

**MEMORANDUM OF UNDERSTANDING BETWEEN
CITY OF SAN MATEO AND COUNTY OF SAN MATEO FOR
DISPOSABLE FOOD SERVICE WARE ORDINANCE
EDUCATION AND ENFORCEMENT ACTIVITIES**

THIS MEMORANDUM OF UNDERSTANDING (MOU), entered into this _____ day of _____, 20__, by and between the County of San Mateo, hereinafter called "the County" and the "City of San Mateo", hereinafter called "the City";

W I T N E S S E T H:

WHEREAS, the County's Board of Supervisors repealed and replaced the existing County ordinance banning polystyrene disposable food service ware by food vendors (Municipal Code Chapter 4.107) with the Disposable Food Service Ware Ordinance (Ordinance) on February 25, 2020; and

WHEREAS, to promote consistency within jurisdictions throughout San Mateo County and leverage economies of scale, the County has offered to lead the education and enforcement efforts for the Ordinance in the incorporated cities of San Mateo County; and

WHEREAS, the City's City Council adopted the Ordinance (Ordinance No. 2021-3) on February 1, 2021 and authorizes the County to provide education and enforcement services within the City's jurisdiction.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Duties of the City

The County will lead education and enforcement efforts for the Ordinance if the City satisfies the following criteria:

- a) Keeps as part of its municipal code either a reference incorporating the Ordinance in its entirety or an ordinance that contains each of the provisions of the Ordinance.
- b) Authorizes the County to enforce the municipal code provisions adopted pursuant to subsection a) above, including authorization to hold hearings, issue citations, and assess administrative fines on behalf of the City.
- c) Remains a party to this MOU.

2. Services to be Performed by the County

- A. The County shall provide education and enforcement services for the City as described in Exhibit A, attached hereto and incorporated by reference herein.

- B. The County shall hire a consultant to provide education services within jurisdictions in San Mateo County that adopt the Ordinance. If appropriate, interested cities will also have the option of entering into contractual agreement with the same consultant for education services specifically relating to provisions that *go beyond* and that fall outside the Ordinance. Please see Section 2.D. for additional information.
- C. The County shall only provide education and enforcement services for the Ordinance within the City's jurisdiction if it has determined that it has adequate resources to do so.
- D. The County shall only offer to provide education and enforcement for services relating directly to the provisions of the Ordinance. If the City adds new provisions that *go beyond* the existing provisions of the Ordinance, the County may, at its discretion, offer to provide education and enforcement services, pending further assessment by the County. The assessment will involve evaluating the alignment of the objectives of the City's "add-on" provisions with those of the Ordinance and the level of effort and resources required for education and enforcement services.

As an alternative, if the County elects not to offer education and enforcement services for the "add-on" provisions, the City can administer, implement, and fund its own education and enforcement services specifically for the "add-on" provisions. Specific to education services, if City policy allows and the City chooses to do so, the City can enter into a separate contractual agreement with the same consultant that will be providing education services for the Ordinance, as referenced in Section 2.B. above.

- E. The County will not be obligated to provide education and enforcement services if modifications are made to the Ordinance by the City, which specifically omit existing provisions and/or reduces the impact of the Ordinance in any way.

3. Consideration

The benefit of this MOU to the City is the opportunity to join a growing number of local governments that are leading the effort around reducing single-use plastic and other food ware waste. An additional benefit includes the implementation of education and enforcement efforts for the Ordinance within the City's jurisdiction with minimal spending of resources by the City.

The benefit of this MOU to the County is the implementation of a uniform, standardized, and coordinated effort throughout the incorporated and unincorporated areas of San Mateo County.

4. Relationship of Parties

It is expressly understood that this is an agreement between two independent entities, the County and the City, and that no individual agency, employee, partnership, joint venture, or other relationship is established by this MOU. The intent by both the County and the City is to create an independent collaborative relationship.

5. Hold Harmless

The County shall indemnify, defend, and hold harmless the City and its officers, agents, employees, and servants against all damages, claims, liabilities, losses, and other expenses, including without limitation attorneys' fees and related costs, whether or not a lawsuit or other proceeding is filed, to the extent that they arise out of (1) the negligence or willful misconduct of County staff in performing the enforcement services described in this memorandum of understanding; or (2) any allegation that the promotional or educational materials produced or used by County staff pursuant to this memorandum of understanding infringe any third-party right of any kind, including without limitation, any intellectual property right.

The City shall indemnify, defend, and hold harmless the County and its officers, agents, employees, and servants against all damages, claims, liabilities, losses, and other expenses, including without limitation attorneys' fees and related costs, whether or not a lawsuit or other proceeding is filed, to the extent they arise out of (1) the act of adopting ordinance No. 2021-3 establishing food service ware regulations; or (2) any acts or omissions by City staff in implementing ordinance No. 2021-3. that arise out of City staff's negligence or willful misconduct; or (3) any allegation that the promotional or educational materials produced by City staff pursuant to this memorandum of understanding infringe any third-party right of any kind, including without limitation, any intellectual property right.

A party seeking indemnity and defense under this section shall provide the indemnifying and defending party with prompt notice of any claim and give control of its defense and settlement to the indemnifying and defending party. The party seeking indemnity and defense shall also cooperate in all reasonable respects with the indemnifying and defending party, its insurance company, and its legal counsel in its defense of such claim. The obligation to defend and indemnify pursuant to this section shall not cover any claim in which there is a failure to give the indemnifying and defending party prompt notice, but only to the extent that such lack of notice prejudices the defense of the claim. The indemnifying and defending party may not settle any potential suit hereunder without the other party's prior written approval, which will not to be unreasonably withheld, conditioned, or delayed. If a party who owes indemnity and defense under this section fails to promptly indemnify and defend a covered claim, the other party shall have the right to defend itself, and in such case, the party owning indemnity and defense shall promptly reimburse the other party for all of its associated costs and expenses.

The obligations imposed by this section shall survive termination or expiration of the MOU.

6. Amendment of MOU and Merger Clause

This MOU, including the Exhibit attached hereto and incorporated herein by reference, constitutes the sole MOU of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the MOU conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any exhibit and/or attachment to this MOU, the provisions of this body of the MOU shall prevail. Any prior MOU, promises, negotiations, or representations between the parties not expressly stated in this

document are not binding. All subsequent modifications shall be in writing and will become effective when signed by both parties.

7. Records

The County shall maintain and preserve all records relating to this MOU in its possession and those of any third-party performing work related to this MOU for a period of five (5) years from the termination of this MOU.

8. Assignability

The County shall have the right to assign this MOU or any portion thereof to a third party or subcontract with a third party to perform any act required under this MOU without the prior written consent of the City.

9. Notices

Any written notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited with the United States Postal Service, postage prepaid, or when transmitted by email communication, addressed:

In the case of the County, to:

Carolyn Bloede, Director
County of San Mateo Office of Sustainability
455 County Center, 4th Floor
Redwood City, CA 94065
Email: cbloede@smcgov.org

In the case of the City, to:

Andrea Chow, Sustainability Analyst
City of San Mateo
330 W. 20th Avenue
San Mateo, CA 94403
Email: sustainability@cityofsanmateo.org

10. Controlling Law and Venue

The validity of this MOU, the interpretation of its terms and conditions, and the performance of the parties hereto shall be governed by the laws of the State of California. Any action brought to enforce this action must be brought in the Superior Court of California in and for the County of San Mateo.

11. Term and Termination

- A. The term of this MOU shall commence on October 1, 2021 and shall automatically be renewed from year to year on the same terms and conditions without any further action of the Parties.

B. This MOU may be terminated without cause by the City or the County at any time upon thirty (30) days written notice to the other Party.

12. Authority

The parties warrant that the signatories to the MOU have the authority to bind their respective entities.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
Carolyn Bloede
Director, Office of Sustainability

Date: _____

CITY OF SAN MATEO

By: _____
Drew Corbett
City Manager

Date: _____

EXHIBIT A - SCOPE OF ACTIVITIES

The below education and enforcement activities relating to the County of San Mateo's (the County) Disposable Food Service Ware Ordinance (Ordinance) will be conducted by the County and the City of San Mateo (the City) within the City's jurisdiction.

I. Education and Outreach

1. The County will conduct education and outreach to food facilities that operate in the City's jurisdiction that may be impacted by the Ordinance. Per the Ordinance, the County will focus efforts only on entities that are defined as a "food facility" under the California Retail Food Code.¹ These entities are required to have a health permit with the County's Environmental Health Services (EHS) to serve food and beverages to the public. The County's Office of Sustainability (OOS) will collaborate with EHS to identify food facilities in the City jurisdiction that will be impacted.
2. The County will conduct education and outreach to the general public in the City's jurisdiction.
3. The County will develop a *standardized* and *uniform* education and outreach strategy that will be rolled out in the City's jurisdiction as well as in unincorporated areas of the county and other cities in the county that adopt the Ordinance. The County may utilize a combination of standardized strategies for education and outreach activities, which may include, but is not limited to development and distribution of educational materials (e.g., flyers, posters, resource guide that will have information on compliant disposable food ware products, signs, banners, etc.), mailers, phone calls, emails, social media posts, videos, newspaper ads, door-to-door visits, pilot and implementation of behavior change campaigns, etc.
4. As needed, the City will supplement the County's efforts for the Ordinance with any additional education and outreach activities that are tailored to the City's needs and managed by City staff (e.g., City's social media accounts, City website, City newsletter, internal City sustainability activities, etc.).

II. Enforcement

1. The County will conduct enforcement of the Ordinance within the City's jurisdiction utilizing a compliant-based system. The County will respond to complaints or referrals from the public and/or from City staff and work with food facility operators to investigate and resolve reported issue(s).
2. The County will follow enforcement provisions detailed in the County's Municipal Code [Chapter 1.40 – Administrative Remedies](#) to correct violations of the Ordinance committed in the City's jurisdiction.

¹ Although public schools are defined as a food facility under the California Retail Food Code, they are exempt from complying with the Ordinance based on the fact that the State has the sole authority to dictate their operations.

3. The County will lead the effort in reviewing requests for exemptions submitted by food facilities and approve them, as needed, in whole or in part, with or without conditions.
4. The County will keep detailed records of enforcement in the City's jurisdiction for a minimum of five (5) years.
5. The County will notify the City promptly about any related issues that arise that require City assistance or lead in resolving the issue(s) related to noncompliance.
6. The City will work with the County on any related issues that arise that require City assistance or lead in resolving the issue(s) related to noncompliance.