



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: January 19, 2021

SUBJECT:
Disposable Food Service Ware Regulations – Ordinance Introduction

RECOMMENDATION:

Introduce an Ordinance to repeal Chapter 5.89 "Polystyrene-Based Disposable Food Service Ware" of the San Mateo Municipal Code and adopt a new Chapter 5.89 "Disposable Food Service Ware" to regulate the use of disposable food service ware by food facilities.

BACKGROUND:

On May 6, 2013, the San Mateo City Council adopted an ordinance restricting the use of polystyrene-based disposable food service ware by food facilities. Polystyrene is more commonly referred to as "Styrofoam" and is a petroleum-based material that had become very commonly used as disposable food service ware and is highly problematic to the environment because it is not biodegradable. Further, Styrofoam contributed to litter within our streets and polluted our waterways. In 2013, the City restricted the use of Styrofoam but now plastic is typically used in food facilities as disposable food service ware and has become a pervasive pollutant.

While disposable products are 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 an energy-intensive and complex process and unfortunately many plastic food service ware items are not recycled due to contamination. 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 Disposable Food Service Ware Ordinance (County Ordinance) was brought up at the City Council Goal Setting Session in January 2020 and the Council prioritized exploration of the County 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 reviewing disposable food service ware policy options. The Commissioners all supported adopting the County Ordinance approach because it addresses all types of disposables, leverages the County's services, and promotes consistency across the region. The Sustainability and Infrastructure Commission recommended that City Council consider adoption of the County Ordinance. At the November 16, 2020 meeting, the City Council reviewed policy options to address plastic disposable food service ware and agreed with the Commission's recommendation. The City Council directed staff to return with the County of San Mateo Disposable Food Service Ware Ordinance for adoption.

Food Facilities Outreach

In September 2020, staff conducted an online survey to get a sense of the barriers and challenges with the County Ordinance approach. The online survey was open for four weeks but only 13 food facilities responded. In addition to the online survey, staff conducted in-depth phone and email discussions with 10 food facilities. While this resulted in a very limited sample size, preliminary findings indicated that overwhelmingly, food facilities are concerned about increased costs of complying with the County Ordinance. The second concern was regarding the quality and durability of compostable alternatives for particular food items. Specifically, food facilities expressed concerns about compostable products and their ability to hold liquids or hot food items. Overall, food facilities understood the intent of the proposed Ordinance and currently use a mix of plastic and compostable products.

On January 4, 2021, the City mailed a notification of this meeting and a summary of the proposed Ordinance to over 500 food facilities. The mailing list of food facilities was obtained from the County of San Mateo Environmental Health Division and included entities within San Mateo with permits for distributing prepared food and beverages. Food facilities on the City's e-mail list and that responded to the City's Disposable Food Service Ware Survey were also notified of this meeting via e-mail. Food facilities were given instructions on how to provide public comment for this meeting.

County of San Mateo Disposable Food Service Ware Ordinance

The County of San Mateo Disposable Food Service Ware Ordinance (County Ordinance) was adopted by the County Board of Supervisors 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 Ordinance. Attachment 2 provides a graphic summary of the County 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, utensils and straws.

The provisions of the County 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 (bioplastics or polylactic 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:*** Small accessories such as straws, utensils, condiment packets, etc. must be provided only upon request or acceptance by the customer 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.

The County of San Mateo developed a "Frequently Asked Questions" document (Attachment 3) that provides more details regarding the Ordinance. The County's website is another helpful resource that is updated frequently with the latest information regarding the Ordinance: <https://www.smcsustainability.org/food-ware>.

Following the County's adoption of the Disposable Food Service Ware Ordinance, Atherton, Belmont, Burlingame, Half Moon Bay and South San Francisco adopted the County Ordinance as a model. The County will provide education and enforcement in cities that adopt the County Ordinance as a model, alleviating the City staff time required to implement the County Ordinance. To leverage the County's services the City must adopt the County Ordinance as a model, authorize the County to provide enforcement, and enter into a Memorandum of Understanding (MOU) with the County.

Enforcement

The County 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 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 is planning to postpone the enforcement of the Ordinance until March 2022. The County Board of Supervisors will consider the delayed enforcement date at a Board of Supervisors meeting in January or February 2021. All of the cities that have adopted the County Ordinance have expressed interest in aligning with the County and delaying enforcement until March 2022, except the City of Half Moon Bay. Half Moon Bay selected a faster timeline and will begin enforcement July 2021, largely due to the amount of disposable food service ware litter that ends up in the City's beach areas.

Staff recommends that the City of San Mateo begin enforcement of the proposed Ordinance on October 1, 2022, six months after the County's enforcement date. Staff recommends a later enforcement date for several reasons. Firstly, a delayed enforcement date would allow businesses to optimize the amount of time to test products and comply with the proposed Ordinance. In addition, the County is still in the process of developing resources for food facilities, including a resource guide that will have examples of compliant disposable food service ware and a toolkit that will help food facilities educate their employees on the Ordinance requirements. It is important for food facilities to have access to the County's resources and technical support to maximize compliance and ensure a smooth transition. Finally, by delaying enforcement, the City will benefit from any lessons learned from the County's early enforcement in other cities.

The County developed a Memorandum of Understand (MOU) outlining the County's responsibilities for outreach, education, and enforcement of the proposed Ordinance. Staff are working with the County to finalize the MOU and the MOU will be brought back to the City Council for review and approval at a later date, prior to the enforcement of the Ordinance. The County's provision of enforcement services is an approach that is already in place for the City's Polystyrene Ban and Reusable Bag Ordinance.

County Education and Ordinance Implementation Support

The County is contracting with consultant Environmental Innovations, Inc. to provide education and technical assistance to food facilities regarding the County Ordinance. Below is a bulleted summary of the scope that will be implemented in all jurisdictions that adopt the County Ordinance:

- Direct technical support to food facilities will be the largest focus of the program. Direct technical support (phone, email, 1:1 virtual meetings/site visits) and financial assistance to food facilities to help them come into compliance with the Ordinance and to promote reusable food ware. Priority of financial assistance will be placed on food facilities in underrepresented communities.
- Development of a resource guide for food facilities that will have info on compliant disposable food ware and examples of reusable food ware.
- Development of a startup toolkit that will have resources that will help food facilities with educating their customers and their staff/employees on the Ordinance requirements.
- Development of various outreach collateral including print and digital (e.g., flyers, rack cards, case studies, etc.).
- Various outreach and marketing activities bring about awareness to both target audiences – food facilities and the general public – including but not limited to mailers, placement of ads in newspapers, social media, etc.
- Webinars/Workshops where food facilities and the general public can learn more about the Ordinance and reusable food ware options.
- Partnership with community-based organizations to target those hard-to-reach communities throughout the county.
- Partnership with innovative vendors/service providers to promote reusable food ware in food facilities.

Proposed Ordinance

The proposed Ordinance (Attachment 1) repeals Chapter 5.89 “Polystyrene-Based Disposable Food Service Ware” and adds new Chapter 5.89 “Disposable Food Service Ware.” The new Chapter will retain the provisions of the City’s polystyrene ban and continue to prohibit the distribution of Styrofoam-based disposable food service ware. The proposed Ordinance is modeled on the County Ordinance and was reviewed and approved by County staff. To be eligible for the County’s enforcement services, the proposed Ordinance contains each of the provisions of the County Ordinance and authorizes the County Manager or designee to enforce the Municipal Code. Section 5.89.040 “Recordkeeping and Inspection” subsection (a) will go into effect on April 1, 2021 and require food facilities to track the purchase of disposable products. The remaining sections of the proposed Ordinance will go into effect on October 1, 2022.

BUDGET IMPACT:

There is no direct budget impact anticipated as a result of the adoption of the Ordinance. If the City Council adopts the County Ordinance as a model, the County of San Mateo will lead the technical support, outreach, education, and enforcement activities for the proposed Ordinance. This will minimize the impact on City resources for implementation of the Ordinance. City staff will provide some implementation support to supplement education and compliance of the Ordinance.

ENVIRONMENTAL DETERMINATION:

This Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15061 (b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the provisions contained herein may have a significant effect on the environment. Further, the Ordinance is also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 of Title 14 of the California Code of Regulations because the Ordinance is an action taken by a regulatory agency to assure the maintenance, restoration, enhancement of natural resources, or protection of the environment.

NOTICE PROVIDED

All meeting noticing requirements were met. On January 4, 2021, the City mailed a notification of this meeting and a summary of the proposed Ordinance to over 500 food facilities. The mailing list of food facilities was obtained from the County of San Mateo Environmental Health Division and included entities within San Mateo with permits for distributing prepared food and beverages. Food facilities on the City’s e-mail list and that responded to the City’s Disposable Food Service Ware Survey were also notified of this meeting via e-mail.

ATTACHMENTS

Att 1 – Proposed Ordinance
Att 2 – County Ordinance Summary Sheet
Att 3 – County Frequently Asked Questions

STAFF CONTACT

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