ORDINANCE NO. 2021-352

AN ORDINANCE OF THE TOWN OF WINDSOR AMENDING TITLE XI, CHAPTER 1 OF THE CODE OF THE TOWN OF WINDSOR REGARDING "SOLID WASTE MANAGEMENT" ARTICLE 4, "POLYSTYRENE"

WHEREAS, Title XI, Chapter 1 of the Code of the Town of Windsor regulates solid waste activities within the Town; and

WHEREAS, public agencies have a duty to protect the natural environment, the economy, and the health and safety of residents; and

WHEREAS, products made from expanded polystyrene foam are not compostable, returnable, or recyclable; and

WHEREAS, there is a prevalence of polystyrene foam debris littering parks and public places, streets and roads, waterways, storm drains and beaches, which results in a high financial and environmental cost to residents, wildlife, and natural resources; and

WHEREAS, perfluoroalkyl and polyfluoroalkyl substances ("PFAS"), are synthetic chemicals commonly used in disposable food service ware products to repel water and grease, and oil, but are extremely persistent in the environment, leach into food, and can be taken up from soil into food; and

WHEREAS, eliminating the use of polystyrene foam, PFAS and other non-compostable and non- recyclable single-use food service ware items will maximize the operating life of landfills, lessen the economic and environmental costs of waste management for businesses and residents of Sonoma County, and further protect the public health and safety of residents, the natural environment, waterways and wildlife.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1 - Recitals. The above recitals are hereby found to be true and correct and are incorporated herein by this reference.

SECTION 2 - CEQA Findings.

1. This ordinance is exempt from environmental review under the California Environmental Quality Act pursuant to Section 15061(b)(3) of Title 14 of the California Environmental Code of Regulations because it can be seen with certainty that there is no possibility that this ordinance will have a significant negative effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the Town) for the protection of the environment because it will strengthen the Town's regulations regarding the distribution and sale of polystyrene products.

2. This Ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

SECTION 3 - Text Amendments. Article 4 of Chapter 1 of Title XI of the Code of the Town of Windsor entitled "Polystyrene" is hereby amended and restated to read as follows:

Article 4. - Polystyrene

Article 4. – Prohibit the Use and Sale of Disposable Food Service Ware and Other Products Containing Polystyrene Foam

11-1-400 - Findings and Purpose.

The Town Council finds and declares:

(A) The Town has a duty to protect the natural environment, our economy, and the health of its citizens.

(B) Products made from expanded polystyrene foam are not compostable, returnable or recyclable. Polystyrene foam easily breaks up into smaller pieces and, because it is lightweight, is carried by the wind even when it has been disposed of properly.

(C) There is a prevalence of polystyrene foam debris littering our parks and public places, streets and roads, waterways, storm drains and beaches. This litter exists at a financial cost to residents and an environmental cost to our natural resources.

(D) The Town is situated near the Sonoma Coast and near waterways which drain to the marine environment. Marine animals and birds often confuse polystyrene foam pieces as a food source, which, when ingested, can impact the digestive track which often leads to death.

(E) Discarded polystyrene constitutes a portion of the Town's waste stream. Laws, policies and regulations pertaining to this material, which is difficult to recycle, have become a vital component in the efforts to reduce the amount of disposed waste.

(F) It is not economically feasible to recycle most polystyrene in the Town. Eliminating the use of polystyrene foam and other non-compostable and nonrecyclable items will maximize the operating life of our landfills and will lessen the economic and environmental costs of waste management for businesses and citizens of Sonoma County.

(G) According to the California Department of Resources Recycling and Recovery (CalRecycle), polystyrene's overall environmental impacts were the second highest of any product, behind only aluminum.

(H) Alternative products exist for almost all uses of polystyrene foam.

(I) Restricting the use of polystyrene foam products will further protect the public health and safety of the Town's residents, the natural environment, waterways, and wildlife.

11-1-401 - Definitions.

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

"Compostable" means products made entirely from natural plant fibers such as paper, bamboo, wood, sugarcane, and wheat. These products must be accepted at the industrial or municipal facilities that aerobically compost Sonoma County's food scraps and yard debris. For the purposes of this ordinance, products that contain or are coated with plastic polymers such as polylactic acid (PLA) or polyethylene (PE) are not compostable.

"Disposable food service ware" includes all containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, napkins and other food ware items designed for one-time use for prepared foods, including without limitation service ware for take-out foods and/or leftovers from partially consumed meals prepared by food providers. The term "disposable food service ware" does not include items composed entirely of aluminum or polystyrene foam coolers and ice chests that are intended to be reusable.

"Food provider" means any vendor, business, organization, entity, group or individual, and including retail food establishments, located or providing food within the Town that offers food or beverage to the public.

"Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.

"PFAS" means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as perfluoroalkyl and polyfluoroalkyl substances.

"Polystyrene foam" means blown polystyrene and expanded and extruded foams (sometimes called Styrofoam™) 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-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

"Prepared food" means food or beverages prepared for consumption on the food provider's premises or within the Town, using any cooking or food preparation technique. Prepared food includes food prepared for consumption off the food provider's premises, also known as "take-out food."

"Recyclable" means material that can be sorted, cleansed, and reconstituted using recycling collection programs available in Sonoma County for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

"Retail vendor" means any store or other business that sells goods or merchandise located or operating within the Town.

"Reusable" means materials that will be used more than once in its same form by the customer, retail vendor or other reuse program. Reusable food service ware includes: food and beverage containers, packages and trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor or reused by the customer and that are provided as take-out containers. Reusable also includes durable containers, packages or trays used on-premises, returnable containers brought back to the food vendor and those intended to be taken home by the consumer for reuse, including all containers, bowls, plates, trays, cartons, cups, and other items that are designed for prolonged use, including, but not limited to, durable plastic, ceramic, glass, porcelain, and metal food service ware.

"Special event promoter" means an applicant for any special event permit issued by the Town, or any Town employee(s) responsible for any organized special event in the Town.

"Town" means all the territory within the Town of Windsor, State of California.

"Town contractors and lessees" means any person or entity that has a contract with the Town for works or improvements to be performed, for a franchise, concession or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the Town.

"Town facilities" means any park, building, structure or vehicles owned or operated by the Town, its agent, agencies, departments and franchisees.

11-1-402 - Prohibited food service ware and products.

On and after January 1, 2021:

(A) Food providers shall not sell, hand out, give away, distribute or otherwise make available for public or customer use prepared food in disposable food service ware that contains polystyrene foam or PFAS.

(B) Town facilities, and any person renting a Town facility, shall not provide prepared food in disposable food service ware that contains polystyrene foam or PFAS.

(C) Town departments may not purchase, acquire or use disposable food service ware that contains polystyrene foam or PFAS.

(D) Town contractors and lessees may not use disposable food service ware that contains polystyrene foam or PFAS.

11-1-403 - Prohibited retail sales.

On and after January 1, 2021:
No retail vendor or special event promoter shall sell, rent or otherwise provide any disposable

food service ware which is composed in whole or in part of polystyrene foam, except as exempted in Section 11-1-407. In addition, no retail vendor shall sell, rent or otherwise provide the following:

(A) coolers, ice chests, or similar containers, unless they are wholly encapsulated or encased within a more durable material so as to be reusable,

(B) pool or beach toys, not including personal floatation devices such as life jackets; and

(C) packing peanuts or other packaging materials.

11-1-404 - Nonfood packaging material.

On and after January 1, 2021:
It shall be a policy goal of the Town to promote and encourage, on a voluntary basis, the elimination of all polystyrene foam packaging. Business establishments located outside the Town are encouraged to eliminate use of any packaging that utilizes polystyrene foam, including both block polystyrene foam or packing peanuts; and to eliminate the purchase, use, distribution or sale, for home or personal use, any packaging which utilizes polystyrene foam.

11-1-405 - Required compostable or recyclable disposable food service ware.

On and after January 1, 2021:

(A) All food providers utilizing any disposable food service ware shall use, when such products are commercially available, a compostable product that is accepted at local compost facilities or recyclable product.

(B) All Town facilities and departments using any disposable food service ware shall use compostable or recyclable disposable food service ware.

(C) Town contractors and lessees using any disposable food service ware shall use compostable or recyclable disposable food service ware in Town facilities while performing under a Town contract or lease.

(D) All food providers shall only provide straws, lids, cutlery, and to-go condiment packages upon request of customers.

(E) All food providers are encouraged to provide $0.25 credit for customers bringing their own reusable containers for to-go items.

(F) All food providers are encouraged to charge a 'take out fee' of $0.25 for disposable cups, lids, straws, and/or utensils. This fee is intended to offset the potential cost difference of compostable or recyclable food service ware.

11-1-406 - Implementation - Town contracts and leases.

The Town Manager or his or her designee is authorized to promulgate regulations, guidelines and forms and to take any and all other actions reasonable and necessary to enforce this article.

11-1-407 - Exemptions.

(A) The Town Manager or his or her designee may exempt a food provider, retail vendor or special event promoter from the requirements of this article for a one-year period upon showing that this article would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Town Manager or his or her designee shall put the decision to grant or deny a waiver in writing and it shall be final.

(B) A food provider, retail vendor or special event promoter granted an exemption must reapply prior to the end of the one-year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

(C) An exemption application shall include all information necessary for the Town to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The Town Manager or his or her designee may require the applicant to provide additional information to determine facts regarding the exemption application.

(D) The Town Manager or his or her designee may approve the exemption application, in whole or in part, with or without conditions.

(E) Foods prepared or packaged outside the Town and sold inside the Town are exempt from the provisions of this article. This exemption shall not apply to food providers operating in Town facilities, pursuant to Town contracts, or as a special event promoter in the Town. Purveyors of food prepared or packaged outside the Town are encouraged to follow the provisions of this article.

(F) Notwithstanding the prohibition on retail sales of products containing polystyrene foam or PFAS, products which pose a small risk of becoming litter or in which polystyrene foam is included for insulating or flotation purposes and is completely encased in more durable material are exempt from the provisions of this article. Examples include surfboards, boats, life preservers, construction materials, craft supplies, and durable coolers not principally composed of polystyrene.

(G) Packaging for meat and fish is exempt from the provisions of this article.

11-1-408 – Enforcement.

Enforcement of this article shall be as follows:

(A) The Town Manager or his or her designee, shall have primary responsibility for enforcement of this article and shall have authority to issue citations for violation of this article. The Town Manager, or designee, is authorized to establish regulations or administrative procedures to obtain compliance with this article, including, but not limited to, inspecting any vendor's premises to verify compliance in accordance with applicable law.

(B) Anyone violating or failing to comply with any of the requirements of this article or of any regulation or administrative procedure authorized by it shall be guilty of an infraction.

(C) The Town Attorney may seek legal, injunctive, or any other relief to enforce this article and any regulation or administrative procedure authorized by it.

(D) The remedies and penalties provided in this article are cumulative and not exclusive of one another.

(E) The Town may inspect any retail vendor's or special event's premises to verify compliance with this article.

11-1-409 - Violations.

Violations of this article shall be enforced as follows:

(A) For the first violation, the Town Manager, or designee, upon determination that a violation of this article has occurred, shall issue a written warning notice to the food provider, retail vendor or special event promoter specifying that a violation of this article has occurred, along with the appropriate penalties in the event of future violations. The vendor will have 30 days to comply.

(B) The following penalties shall apply for subsequent violations of this article:

(1) A fine not exceeding $100.00 for the first violation 30 days after the first warning.

(2) A fine not exceeding $200.00 for the second violation 60 days after the first warning.

(3) A fine not exceeding $500.00 for the third violation 90 days after the first warning, and for every 30 days not in compliance.

(C) Vendors or special event promoters who violate this article in connection with commercial or noncommercial special events shall be assessed fines as follows:

(1) A fine not exceeding $200.00 for an event of 100 to 200 persons.

(2) A fine not exceeding $400.00 for an event of 201 to 400 persons.

(3) A fine not exceeding $600.00 for an event of 401 to 600 persons.

(4) A fine not exceeding $1,000 for an event of 601 or more persons.

(5) The special events permit listing the number of persons expected to attend the special event shall be the basis upon which fines are assessed pursuant to this section.

SECTION 4 - Severability. The provisions of this article are declared to be severable and if any provision, sentence, clause, section or part of this article is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this article or their application to persons and circumstances.

SECTION 5 - No conflict with Federal or State law. Nothing in this article shall be interpreted or applied so, as to create any requirement, power, or duty in conflict with any Federal or State law.

SECTION 6 - Preemption. The provisions of this article shall be null and void on the day that California Statewide legislation or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this article, or in the event that a pertinent California State or Federal administrative agency issues and promulgates regulations, preempting such action by the Town. The Town shall determine by ordinance whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

SECTION 6 - Effective Date. This ordinance shall take effect and be in force thirty (30) days following its adoption.

SECTION 7 - Publication or Posting. The Town Clerk of the Town of Windsor shall cause this Ordinance to be published and/or posted after its adoption in accordance with California Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 21st day of July 2021, by the following vote:

AYES: **COUNCILMEMBERS FUDGE, LEMUS, VICE MAYOR REYNOZA AND MAYOR SALMON**
NOES: **NONE**
ABSTAIN: **NONE**
ABSENT: **NONE**

SAM SALMON, AT-LARGE MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK