

## ORDINANCENO. 5406

### AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING CHAPTER 10.44 TO THE MONTEREY COUNTY CODE TO SET RESTRICTIONS ON THE USE OF SINGLE-USE PLASTICS

#### County Counsel Summary

*This ordinance adds Chapter 10.44 to the Monterey County Code to encourage the use of reusable or compostable products by food providers and consumers, and to reduce the consumption of single-use plastics in general to reduce litter, protect the natural resources, and protect the public health, safety, and welfare of the citizens of Monterey County. The ordinance restricts food providers located and/or providing prepared food in the unincorporated area of Monterey County from providing single-use plastic food accessories and standard condiments packaged for single-use with certain exemptions. The ordinance also contains provisions for enforcement of the regulations.*

The Board of Supervisors of the County of Monterey ordains as follows:

#### **SECTION 1.** Findings and Declarations.

A. Pursuant to Article XI, Section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations to protect the natural resources of the County and promote the public health, safety, and welfare of its citizens.

B. The purpose of this Chapter is to encourage the use of reusable or compostable products by food providers and consumers, and to reduce the consumption of single-use plastics in general to reduce litter, protect natural resources, and protect the public health, safety, and welfare of the citizens of Monterey County.

C. The Integrated Waste Management Act of 1989 (Public Resources Code section 41750 *et seq.*) requires the County to divert its solid waste from landfills through source reduction, recycling, and composting activities. The State of California may levy fines if compliance with this statute is not met.

D. This Chapter is consistent with the Source Reduction and Recycling Element (SRRE) of the Countywide Integrated Waste Management Plan (1995) for Monterey County as adopted under the Integrated Waste Management Act of 1989. The SRRE identifies regulatory program options, including product bans, based upon “excessive packaging, non-recyclability, litter potential, etc.”

E. The County Board Policy (Board Policy G-237), “Waste Reduction Policy for County Facilities and Operations”, notes that “The County seeks to reduce solid waste, to minimize unneeded materials being disposed of in landfills and to maximize the highest use of products and materials that are no longer needed.” In addition, the County shall conduct

“zero waste” events and comply with the Climate Friendly Purchasing Policy (Board Policy A-20).

F. Single use plastics, such as disposable food service ware, used for take-out/carry-out, and used by food providers are not compostable recyclable and contribute to landfill disposal.

G. According to the Plastic Debris, Rivers to Sea Project implemented by the California State Water Resources Control Board, the California Coastal Commission, and the Algalita Marine Research Foundation, 60% to 80% of all marine debris and 90% of floating debris is plastic material which includes polystyrene foam. [Gregory, M.R., Ryan, P.G. 1997].

H. Plastic waste is polluting the marine environment. 80% of marine litter comes from land-based sources, and according to the 2011 Clean Water Action Study, and 67% of litter in commercial streets is comprised of single use disposable food and beverage packaging.

I. The collection of plastic litter and the disposal of plastic waste results in direct costs to the County in the form of personnel time, equipment usage, and disposal fees.

J. As of September 15, 2023, there were approximately 600 permitted food providers located or operating in unincorporated area of Monterey County. Approximately 332 permitted food facilities, 129 mobile food vendors are in operation, and 139 temporary food vendors are in the unincorporated area of the County.

K. Monterey County is home to unique environmental resources, including the Monterey Bay National Marine Sanctuary and Elkhorn Slough National Estuarine Research Reserve. Plastics that enter these and other coastal habitats of Monterey County can cause ingestion or entanglement, adversely affecting sensitive species that inhabit these coastal and marine environments, including leatherback sea turtles, seals, fish, sea otters, and bird species.

L. Reducing the amount of single-use plastic in unincorporated Monterey County would result in an incremental reduction in the amount of litter that enters the storm drain system and local waterways, thereby improving water quality and natural resources within Monterey County and surrounding areas outside of Monterey County's jurisdictional boundaries.

M. Affordably priced non-plastic products are available to food providers to comply with the regulations of this Chapter.

N. By limiting the use of plastics and promoting compostable materials and reusable products, the County positions itself to meet statewide requirements.

O. This ordinance is entitled to a categorical exemption of the California Environmental Quality Act (“CEQA”) pursuant to 14 California Code of Regulations Section 15307, which exempts “actions taken by regulatory agencies, as authorized by State

or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection.” This ordinance will reduce litter of single-use plastics found in the ocean, marine sanctuary and reserve, beaches, parks, roadways, and other areas of the County, and protect natural resources, wildlife, and residents and visitors of Monterey County.

**SECTION 2.** Chapter 10.44 is added to the Monterey County Code to read as follows:

## **CHAPTER 10.44**

### **RESTRICTIONS ON THE USE OF SINGLE-USE PLASTICS**

#### **Sections:**

<b>10.44.010</b>	<b>Purpose</b>
<b>10.44.020</b>	<b>Applicability</b>
<b>10.44.030</b>	<b>Definitions</b>
<b>10.44.040</b>	<b>Regulations</b>
<b>10.44.050</b>	<b>Exemptions</b>
<b>10.44.060</b>	<b>Record Keeping and Inspection</b>
<b>10.44.070</b>	<b>Enforcement</b>

#### **10.44.010 Purpose.**

The purpose of this Chapter is to encourage the use of reusable or compostable products by food providers and consumers, and to reduce the consumption of single-use plastics in general to reduce litter, protect the natural resources, and protect the public health, safety, and welfare of the citizens of Monterey County.

#### **10.44.020 Applicability.**

This Chapter shall apply in the unincorporated area of the County of Monterey.

#### **10.44.030 Definitions.**

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

A. “ASTM standard” means meeting the standards of the American Society for Testing and Materials International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.

B. “Care provider” means any entity that provides care to people or animals; this includes dentist offices, medical care providers, veterinary care providers and day care facilities, including child and elder care.

C. “Chapter” means Chapter 10.44 of the Monterey County Code.

D. “Compostable” means all the materials in the product or package will break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware must meet ASTM standards for compostability and any compostable product containing a bioplastic or plastic-like material must be clearly labeled as compostable in accordance with Public Resources Code section 42357, *et seq.*, and all state and federal labeling laws pertaining to the identification of compostable products.

E. “Consumer” has the same meaning as in Section 113757 of the Health and Safety Code.

F. “County” means the County of Monterey.

G. “Director” or “Director of Health” means the Director of the Monterey County Health Department or his/her designee.

H. “Effective date” means the operative date of this Chapter.

I. “Food provider” means any vendor located or providing food within the County unincorporated area which provides prepared food or beverages on or off its premises and includes without limitation any store, shop, sales outlet, restaurant, grocery store, supermarket, delicatessen, special events vendor, food/catering/delivery truck or vehicle, or any other person who provides prepared food; and any organization, group or individual which regularly provides food as part of its services, including care providers and lodging providers; also including vendors located outside of the County when delivering prepared food into the County unincorporated area.

J. “Lodging provider” means any hotel, motel, bed and breakfast inn, short-term rental, or any other establishment that provides overnight lodging.

K. “Person” means any individual, sole proprietorship, firm, association, organization, partnership (whether limited or general), corporation, limited liability corporation, political subdivision, government agency, municipality, industry, public or private corporation, trust, joint venture, regulatory authority, or any other entity.

L. “Plastic” means a material derived from fossil fuel-based petrochemicals.

M. “Prepared food” means any food or beverage prepared at the food, care, or lodging provider's premises, using any cooking or food preparation technique. Prepared food does not include any raw uncooked meat, poultry, fish, or eggs unless provided for consumption without further food preparation.

N. “Reusable” means designed or intended for more than a single use or few uses, or intended for reuse, in contrast to “disposable.”

O. “Single-use” means designed to be used once and then discarded, and not designed for repeated use and sanitizing.

P. “Single-use plastics” means all the following single-use food accessory items provided alongside prepared food:

1. Trays
2. Plates, bowls, cups, cup lids
3. Utensils, which is defined as knives, forks, spoons, sporks, and chopsticks
4. Straws
5. Stirrers
6. Splash Sticks
7. Cocktail sticks
8. To-go containers, clamshells, and all other containers with plastic lining.

Q. “Special event” includes, but is not limited to, activities such as parades, marathons, bicycle events, walkathons, marches, triathlons, festivals, farmer's markets, block parties, civic, and celebration activities. Construction and maintenance activities are not deemed special events.

R. “Standard condiment” means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes.

#### **10.44.040 Regulations.**

A. Food providers shall not provide any single-use plastic food accessories or standard condiments packaged for single use to a consumer unless the single-use plastic food accessory or standard condiment is requested by the consumer or in any of the following circumstances:

1. A food provider may ask a drive-through consumer if the consumer wants a single-use plastic food accessory and/or standard condiment if it is necessary for the consumer to consume prepared food, or to prevent spills of or safely transport prepared food.

2. A food provider that is located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, may ask a walk-through consumer if the consumer wants a single-use plastic food accessory and/or standard condiment if it is necessary for the consumer to consume prepared food, or to prevent spills of or safely transport prepared food.

3. If a food provider uses any third-party delivery platform for prepared food, the food provider shall customize its menu with a list of available single-use plastic food accessories or standard condiments, and only those single-use plastic food accessories or standard condiments selected by the consumer shall be provided by the

food provider. If a consumer does not select any single-use plastic food accessories or standard condiments, no single-use plastic food accessories or standard condiments shall be provided by the food provider for delivery of prepared food.

B. Single-use plastic food accessories and standard condiment packaged for single use provided by food providers for use by consumers shall not be bundled or packaged in a manner that prohibits a consumer from taking only the type of single-use plastic food accessory or single-use standard condiment desired without also having to take a different type of single-use plastic accessory or single-use standard condiment.

C. When standard condiments are part of table service by a food provider they must be provided to consumers in containers over 10 ounces or in reusable packaging.

D. Nothing in this Section shall prohibit a food provider from making unwrapped single-use plastic food accessories available to a consumer using refillable self-service dispensers that dispense one item at a time to allow for single-use plastic food accessories to be obtained.

E. Nothing in this Section shall prohibit a food provider from making standard condiments available to a consumer using refillable self-service dispensers to allow for standard condiments to be obtained. A food provider that offers standard condiments is encouraged to use bulk dispensers for the condiments rather than condiments packaged for single use.

F. Food providers are encouraged, but not required, to provide consumers with reusable and/or compostable food accessory items, and to take actions in addition to the requirements of this Chapter that support a goal of reducing the use of and waste generated by all single-use plastic food accessories.

G. To allow food providers an opportunity to use remaining stocks of single-use plastic food accessories and standard condiment packaged for single use, these entities shall have 180 days from the effective date to comply with the regulations of this Chapter. During the 180-day period, it shall be the policy of the County to encourage voluntary adherence to the requirements of this Chapter. After 180 days from the effective date, food providers shall be subject to and shall comply with the regulations of this Chapter.

#### **10.44.050 Exemptions.**

A. During an emergency requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, persons providing emergency relief are exempt from the provisions of this Chapter until such time as the emergency has ceased or the Director of Health rescinds the exemption.

B. This Chapter does not apply to:

1. Correctional institutions, as defined in Penal Code section 7502(a).

2. Health care facilities licensed pursuant to Health and Safety Code section 1250, *et seq.* or facilities that are owned or operated by a health care service plan licensed pursuant Health and Safety Code section 1340, *et seq.*

3. Residential care facilities licensed pursuant to Health and Safety Code section 1200, *et seq.*

4. Public and private school cafeterias, as referenced in Section 113789(b)(1) of the Health and Safety Code.

#### **10.44.060 Record Keeping And Inspection.**

All food providers shall keep accurate and complete records of the purchase and sale of any single-use plastic food accessories or standard condiment packaged for single use. Such records shall be kept for a minimum period of one year from the date of purchase and sale, and such records shall be available for inspection by the County at no cost to the County during regular business hours. Unless the County and food provider mutually agree upon an alternative location or method of review, the records or documents shall be available at the food provider's address. The provision of false information, including but not limited to incomplete records or documents to the County, shall be a violation of this Chapter.

#### **10.44.070 Enforcement.**

A. The Director of Health shall be primarily responsible for implementation and enforcement of this Chapter. The Director is authorized to establish guidelines and procedures to implement this Chapter and to take such action as may be necessary, including inspection of food providers, to monitor compliance with this Chapter.

B. In the event of a violation of this Chapter or any requirement imposed pursuant to this Chapter, the County may in its discretion, in addition to all other remedies, take such enforcement action as is authorized under the Monterey County Code and any other action authorized by law. A food provider shall be allowed one warning prior to the first citation for a violation of this Chapter.

C. If the County elects to utilize the administrative procedures set forth in Chapter 1.22 of the Monterey County Code to enforce this Chapter, the Director of Health shall serve as the Enforcement Official within the meaning of Chapter 1.22.

D. Nothing in this Chapter shall be interpreted or applied to create any requirement, power, or duty in conflict with any federal or state law.


**SECTION 3. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof,

irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall become effective on the thirty-first day following its adoption.

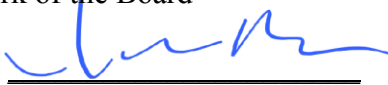
**PASSED AND ADOPTED** on this 10<sup>th</sup> day of October 2023 by the following vote:


AYES Supervisors Alejo, Lopez, Root Askew, and Adams  
NOES None  
ABSENT Supervisor Church  
ASTAIN None

  
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Chair, Luis A. Alejo  
Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH  
Clerk of the Board

By:   
\_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
  
Kelly L. Donlon  
Assistant County Counsel