ORDINANCE NO. 1389-19 (CM)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE REPEALING CHAPTER 6 (ENVIRONMENTALLY ACCEPTABLE PACKAGING AND PRODUCTS) IN ITS ENTIRETY AND ADDING A NEW CHAPTER 6 (SINGLE-USE FOOD SERVICE WARE STANDARDS, ENVIRONMENTALLY ACCEPTABLE PRODUCTS, AND LITTER REDUCTION) OF TITLE 6 (SANITATION AND HEALTH) OF THE WATSONVILLE MUNICIPAL CODE TO PROMOTE A SUSTAINABLE COMMUNITY AND ALIGN WITH GOALS OUTLINED IN THE CITY OF WATSONVILLE CLIMATE ACTION PLAN, THE STATE STORMWATER PROGRAM, AND SUPPORT THE WATSONVILLE GREEN BUSINESS PROGRAM

Repeals Ordinance Number 1300-14 (CM)

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WHEREAS,

The City has a duty to protect its natural environment, its economy, and the health of its citizens; and
It is in the interest of the health, safety, and welfare of all who live, work and do business in the City that the amount of litter in public streets, parks and other public places be reduced; and

As litter, plastics and plastic foam are highly persistent, there is a prevalence of plastics and plastic foam packaging littering City parks and public places, streets and roads, storm drains, wetlands and the Bay; and

Litter creates a financial cost to City residents and an environmental cost through water quality issues, and health impacts to humans and wildlife; and

Over time, plastic fragments become microplastics that both release toxins into our water and soil and enter into our food systems; and

Studies by the US Centers for Disease Control and Prevention, the National Institutes of Health and the National Institute of Environmental Health have found numerous health risks from routine use of plastics; and

People are exposed to chemicals from plastic multiple times per day through the air, dust, water, food and use of consumer products; and

Chemicals present in plastics which leach out into the environment have been shown to affect reproduction and development in animals and studies show direct links between exposure and adverse health outcomes; and

The US Environmental Protection Agency's (EPA) Toxics Release Inventory found that significant releases of toxic chemicals from plastics into the environment include trichloroethane, acetone, methylene chloride, methyl ethyl ketone, styrene, toluene and benzene; and

According to the EPA, plastics make up more than 12 percent of the municipal solid waste stream, a dramatic increase from 1960, when plastics were less than one
percent of the waste stream; and

Only about 8 percent of plastic used in the US is recycled, and

The plastics industry rarely uses recycled plastics in the vast majority of their products; and

Most plastics which are recycled are “downcycled” into lower-grade, single-use products which can no longer be recycled; and

As much as one third of plastics recycled in the US were previously sent to China for processing and the ban on most recycled commodities by China has left the US with 1.4 million tons of plastic each year that is struggling to find an outlet and the amount is expected to increase; and

Many jurisdictions have begun landfiling plastic due to the difficulty of recycling it; and

Discarded plastic products constitute a significant portion of the City’s waste stream; and

Laws, policies, and regulations pertaining to plastic and plastic foam products are a vital component in the City’s efforts to reduce the amount of disposed waste; and

Products that are compostable are the most responsible and sustainable choice for the City’s residents and the environment; and

Compostable food service ware such as cups, plates, clamshell containers, and cutlery are now made from sources such as paper, sugarcane stalk, corn by-products, and potato starch and as these products degrade, they pose less of a danger to the environment and are not a permanent blight on the landscape and have become increasingly available locally; and

Plastic foam products made from expanded plastic foam (commonly called
Styrofoam) are not biodegradable, compostable, returnable, or locally recyclable and alternatives are locally available for plastic foam coolers, food service ware, and packaging materials including peanuts; and

Plastic and plastic foam litter ultimately floats, or is blown, into the local creeks, wetlands, the Pajaro River and the Bay; and

The City is home to rare and unique freshwater wetlands that are directly impacted by stormwater run-off from City streets and these wetlands are home to over two hundred species of resident and migratory birds, mammals, fish and native plants; and

The City is also located adjacent to the Monterey Bay National Marine Sanctuary federal reserve which supports one of the most diverse and delicate ecosystems in the world; and

This sanctuary provides habitat for at least thirty-three mammals, ninety-four species of seabirds, three hundred forty-five species of fish, and contains the largest kelp forest in the nation and plastics in waterways and oceans break down into smaller pieces that are not biodegradable and are present in most of the world's oceans; and

Prohibiting the use of plastic and plastic foam food service ware products, and replacing them with compostable products will protect the Wetlands of Watsonville, Monterey Bay National Marine Sanctuary, City residents and visitors, and will support the City’s goals and mandates for reducing waste and litter for a cleaner environment for generations to come; and

This chapter is consistent with the City’s Climate Action Plan and the State’s CalRecycle recycling and waste disposal regulations.
The City Council of the City of Watsonville, California, does hereby ordain as follows:

Section 1. Enactment.

Title 6 (Sanitation and Health) of the Watsonville Municipal Code is hereby amended by repealing Chapter 6 (Environmentally Acceptable Packaging and Products) in its entirety and adding a new Chapter 6 entitled Single-Use Food Service Ware Standards, Environmentally Acceptable Products, and Litter Reduction to read in words and figures as follows:

Chapter 6
Single-Use Food Service Ware Standards, Environmentally Acceptable Products, and Litter Reduction

Sec. 6-6.100 Definitions.

For the purposes of this chapter, certain words and phrases used are defined as follows:

(a) “ASTM standard” shall mean meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable materials, as those standards may be amended.

(b) “Biodegradable” shall mean the ability of organic matter to break down from a complex to a more simple form through the action of bacteria. Biodegradable and compostable may be used interchangeably for the purpose of this ordinance.

(c) “City contractor” shall mean any person or entity that has a contract with the City for work or improvement to be performed, for a franchise, concession, goods and services, or supplies to be purchased at the expense of the City.

(d) “Compostable” shall mean 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 products shall meet ASTM standards for compostability or any variation of acceptable compostable materials as defined by the City’s Organics (food scraps) processing contract for disposal. Any bioplastic or plastic-like product shall be clearly labeled to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic.

(f) "Dine-In Services" means Prepared Food provided to a customer for consumption on the provider's premises.

(e) "Dine-Out Services" shall mean Prepared Food provided to a customer for consumption not on the provider's premises and is interchangeable with “To-go” and “Take-out”.

(f) “Director” shall mean the Director of Public Works and Utilities or their designee.

(g) “Disposable” shall mean designed or intended for a single use or a few uses, or not intended for reuse, in contrast with Reusable products.

(h) “Food provider” shall mean any vendor, business, organization, entity, group or individual, including retail food establishments, located in the City that offers food or beverage to the public.

(i) “Food Scraps”, also referred to as Organics, shall mean food waste including solid, semisolid, and liquid food, such as fruit, vegetables, cheese, meat, bones, poultry, seafood, bread, rice, pasta, and oils; coffee grounds and filters and tea bags; cut flowers and herbs; and any putrescible matter produced from human or animal food production, preparation, and consumption activities. Food waste includes food-soiled paper.
(j) “Food Service Ware” is interchangeable with “to go” packaging and “food packaging material” and includes: all food containers, clamshells, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, napkins and other items designed for one (1) time use for prepared foods, including, without limitation, service ware for eat-in and take-out foods and/or leftovers from partially consumed meals prepared by food providers.

(k) “Plastic” shall mean any synthetic material made from organic polymers such as polyethylene, PVC, nylon, etc. that can be molded into shape while soft and then set into a rigid or slightly elastic form.

(l) “Plastic foam” shall mean blown, expanded, oriented, or extruded polystyrene (sometimes called Styrofoam™ or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, coolers, ice chests, shipping boxes, packing peanuts and beach and pool toys. The term “polystyrene” includes clear or solid polystyrene which is known as “oriented polystyrene.”

(m) “Plastic foam products” shall mean any items made of plastic foam such as coolers, ice chests, cups, bowls, plates, clamshells, shipping boxes, containers, packaging peanuts, pool or beach toys or any other product containing polystyrene or other plastic foam that is not wholly encapsulated or encased by a more durable material.

(n) “Prepared food” shall mean food or beverages prepared by retail food establishments, which are served, packaged, cooked, chopped, sliced, mixed, brewed,
frozen, squeezed or otherwise prepared within the City. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail establishment.

(o) “Recyclable” refers to any material that is accepted by the City recycling program and is subject to the changes in the recycling industry based on what materials are accepted as recycling under the current standards.

(p) “Retail food establishment” shall mean all sales outlets, stores, shops, vehicles or other places of business located within the City which operate primarily to sell or convey foods or beverages directly to the ultimate consumer, which foods or beverages are predominantly contained, wrapped or held in or on packaging. Retail food establishment shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, short-order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out, prepared food place, industrial feeding establishment, catering kitchen, mobile food preparation unit, commissary, special event, grocery store, public food market, produce stand, food stand, or similar place in which food or drink is prepared for sale, or for service, on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served or provided for the public and any organization, group or individual which provides food as part of its service

(q) “Reusable” shall mean designed or intended for more than a single use or a few uses, and intended for reuse, in contrast to Disposable.
(r) “Single-use” shall mean designed or intended for a single use or few uses, or not intended for reuse. “Single-use” may be used interchangeably with “Disposable”.

(s) “Special events promoter” shall mean an applicant for any special events permit issued by the City or any City employee(s) responsible for any City-organized special event.

(t) “Straw” shall mean a tube through which beverages, slurries, smoothies, and similar ingestible products may be ingested by the consumer.

Sec. 6-6.101 Plastic and plastic foam food service ware products prohibited.

(a) Food providers within the City shall not provide prepared food in or on any product that contains plastic or plastic foam.

(b) Products that contain plastic or plastic foam are prohibited from use in all City facilities.

(c) City contractors, vendors or promoters in the performance of City contracts and special events shall not provide prepared food in products that contain plastic or plastic foam.

Sec. 6-6.102 Prohibited sales of plastic foam products.

No person in the City shall sell, rent or otherwise provide any plastic foam product which is not wholly encapsulated or encased within a more durable material, except as exempted herein. This specifically includes, but is not limited to, cups, plates, bowls, clamshells and other products primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, pool or beach toys, packing peanuts or other packaging materials.

Sec. 6-6.103 Mandatory single-use cup charge.
(a) Any person who sells or provides hot or cold beverages in a single-use (compostable required) cup shall charge an additional ten cents for each cup. Sellers shall not waive or absorb such charges.

(b) Charges for single-use 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 single-use cup charges. All cup charges remain with the seller.

(c) 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, as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the single-use cup charge.

(d) Businesses shall not charge for use of a reusable cup provided by the customer.

(e) The City shall make determination of “Single-Use” or “Reusable” as needed. Such determinations will be final.

(f) This mandatory single use cup charge shall take effect January 1, 2020.

Sec. 6-6.104 Reusable customer cups.

(a) Except as allowed by Health and Safety Code Section 114353 in Chapter 11, of Part 7 of Division 104 [“Temporary Food Facilities’] of the California, customers
shall provide their own Reusable Cups for beverage service in accordance with subdivision (e) of California State Health Code 114075 as amended.

(b) Food Providers may refuse, at their sole discretion, any customer-provided Reusable Cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Cup for a beverage consumed on the premises, or a Disposable Cup that conforms to the compostable disposable cup standards in section 6-6.106, Required Biodegradable or Compostable Food Service Ware, for a beverage to be consumed off the premises, with any charge required pursuant to section 6-6.104, Mandatory Charges for Disposable Cups.

Sec. 6-6.105 Required compostable food service ware.

(a) All Food Providers, City Contractors, and Special Event Promoters within the City are prohibited from using or distributing Disposable Food Service Ware that is not Compostable (as defined by the certified compostable product ASTM standards or any variation of acceptable compostable materials as defined by the City’s food scrap (Organics) collection contract for disposal). This subdivision shall take effect January 1, 2021.

(b) No Food Providers, City Contractors, and Special Event Promoters within the City may provide or distribute plastic straws, except when a consumer, specifically requests a plastic straw, whereupon such Food Provider, City Contractor or Special Event Promoter shall provide a plastic straw to the consumer. Straws (plastic, compostable, or otherwise) shall not be wrapped in plastic. This subdivision shall take effect January 1, 2020.

(c) All City facilities shall use Compostable Food Service Ware.
Sec. 6-6.106 Required separate food service ware waste receptacles.

(a) All Food Providers, City Contractors, and Special Event Promoters within the City that allow self-bussing shall provide three color-coded bins labeled for recyclables, compostables, and other waste to be landfilled. To the extent possible given space constraints, all three receptacles should be placed together in the same location.

(b) The City shall identify materials accepted for each collection program on the City’s website, and signage shall be posted on and/or above each receptacle, indicating the materials to be deposited into such receptacle. Receptacles and signage shall be color coded as follows:

1. Blue for recyclables
2. Green for compostables
3. Black for items to be landfilled or otherwise wasted

(c) Prepared Food Vendors that share premises may share receptacles. This Section shall take effect January 1, 2021.

Sec. 6-6.107 Encouraged and voluntary use of reusable food service ware for dine-in and encouraged charge for to-go food service ware.

(a) All Food Providers are encouraged to use Reusable, rather than Disposable, Food Service Ware for Dine-in services.

(b) All Food Providers, City Contractors, and Special Event Promoters within the City may charge a ten-cent (10¢) fee for “To-go” Food Service Ware and are encouraged to do so.

Sec. 6-6.108 Exemptions for Compostable Food Service Ware and plastic foam products.
(a) The Director may grant up to a one (1) year extension for the implementation of this chapter upon a food provider showing, in writing, that this Chapter imposes an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Director shall put the decision to grant or deny a one (1) year exemption in writing, and the Director’s decision shall be final.

(b) An extension application shall include all information necessary for the Director to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The Director may require the applicant to provide additional information.

(c) The Director may approve the extension application in whole or in part, with or without conditions.

(d) Foods prepared or packaged outside the City and sold inside the City are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City are encouraged to follow the provisions of this Chapter.

(e) Exemptions to allow for the sale or provision of plastic foam products may be granted by the Director, if the vendor can demonstrate in writing the public health and safety requirements of medical necessity of use of the product.

(f) Meat trays are exempt from the provisions of this chapter.

(g) Products made from plastic foam that is fully encapsulated or encased by a more durable material are exempt from this Chapter. Examples include surfboards, boats, life preservers, and craft supplies, which are fully encapsulated, and durable coolers not principally composed of plastic foam.
(h) Construction products made from plastic foam are exempt from this Chapter if used in compliance with building and stormwater regulations and used in a manner that prevents plastic foam from being released into the environment.

(i) Plastic, single use straws are considered exempt only if a person specifically requests a Plastic Straw, whereupon the Food Provider, City Contractor, or Special Event Vendor shall provide a Plastic Straw to the consumer. No straws provided shall be wrapped in plastic.

(j) In a situation deemed by the City Manager to be an emergency for the immediate preservation of public peace, health, and safety, the City and its vendors shall be exempt from the provisions of this Chapter.

SECTION 2. PUBLICATION.

This ordinance shall be published in the Watsonville Register-Pajaronian and/or Santa Cruz Sentinel in compliance with the provisions of the City Charter.

SECTION 3. EFFECTIVE DATE.

This ordinance shall be in force and take effect thirty (30) days after its final adoption.

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The foregoing ordinance was introduced at regular City Council meeting of the City of Watsonville, held on the 25th day of June, 2019, by Member Parker, who moved its adoption, which motion being duly seconded by Member Hernandez, was upon roll call carried and ordered printed and published by the following vote:

AYES: COUNCIL MEMBERS: Coffman-Gomez, Garcia, Gonzalez, Hernandez, Hurst, Parker, Estrada

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

Francisco Estrada, Mayor

City Clerk

APPROVED AS TO FORM:

City Attorney
ORDINANCE NO. 1389-19 (CM)

The foregoing ordinance, having been printed and published as required by the Charter of the City of Watsonville, and coming on for final consideration at the regular meeting of the Council of the City of Watsonville, held on the 9th day of July, 2019, by Member Hurst, who moved its adoption, which motion being duly seconded by Member Hernandez, was upon roll call carried and the ordinance finally adopted by the following vote:

AYES: COUNCIL MEMBERS: Coffman-Gomez, Garcia, Gonzalez, Hernandez, Hurst, Parker, Estrada

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST:

City Clerk

[Signature]

Date 7/12/19

EFFECTIVE DATE: August 8, 2019

CERTIFICATION

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

I, Beatriz Vázquez Flores, City Clerk of the City of Watsonville, in the County of Santa Cruz, State of California, hereby certify that the attached Ordinance No. 1389-19 (CM) is a true and correct copy of the original of said ordinance as it appears upon the official records of said City of Watsonville.

Beatriz Vázquez Flores, City Clerk

[Signature]

Date 7/12/19