



CITY OF SAN MATEO

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Agenda Report

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TO: City Council
FROM: Drew Corbett, City Manager
PREPARED BY: City Manager's Office
MEETING DATE: November 16, 2020
SUBJECT:
Disposable Food Service Ware – Policy Options

RECOMMENDATION:

Review policy options to address disposable food service ware in food facilities and provide feedback and direction.

BACKGROUND:

The County of San Mateo has led regional efforts to address waste and litter from food facilities. Specifically, the County led the development of the Polystyrene (Styrofoam) Ban Ordinance and Reusable Bag Ordinance that were eventually adopted by all cities in the County. The San Mateo City Council adopted the Polystyrene Ban on May 6, 2013 and the City's Reusable Bag Ordinance began implementation on June 6, 2013. Both efforts helped combat negative environmental impacts as Styrofoam and plastic bags often ended up as litter in our streets and polluted our waterways impacting marine wildlife and human health. Instead of Styrofoam, plastic is now typically used in food facilities as disposable food service ware and has become a pervasive pollutant.

While disposable food service ware is convenient to customers, plastic disposables have lasting impacts on the environment. Plastic disposable food service ware is often used just for a few minutes before becoming waste that takes hundreds, if not thousands, of years to break down. Recycling is a complex process and unfortunately many plastic food service ware items are not recycled due to contamination. Furthermore, the plastic recycling market drastically changed over the past year, as in 2019, China began to restrict plastics they will accept. Similarly, other recycling markets in India, Vietnam, and Indonesia are following suit. Now many plastics are piling up at waste facilities, landfills and are even being incinerated. This highlights the importance of reusables for dine-in restaurants but with the pandemic limiting dine-in operations, businesses rely on takeout and delivery options with disposables.

On February 25, 2020, the County of San Mateo adopted a Disposable Food Service Ware Ordinance that addresses this pollution and environmental challenge. The County's Disposable Food Service Ware Ordinance (County's Ordinance) was brought up at the City Council Goal Setting Session earlier this year and the Council prioritized exploration of the County's Ordinance for fiscal year 2020-21. In addition to preventing pollution from entering our waterways, an ordinance would help the City in achieving 100% trash reduction, a requirement of the Municipal Regional Stormwater Permit. Meeting this trash reduction requirement was also identified as a Council priority. At the October 14, 2020 Sustainability and Infrastructure Commission meeting, staff brought forward a report on the disposable food service ware policy options. This report describes policy approaches to address disposable food service ware, including the County's Ordinance, and the Sustainability and Infrastructure Commission's feedback and recommendation to City Council.

Policy Approaches

Jurisdictions in California have taken varied approaches to address disposable food service ware. The County of San Mateo developed a Food Ware Policy Matrix in October 2019 (Attachment 1) to summarize the different approaches. Some

jurisdictions address all types of disposable food service ware while other jurisdictions regulate specific items, most commonly beverage straws and other small accessories. The following provides an overview of the County's Ordinance that impacts all disposable food service ware and a policy approach that addresses small accessories.

County of San Mateo: Disposable Food Service Ware Ordinance

The County's Disposable Food Service Ware Ordinance was adopted on February 25, 2020 and applies to food facilities that provide prepared food in unincorporated San Mateo County and in any city that adopts the County's Ordinance. Attachment 2 provides a graphic summary of the County's Ordinance. Food facilities are defined as an entity that has a valid health permit for distributing food/beverages to the public. This includes restaurants, mobile food trucks, farmers' markets, and private schools. Disposable food service ware includes containers, cups, lids, utensils and straws.

The provisions of the County's Ordinance are summarized as follows:

- "Non-plastic and Compostable" defined: The County requires food facilities use non-plastic, compostable products instead of plastic products. Non-plastic compostable products are defined as, but not limited to, natural fiber-based materials such as paper, sugarcane, wheat stalk/stem, bamboo, wood, etc. Traditional plastics (petroleum-based) and compostable plastics (bio plastics or polyactic acid [PLA]) are not allowed.
- Food Service Ware Containers: Food facilities shall use non-plastic compostable plates, bowls, cups, food trays, clamshells, boxes, deli containers and other containers. These items may be lined with, but not entirely made of compostable plastic, and must be certified by the Biodegradable Products Institute (BPI).
- Small Accessories: Food facilities shall use non-plastic compostable straws, stirrers, utensils and toothpicks.
- "Upon Request" Only: Typically, food facilities provide small accessories without the customer asking. The County's Ordinance requires small accessories such as straws, utensils, condiment packets, etc. be provided only upon request or at a self-serve area. Take-out delivery services that utilize digital ordering platforms would have to provide clear options that allow customers to request small accessories.

Following the County's Ordinance adoption, South San Francisco, Burlingame, Atherton and Half Moon Bay adopted the County's Ordinance as a model. The County will provide education and enforcement in cities that adopt the County's Ordinance, alleviating the City staff time required to implement the Ordinance.

The County's Ordinance was initially scheduled to begin enforcement in unincorporated County in March 2021, one year after the adoption of the Ordinance. Similarly, the cities that adopted the County's Ordinance as a model adopted an enforcement date one year from adoption. The delay in enforcement allows time for the jurisdiction to educate and inform food facilities of the required changes and allows food facilities to use up their existing inventory of disposable food service ware that does not meet the requirements of the new Ordinance. Due to COVID-19, the County decided to further delay enforcement of the ordinance until March 2022.

Small Accessories and "Upon Request" Regulations

Small accessories include straws, stirrers, utensils and lid plugs. Instead of addressing all disposable food service ware, some cities opted for regulations that focus on small accessories and require that small accessories be compostable. The cities of Pacifica, Palo Alto, Malibu and Santa Barbara adopted ordinances banning plastic straws, utensils and lid plugs and requiring these small accessories be compostable.

As of January 1, 2019, AB 1884 requires that all restaurants in California only provide plastic single-use straws upon request. Similar to this approach, jurisdictions have adopted ordinances that expand on California's "upon request" straw regulations to utensils, stirrers and other small accessories. The cities of Palo Alto, Malibu and Santa Barbara included policy language that requires small accessories are only provided upon request. The "upon request" regulations can also be expanded to address the distribution of condiment packets and napkins. This policy approach can be coupled with other disposable food service ware regulations or adopted as a standalone policy.

Food Facilities Outreach

The City of San Mateo has 428 food facilities that would be impacted by a potential disposable food service ware ordinance. In an effort to get a sense of the barriers and challenges with the County's Ordinance approach, staff conducted preliminary research by putting out an online survey. The survey was open for 28 days but only 13 food facilities responded. In addition to the survey, staff conducted in-depth phone and email discussions with 10 food facilities. This is a very limited sample size that helps provide some preliminary findings but makes it challenging to understand the full impact of a potential ordinance. More robust outreach and educational campaigns would be necessary prior to policy adoption.

The results of the survey and staff's direct outreach were varied and due to the small sample size reached, it is challenging to assess trends. Of the 23 food facilities reached, food facilities reported using a variety of plastic, compostable plastic and fiber-based compostable plastic products. None of the food facilities reported using all non-plastic compostable products that comply with the County's Ordinance. Most restaurants did report using some compostable products. Depending on the type of restaurant, some businesses used very few types of disposables (e.g., only cups and straws) while other restaurants use all types of disposables. Overall, businesses understood the intent of the ordinance and are interested in "going green." The online survey and staff's direct outreach identified three major challenges to complying with the County's Ordinance including cost, quality/durability, and availability of compostable products.

One major communication challenge was having discussions with food facilities and distinguishing between non-plastic and fiber-based compostable products and compostable plastic products. This distinction is important for the County's Ordinance as many products that are marked "biodegradable" are made from compostable plastics. While these items are compostable, they would be out of compliance with the County's Ordinance. The County's Ordinance does not allow compostable plastic because it is often missorted and placed in the recycling bin. Furthermore, since one of the goals of the Ordinance is to reduce the impact of potential pollution, fiber-based compostable disposables pose less of a threat than compostable plastic to the marine environment.

Overwhelmingly, food facilities identified their primary concern with complying with the County's Ordinance is cost. A Cost Assessment prepared by the County of San Mateo (Attachment 3) shows that the non-plastic compostable products tend to cost more than the plastic alternative. If the City were to adopt the County's Ordinance, the cost of compliance will vary depending on the types of disposables the facility already uses. Restaurants are especially worried since the pandemic has forced restaurants to rely on takeout operations and thus, they are forced to use disposables. Requiring more costly disposable products could negatively impact businesses that are already struggling.

Another concern was the quality and durability of compostable alternatives for carrying their food items. Several restaurants pointed to the fact that the compostable option was not viable for their hot food item and that customers complain if containers leak. For many businesses, plastic containers are the preferred product. Additionally, several business owners mentioned concern regarding the availability of compostable products from their vendors.

Policy Discussion

COVID-19 has negatively impacted most restaurants as many restaurants saw a sharp decline in patronage and great loss in revenues. Food facilities had to close all indoor operations for six months and only now are able to offer limited indoor dining. While some food facilities have been able to provide outdoor dining, many rely on takeout and delivery options for their customers and are purchasing more disposables than ever. Restaurants are operating on very thin margins and any increase in cost will be more impactful now than in normal circumstances. It is important to consider these policy options in the context of the pandemic. It is likely that the recovery from the economic impact of COVID-19 on restaurant businesses will continue for an extended period, well beyond the end of the pandemic.

The County's model ordinance is the most comprehensive approach that would have the greatest environmental impact. In addition, the County is offering to provide education and enforcement support to any cities that adopt their model ordinance. However, a key consideration is the additional cost to the restaurants to provide the compostable products and whether that is something they will be able to absorb given the financial challenges that they face.

Adopting a policy that regulates small accessories would have a more limited environmental impact but also would not have as large of a financial impact on businesses. This policy option could serve as a helpful stepping stone to transition food facilities to using more compostable products. Adopting the “upon request” policy option for small accessories would help save food facilities money. This approach might be especially impactful under current circumstances when many are ordering takeout and delivery to eat at home where they do not need utensils or condiment packets. Regulations requiring compostable small accessories and small accessories “upon request” are two approaches that could be combined or considered separately. The City would be responsible for outreach and implementation of these policy approaches because the County’s support is limited to cities that adopt the County’s Ordinance as a model.

Staff presented the disposable food service ware policy options to the Sustainability and Infrastructure Commission at the October 14, 2020 Commission meeting. The Commissioners all supported adopting the County’s Ordinance because it addresses all types of disposables, leverages the County’s services, and promotes consistency across the region. The Commissioners did acknowledge the economic impact to food facility businesses and encouraged staff to develop resources and to ease the transition to compostable products. The Commissioners also hoped that delaying enforcement until March 2022 would provide ample time for businesses to use up inventory and find compostable products. Furthermore, the Commission asked staff to consider marketing campaigns encouraging businesses to start to employ the “upon request” strategy on a voluntary basis to reduce the amount of disposable small accessories that are distributed.

BUDGET IMPACT:

Adoption and implementation of policy to address disposable food service ware would require dedicated staff time for outreach plus some direct expenses for outreach materials. Staff time and budget would depend on the policy approach adopted.

ENVIRONMENTAL DETERMINATION:

In accordance with Public Resources Code Section 21065, this discussion and recommendation is not a project subject to CEQA, because the City is not taking action at this time. In accordance with CEQA Guidelines Section 15308, adoption of a potential ordinance regulating disposable food service ware would be categorically exempt as it is an action by a regulatory agency for the protection of the environment

NOTICE PROVIDED

All meeting noticing requirements were met. Staff notified food facilities on the City’s Restaurant E-mail Listserv.

ATTACHMENTS

- Att 1 – Food Ware Policy Matrix
- Att 2 – County’s Ordinance Summary Sheet
- Att 3 – Cost Assessment
- Att 4 – Public Comment

STAFF CONTACT

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