



## Legislation Details (With Text)

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Report regarding Study Session on potential regulation of plastic straws. *(Christina Fernandez, City Manager's Office)*

### **RECOMMENDATION**

**It is recommended that City Council provide guidance and direction regarding the potential regulation of plastic straws.**

### **BACKGROUND/DISCUSSION**

The United States uses over 500 million straws every day. Many of these straws end up in the landfill or ocean, irreparably harming marine life and making its way into our water supplies. Plastic straws do not biodegrade, rather they breakdown into small pieces known as "microplastics." These microplastics never dissolve and are present in sea salt, tap drinking water, and shellfish. New studies confirm that some microplastics are smaller than dust particles or powdered sugar ingested by marine life, which threatens many species survival. Over 94% of tap water contains microplastics.

Plastic straws are the focus of many of the current efforts to ban plastic food service ware due to its prevalence in the ocean. More than 8.3 billion straws pollute the world's beaches, and if the current rate of usage continues, by the year 2050 there will be more plastic (by weight) than fish in our oceans. Straws are in the top 10 of litter picked up during coastal cleanups.

Too lightweight to make it through mechanical recycling sorters, plastic straws drop through sorter screens and mix with other materials too small to separate, contaminating recycling loads or getting disposed as garbage. Many of these straws end up in the ocean due to human error or blown out of trash cans.

The City of South San Francisco is committed to sustainability, environmental preservation, and reducing greenhouse gas emissions. Among the initiatives to keep South San Francisco "green" include:

- Adopted in 2008, the City's Green Food Packaging ordinance prohibits food vendors from dispensing prepared food to customers in disposable food service ware made from polystyrene. (SSFMC Chapter

8.60)

- Effective April 22, 2013, the City adopted a reusable bag ordinance that prohibits the use of single use carryout bags at retail stores. It requires retailers to charge customers for recycled paper bags and reusable bags at point of sale. (SSFMC Chapter 8.64)
- Adopted in 2014, the City's Climate Action Plan provided guidance in meeting the City's goals to reduce energy usage and greenhouse gas emissions communitywide.
- In 2016, the City joined Peninsula Clean Energy, which gives residents and businesses the option to purchase energy from renewable sources.
- South San Francisco currently encourages residents and businesses to participate in various transit options including the Free South City Shuttle service and SCOOP, the commute app.

### ***Current Municipal Code***

The City's Green Food Packaging ordinance defines the term "disposable food service ware" as "single or non-durable use disposable products used by food vendors in the restaurant or food serving industry for serving or transportation prepared, ready to consume food or beverages," which "includes, but is not limited to, plates, cups, bowls, utensils, cartons, trays, and hinged or lidded containers for takeout foods and/or leftover from partially consumed meals prepared at food vendors." (SSFMC § 8.60.010) **The City's current definition of "disposable food service ware" does not specifically include plastic straws or stirrers.** Therefore, plastic straws or stirrers are permitted in the City.

Furthermore, the City's Green Food Packaging ordinance prohibits food vendors from dispensing prepared food to customers in disposable food service ware made from polystyrene. (SSFMC § 8.60.020) The City's definition of "food vendor" includes full service restaurants and fast food restaurants, as well as "any sales outlet, store, shop, restaurant, grocery store, supermarket, vehicle or other places of business operating 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."

Similarly, all city facilities, city sponsored events, and city permitted events are prohibited from using disposable food service ware made from polystyrene. Instead, all food vendors must use disposable food service ware that is biodegradable, compostable, reusable, or recyclable. (SSFMC § 8.60.030) Additionally, all city facilities must use biodegradable, reusable, or recyclable food service ware unless it can be shown that there is not an alternative for a specific use.

However, there are several exemptions in the City's Green Food Packaging ordinance. (SSFMC § 8.60.040) Prepared foods packaged outside of the City are exempt from the provisions. There may be situations unique to a food vendor where a suitable alternative does not exist for a specific application. Food vendors may also apply for an exemption due to significant economic hardship, but they must provide documentation that factually supports their claim. All exemptions are subject to City Manager or designee approval. A food vendor granted an exemption by the City must re-apply prior to the expiration of the one-year exemption period and demonstrate continued undue hardship, the continued absence of a suitable biodegradable, compostable, reusable, or recyclable alternative, if they wish to have the exemption extended.

### ***Bioplastics***

Bioplastics are plant based and are growing in popularity compared to petroleum-based plastics. Bioplastics are composed of renewable resources such as corn, sugar, and soy protein and labeled as “compostable.” Bioplastics take an average of 4-6 months to degrade. The South San Francisco Scavenger Company (“Scavenber”) has the ability to compost some bioplastic materials if it is (1) received from industrial carts (metal carts from businesses) and (2) sent to an industrial composting facility, such as Z Bust. Bioplastics unable to be broken down at Z Bust are sent to a landfill. Bioplastics found in residential recycling bins are sent to a landfill as the digesters are unable to break them down.

### ***State Legislation***

Effective January 1, 2019, Assembly Bill 1884 (Calderon) prohibits a full service restaurant from providing single use plastic straws to consumers unless requested by the consumer. The new law defines a “full-service restaurant” as an “establishment with the primary business purpose of serving food, where food may be consumed on the premises,” and where an employee (1) escorts or assigns a consumer to an assigned eating area, (2) takes the consumer’s food and beverage orders after being seated, (3) directly delivers the food and beverage orders to the consumer; (4) brings any requested items associated with the order to the consumer; and (5) delivers the check directly to the consumer at the assigned eating area. (Pub. Res. Code § 42270(d).)

The bill specifies that the first and second violations of these provisions would result in a notice of violation and any subsequent violation would be an infraction punishable by a fine of \$25 for each day the full service restaurant is in violation, but not to exceed an annual total of \$300. The new law authorizes local enforcement officers to enforce the California Retail Food Code provisions. The San Mateo County Environmental Health Office is responsible for inspecting food facilities located in San Mateo County. Of note, the new bill does not prevent a city from adopting and implementing an ordinance or rule that would further restrict a full-service restaurant from providing a single-use plastic straw to a consumer. (Pub. Res. Code § 42271(c).)

### ***Model Ordinances: City of Malibu***

The City of Malibu passed Ordinance No. 432 effective June 1, 2018, which prohibits restaurants (including fast food restaurants), beverage providers, or vendors from using, providing, distributing, or selling plastic beverage straws, plastic stirrers, or plastic cutlery, including bioplastics. The use of non-plastic alternatives are encouraged including those made from paper, sugar cane, or bamboo. In addition, non-plastic alternative straws, stirrers, or cutlery will only be provided upon request by the customer (please see Attachment A). The distribution of plastic or bioplastic beverage straws, plastic stirrers, or plastic cutlery at any city facility or any city-sponsored event is prohibited.

Straws compliant under the City of Malibu’s Municipal Code Chapter 9.24 include:

- Paper Straws
- Bamboo Straws
- Glass Straws
- Stainless Steel Straws
- Seaweed based straws
- Sugar based straws

Cutlery compliant under the City of Malibu’s Municipal Code Chapter 9.24 include:

- Birchwood
- Aspen Wood
- Bamboo
- Wheat bran and corn starch or sugarcane
- Flours of jowar (sorghum), rice, and wheat
- Forest Stewardship Council (FSC) Certified Wood

### ***Local Efforts - City of Pacifica***

The City of Pacifica held public meetings on August 13, 2018 and September 10, 2018 to discuss issues relating to litter within the City and the potential to adopt stronger standards relating to certain types of litter including plastic cutlery, plastic stirrers, and plastic beverage straws.

Modeled after the City of Malibu's ban on disposable food service ware, the City of Pacifica became the first (and only) city in San Mateo County to include the prohibition of plastic and bioplastic beverage straws, stirrers, and cutlery in its disposable food service ware ordinance adopted on November 13, 2018 (Ordinance No. 838-C.S.).

In addition to the prohibition of providing prepared food to customers in foam polystyrene or solid polystyrene disposable food service ware, restaurants are also prohibited from using, distributing, or providing customers with plastic cutlery, plastic beverage straws, or plastic stirrers. A restaurant or retail food vendor is not precluded from offering non-plastic disposable food service ware such as those made from paper, sugar cane, or bamboo to customers; or encouraging the non-use of plastic lids, cups, or plastic containers. Restaurants and retail food vendors are strongly encouraged to use, distribute, or provide 100% compostable paper cups. Lastly, all individuals, entities, or organizations that rent or use the City of Pacifica's facilities are prohibited from using plastic beverage straws, plastic stirrers, or plastic cutlery, and are strongly encouraged to use 100% compostable paper cups.

### ***The County of San Mateo***

Over the past year, San Mateo County's Office of Sustainability has been developing a Disposable Food Service Ware Ordinance that will affect food facilities in the unincorporated areas of San Mateo County and serve as a model for local governments. During this process, the County's Office of Sustainability has led efforts in order to help inform and prioritize any additional next steps in addressing food service ware. The Office of Sustainability is currently drafting the Disposable Food Service Ware Ordinance and hopes to have the draft adopted by the San Mateo County Board of Supervisors in late spring 2019 or early summer 2019. Of note, the County of San Mateo currently prohibits food service providers from using disposable food service ware when preparing food on property owned or leased by the County. While the County's definition of "disposable food service ware" includes plates, cups, bowls, trays and hinged or lidded containers, but explicitly does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods. (SMCMC §§ 4.106.020(c), 4.107.020(a).) Additionally, County departments are prohibited from purchasing or otherwise acquiring bottled water. Finally, the County prohibits food vendors from using polystyrene-based disposable food service ware when providing prepared food. (SMCMC § 4.107.030)

*NextGen Food ware Ordinances: A Policy Lab for Local Government*

On December 5, 2018, about 75 local government staff from the Bay Area participated in a daylong workshop called *the NextGen Foodware Ordinances: A Policy Lab for Local Government*, which focused on policy options for reducing single-use foodware items. As a result, local governments were able to share best practices and experiences regarding disposable food service ware ordinances. The workshop was sponsored by the County of San Mateo's Office of Sustainability and UPSTREAM.

*Rethink Disposable Program with Clean Water Fund*

The County of San Mateo's Office of Sustainability is launching a door-to-door campaign targeting different food facilities throughout the county, including businesses in South San Francisco in order to obtain a better understanding of the needs, challenges, and opportunities for food service ware, especially around reusables. The County will be working in partnership with the non-profit organization, the Clean Water Fund to reach out to specific restaurants to learn if they might be interested in participating in their Rethink Disposable program, where facilities swap out disposables with reusable. For those interested, Clean Water Fund will offer technical assistance and grants up to \$500 to help food facilities with this effort

***Policy Alternatives***

- A. No Alternative: Do not adopt or amend any new ordinances relating to the prohibition of disposable food service ware. The City would continue enforcing the existing Green Food Packaging ordinance which prohibits the use of polystyrene disposable food service ware and encourages the use of biodegradable, compostable, reusable, or recyclable food service ware. Plastic straws and stirrers would continue to be permitted in the City.
- B. San Mateo County Ordinance: Defer the drafting of an ordinance until the County completes its Disposable Food Service Ware Ordinance. The Board of Supervisors is expected to review a proposed ordinance in late spring or early summer 2019.
- C. Draft an Ordinance: Direct staff to proceed in drafting a Disposable Food Service Ware Ordinance with guidance on the scope, implementation, and timing. Plastic straws and stirrers could be prohibited in the City.

***Food Service Ware Guidance***

Should Council elected to move forward with drafting an ordinance, staff will need guidance regarding the scope, implementation, and timing of the draft ordinance.

The City's current Green Food Packaging ordinance requires all food vendors - including full service restaurants and fast food establishments - to adhere to the City's ban of polystyrene food service ware and disposable food service ware, which currently includes single use utensils. If the Council desires, the City may similarly amend the Green Food Packaging ordinance and clarify that all food vendors are required to use biodegradable, compostable, reusable, or recyclable plastic straws, stirrers, or lid plugs, the most prevalent items found during coastal cleanups. Alternatively, the City could limit or exempt certain types of businesses from this requirement.

An implementation framework must also include guidance regarding enforcement. The City's Green Food Packaging ordinance adopted in 2008 is enforced by the City Manager or designee to ensure that food vendors

are adhering to the ordinance. The City may also opt to adopt a complaint-based mechanism for enforcement.

Pending further discussions with the County, another option may be to utilize the County's Environmental Health Division, which is responsible for inspecting food vendors annually. For example, as of 2011, the County allows a city to authorize the County's Environmental Health Division by ordinance or resolution to enforce a city's prohibition on the use of polystyrene based disposable food service ware by food vendors if a city adopts the County's ordinance. (SMCMC § 4.107.080) Similarly, the City authorized and directed the County's Environmental Health Division to enforce the City's Reusable Bags ordinance in 2012 (SSFMC§ 8.64.080).

As with the implementation of the polystyrene ban, the City provided food vendors with a phased-in period to adopt new food service containers. Staff recommends including time for the City to conduct outreach to the business community and other stakeholders.

#### ENVIRONMENTAL REVIEW

A proposed ordinance to regulate the use of plastic straws would be exempt from the requirements of the California Environmental Quality Act (CEQA) because it can be seen with certainty that that such ordinance would not have the potential for causing a significant effect on the environment under Section 15061(b)(3) of the State CEQA guidelines. Additionally, a proposed ordinance would be exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

#### FISCAL IMPACT

There is no known current Fiscal Impact to the General Fund.

#### RELATIONSHIP TO STRATEGIC PLAN

The potential ban on food service ware adheres to the City's strategic planning goals of building and maintaining a sustainable city.

#### CONCLUSION

Staff recommends that City Council provide guidance and direction regarding the potential regulation of plastic straws.

#### Attachments:

- A. Alternative Food Service Ware
- B. Disposable Food Service Ware Presentation