency req's)	None	None	Tier 1+	Tier 1
San Rafael	All-Electric (no nat gas expansion) (no add'n energy efficiency req's)	None	None	Tier 1+	State Minimum
San Anselmo	All-Electric (single-family only) (no add'n energy efficiency req's)	None	None	Tier 1	Tier 1
Mill Valley	None	None	None	TBD	TBD
Tiburon	None	None	None	TBD	TBD
Novato	None	None	None	TBD	TBD
Sausalito	None	None	None	None	None
Belvedere	None	None	None	None	None
Ross	None	None	None	None	None
Larkspur	None	None	None	None	None

ATTACHMENT 2

ORDINANCE NO. 2022-
ORDINANCE OF THE [JURISDICTION CITY/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 [CITY/TOWN OF XXXXX] 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 [CITY/TOWN]'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, [CITY/TOWN] 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 City Council of the [CITY/TOWN OF XXXXX] ordains as follows:

SECTION II. Chapter [XXXX] of the [JURISDICTION CITY/TOWN] Code is amended as follows:

Chapter [XXXX] – Reusable Foodware Ordinance

[XXXX].010 - 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 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 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 CITY/TOWN'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 or the region. These products are considered non-compliant.
- (g) *“CITY/TOWN”* means the CITY/TOWN OF XXXXX.
- (h) *“CITY/TOWN Facility”* means any building or structure owned, leased, or operated by the CITY/TOWN OF XXXXX.
- (i) *“Customer”* means any person obtaining Prepared Food from a Food Vendor.
- (j) *“Director”* means the 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 DATE, 202[AD1]3.
- (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# vendors as described in the California Retail Food Code section 113789, or its successor, including. This includes but ~~is~~ not limited to a: restaurant, bar, grocery store, delicatessen, bakery, food service establishment (carry out, quick service, full-service), ~~public and private schools,~~ food truck, itinerant restaurants, pushcart, farmers market, caterer, microenterprise home kitchen operations, or cottage food operations, that sell Prepared Food to be consumed on and/or off the premises located or operating within the **CITY/TOWN**, 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.

XXXX.020 - Dine-in Foodware regulations.

Food Vendors within the incorporated areas of **CITY/TOWN**:

- (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 **XXXX.030** (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^[AD2]**, before enforcement of this regulation begins.

XXXX.030 - 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, paper, or comply with **Chapter 5.46^[AD3]** (regulations for single-use carry-out bags).
- (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.

XXXX.040 - **CITY/TOWN purchasing, facilities, and **CITY/TOWN** sponsored events.**

The following regulations apply to **CITY/TOWN** purchases, facilities, and **CITY/TOWN** -sponsored events:

- (a) All **CITY/TOWN** facilities that involve food service shall use Reusable Foodware and Compliant Foodware Accessories.

- (b) **CITY/TOWN** -managed concessions, **CITY/TOWN** -sponsored events, and **CITY/TOWN** -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 **CITY/TOWN** department shall purchase or acquire Non-Reusable plastic foodware for use at any **CITY/TOWN** facility. Organizations or individuals using **CITY/TOWN** facilities shall use Reusable or Compliant Foodware and Compliant Foodware Accessories.
- (d) The **CITY/TOWN** 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 **CITY/TOWN** government center facilities, and **CITY/TOWN** 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 **CITY/TOWN** 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 **CITY/TOWN** facilities that are sponsored or co-sponsored by the **CITY/TOWN** 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 **CITY/TOWN**, shall specifically prohibit the usage and distribution of EPS/Polystyrene Foam and Non-Reusable plastic foodware.

XXXX.050 - 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.

XXXX.060 - 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.

XXXX.070 - 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 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 City Council, or designee, may exempt Food Vendors, persons operating CITY/TOWN facilities and agents, contractors, and vendors doing business with the CITY/TOWN, from the provisions of this chapter.

XXXX.080 - Enforcement.

- (a) Compliance with this ordinance is required as of the Effective Date.
- (b) Enforcement of this chapter shall be pursuant to CITY/TOWN Code sections XX.XX.030 through XX.XX.070, 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 CITY/TOWN council that the public interest, health, safety, and welfare of the residents of the city require that the Marin County Environmental Health Services Division be designated as the enforcement agency of and within CITY/TOWN 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 CITY/TOWN, 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 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.

XXXX.090 - Violations

On behalf of the CITY/TOWN, the County 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. 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 7.25.090(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 **CITY/TOWN**. The **CITY/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 **CITY/TOWN**.

SECTION V: EFFECTIVE DATE AND PUBLICATION

This Ordinance shall take **effect** thirty days^[AD4] after its passage and shall be published at least once in a newspaper of general circulation, printed and published in the County of Marin.

The foregoing ordinance was introduced before the Council of the **CITY/TOWN** of **XXXX** on **DATE, 2023** and passed by the following vote:

SECTION V: VOTE

PASSED AND ADOPTED at a regular meeting of the **CITY/TOWN** of **XXXX** held on this **XX day** of **XX 2023**, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

XXXXXX, CITY/TOWN COUNCIL

CLERK