

ORDINANCE NO. 2020-02

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA
ADDING SECTION 28 TO TITLE 5: BANNING THE USE OF CERTAIN
PLASTICS AND ESTABLISHING A SUSTAINABLE FOOD
SERVICE WARE AND RETAIL BAGS ORDINANCE**

WHEREAS, each year, millions of plastic products produced for a single use that becomes waste that never decomposes when placed in the landfill; and

WHEREAS, on average, 8-million tons of this single-use plastic waste becomes litter, and much of it is discharged into the oceans of the world; and

WHEREAS, reduction and eventual elimination of single use plastic products that include but are not limited to Styrofoam, food bags, to-go containers and food service ware will improve health and safety by eliminating disposable wares that do not decompose, cause pollution and are harmful to humans and marine life; and

WHEREAS, it is in the best interest of the City, the environment, and visitors to the City, to encourage sustainable food service ware, and to the highest extent possible, eliminate the distribution of all single use plastics and single use plastic bags; and

WHEREAS, the City is showing leadership to reduce litter and prevent plastics from entering the stormwater discharge system that flow to our creeks and rivers and eventually drains to the ocean.

NOW, THEREFORE, by adopting this Ordinance, the City establishes a sustainable food service ware and retail bags policy that commits it to ban single use plastics and single use carry-out bags.

SECTION 1. Adds Ordinance number 2020-01, pertaining to Municipal Code Title 5, Section 5-28 as follows:

Sec. 5-28.1. Definitions

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

- (A) “Affordable alternative” means a compostable or recyclable product that costs up to 20 percent more than the purchase cost of the noncompostable or nonrecyclable alternative(s).
- (B) “Biodegradable Products Institute” or “BPI” is a North America’s leading certifier of compostable products and packaging. Products bearing this certification have been scientifically verified by a third-party testing to biodegrade when diverted for the recovery of compostable materials.
- (C) “Compostable” means all the materials in the product or package will break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch) in a safe

and timely manner. Compostable disposable food service ware must meet BPI Certified Compostable standards for composability and any compostable product containing a bioplastic or plastic-like material must be clearly labeled as compostable in accordance with California Public Resources Code Section 42357 et seq. and all State and Federal labeling laws pertaining to the identification of compostable products.

- (D) “Dine-in services” means prepared food provided to a customer for consumption on the provider’s premises.
- (E) “Dine-out services” means prepared food provided to a customer for consumption not on the provider’s premises.
- (F) “Disposable” means designed or intended for a single use or few uses, or not intended for reuse, recycling or composting.
- (G) “Food provider” means any vendor located or providing food within the City which provides prepared food on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, supermarket, delicatessen, food/catering truck or vehicle, including vendors located outside of the City when delivering prepared food into the City.
- (H) “Food service ware” means products used in the restaurant and food service industry for consuming, packaging, serving, and transporting ready-to-consume food and beverages, including, but not limited to, utensils, straws, beverage stirrers, plates, bowls, cups, cup lids, trays, boxes, clamshells, packaging, and containers.
- (I) “Plastic” means a material derived from a petroleum-based polymer. It does not include BPI certified products that are made from vegetable-based polymers and are compostable, such as corn or other plant sources.
- (J) “Polystyrene foam” (aka “Styrofoam”) means and includes expanded polystyrene that is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). To include but not limited to polystyrene foam plate, bleached paperboard plate with low density polyethylene coating and bleached paperboard plate with polystyrene coating.
- (K) “Prepared food” means food or beverage prepared for consumption using any cooking or food preparation technique. This does not include any raw uncooked meat, poultry, fish or eggs unless provided for consumption without further food preparation.
- (L) “Retail Establishment” or “Retail Store” means all sales outlets, stores, shops, vehicles, non-profits, resale businesses or other places of business located within the City that operate primarily to sell or convey goods directly to the ultimate consumer.
- (M) “Recyclable” means any material that is accepted by a local waste collector under franchise with the City to provide a recycling program, including, but not limited to, paper, glass, aluminum, cardboard, plastics labeled as #1 through #5 (including but not limited to plastic bottles, jars and tubs).
- (N) A “Recycled paper bag” is defined as a bag that contains no old growth fiber and a minimum of 40 percent post-consumer recycled content, is 100 percent recyclable, and has printed in a highly visible manner on the outside of the bag the words “reusable” and

“recyclable,” the name and location of the manufacturer, and the percentage of post-consumer recycled content.

- (O) “Reusable” means designed or intended for more than a single use or few uses, or intended for reuse, in contrast to “disposable.”
- (P) A “Reusable bag” is defined as a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.
- (Q) A “Single-use carryout bag” is defined as a bag, other than a Reusable Bag or Recycled Bag, provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single-Use Carryout Bags do not include bags, a maximum of 11 inches by 17 inches, without handles provided to the customer (1) to transport produce, bulk food or meat from a product, bulk food or meat department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a bag.
- (R) “Special Event Organizer” means a person, non-profit (a charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code of 1986), or business that endeavors to organize a special event in the City limits that may involve Retail Establishments and food and beverage services.
- (S) “Special event Participant” means a person providing prepared food at any special event, regardless of size, sponsored by any person, commercial or nonprofit organization as defined in “R” above, or individual, which is held within the City, regardless of whether the prepared food is prepared within or outside of the City limits.
- (T) “Straw” means a tube through which beverages, slurries, smoothies, and similar ingestible products may be ingested by the consumer.

5-28.2 Prohibited Disposable Food Service Ware.

(A) All persons within, at, or upon any City facility are prohibited from:

- (1) Distributing Prepared food using Polystyrene foam (aka Styrofoam);
- (2) Distributing Plastic Straws (except when a consumer specifically requests a Plastic Straw, whereupon the Retail Establishment shall provide a Plastic Straw to the consumer); and
- (3) Distributing Disposable Food service ware that is not Recyclable or Compostable unless there is no Affordable alternative.

(B) Food providers, Special Event Participants and Special Event Organizers operating within City limits are prohibited from:

- (1) Using or distributing Polystyrene foam (AKA Styrofoam) for prepared food or in any Food service ware;
- (2) Using or distributing Plastic Straws, except when a consumer specifically requests a Plastic Straw, whereupon the Food provider or Special event participant shall provide a plastic straw to the consumer; and

(3) Using or distributing any Disposable Food service ware when providing Dine-in services, unless the consumer requests a Straw, whereupon a food provider shall distribute a Straw that is Compostable such as one made from paper, sugar cane, pasta, or bamboo, though not a Plastic Straw, except when a consumer specifically requests a Plastic Straw, whereupon the Food provider or Special event participant shall provide a Plastic Straw to the consumer.

(4) When providing Dine-out services, using or distributing Disposable Food service ware that is not Compostable or Recyclable, unless:

(a) A consumer requests a Plastic Straw, whereupon the Food provider or Special event participant shall provide a Plastic Straw to the consumer.

(b) There is no Affordable alternative to Disposable Food service ware that is not Compostable or Recyclable, whereupon the Food service provider may use or provide Disposable Food service ware that is not Compostable or Recyclable, though this exception shall not permit the use or distribution use of a Plastic Straw.

5-28.3 Encouraged Use of Reusable and Compostable, or Recyclable Food Service Ware.

(A) All persons, including Retail Establishments including but not limited to supermarkets and vendors, are encouraged to eliminate the use of Polystyrene foam (AKA Styrofoam) for packaging of food and other items that are not Prepared food.

(B) All persons are encouraged to use and distribute reusable, rather than Disposable, Food service ware, even when not required to do so. When it is necessary to use or distribute disposable food service ware, all persons are encouraged to use and distribute Disposable Food service ware that is Compostable or Recyclable, even when not required to do so.

5- 28.4 Retail Bag Regulations.

(A) No Single Use Plastic Bag Distribution No Retail Establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer shall provide a Single-use carryout bag to a customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Section. A Reusable Bag or a Recycled Paper Bag may upon request be provided to the customer, pursuant to this Section.

(1) Food providers which receives 90 percent or more of its revenue from the sale of food which is prepared on the premises, to be eaten on or off its premises, are not considered Retail Establishments for the purpose of this Section.

(2) Nonprofit charitable re-users, which is a charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that re-uses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials, are not considered retail establishments for the purpose of this Article.

(B) Charge for retail bags: a Retail Establishment may make available for sale to a customer a Recycled paper bag for a minimum charge of \$0.25. A retail establishment may also make available to the customer a Reusable bag.

(1) Notwithstanding this Section, when a Recycled paper bag is distributed to the customer, the amount of the sale of the Recycled paper bag shall be separately itemized on the sales receipt.

(2) A retail establishment may provide a customer participating in the California Special Supplement Food Program, for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code; and a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, with one or more Recycled paper bags at no cost or Reusable bags.

5-28.5. Application for Exemption Caused by Undue Hardship.

(A) A person or business as defined above in Sections 5-28.1 (D), (E), (G), (L), (R) and (S), seeking an exemption must apply in writing for consideration of this exemption from the requirements set forth in Section 5-28 if said application is submitted within one year of the date this Ordinance is adopted. The application must include all information necessary for the City Manager to make a determination, including but not limited to a statement of the supporting facts made under penalty of perjury and documentation showing factual support for the exemption. The City Manager may require the applicant to provide additional information and may deny the application if the applicant fails to provide it.

(b) The City Manager may, within his or her discretion, approve an application for exemption from the requirements set forth in Section 5-28 for a one-year period only upon a finding and determination that application of Section 5-28 would create an undue hardship upon the applicant. The City Manager may, within his or her discretion, deny the application in whole, approve the application in whole, or approve the application in part and/or with conditions. The City Manager's decision shall be final.

SECTION 2. If any section, subdivision, sentence, clause, portion, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Council hereby declares that it would have passed this chapter and each section, subdivision, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subdivisions, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

SECTION 3. The City Council hereby finds that enactment of this Ordinance establishing a sustainable food service ware and retail bags policy that commits it to a ban of single use plastics and single use carry-out bags prohibiting single use plastics and disposable food ware, is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15061(b)(3) [project is exempt when it can be determined with certainty that there is no potential for causing a significant effect on the environment] and Sections 15307 and 15308 [actions taken by a regulatory agency to assure the maintenance, restoration, enhancement,

or protection of the environment where regulatory process involves procedures for the protection of the environment.].

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect thirty days after the date of its signing.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of San Juan Bautista duly held on February 18, 2020, and was passed and adopted at a regular meeting duly held on March 17, 2020 by the following vote.

AYES: Edge, Freeman, Flores, DeVries, Jordan

NOES: None

ABSENT: None

ABSTAIN: None



Mayor Mary V. Edge

ATTEST:



City Clerk Laura Cent