



Legislation Text

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Report regarding an ordinance amending Title 8, Chapter 8.72 of the South San Francisco Municipal Code regulating the use of disposable food service ware by food facilities. (*Christina Fernandez, Chief Sustainability Officer*)

RECOMMENDATION

It is recommended that the City Council waive first reading and introduce an ordinance to amend Chapter 8.72 of the South San Francisco Municipal Code to align with the County of San Mateo's Disposable Food Service Ware Ordinance and new state requirements under Assembly Bill (AB) 1276 and AB 1200.

BACKGROUND

In March 2019, the City of South San Francisco began to explore the prohibition of plastic food service ware, specifically plastic straws provided by restaurants and fast food establishments. At a Special City Council on April 9, 2019, the City Council provided staff direction to continue to explore banning plastic straws and other food service ware from restaurants and fast food restaurants. Council directed staff to reach out to the business community regarding the potential ban of plastic straws.

The City Manager's office in coordination with the Economic and Community Development Department hosted a series of four Business Town Hall meetings on June 17, 2019, June 24, 2019, June 27, 2019, and June 28, 2019. Two meetings were held in the morning and two in the evening.

The City advertised the town hall meetings through mailers sent to every business license holder citywide. Approximately 6,000 mailers were sent via U.S. Postal Mail to every business license address. The non-profit organization, Gatepath personally handed out mailers to every business along Grand Avenue and Linden Avenue.

The City advertised the business town hall meetings on social media platforms including the City's Facebook page, the Economic and Community Development Facebook page, NextDoor, and the City's Website Calendar of Events. The Economic and Community Development department and the City Manager's office also provided e-blasts to their distribution lists. The City also called businesses along Grand Avenue to inform them of the business town hall meeting dates.

On March 25, 2020, the Council unanimously adopted Ordinance 1628-2021 "Disposable Food Service Ware", creating Chapter 8.72 of the South San Francisco Muni Code regulating the use of disposable food service ware at food facilities in the City. The City's Disposable Food Service Ware ordinance was modeled after the County of San Mateo's Disposable Food Service Ware Model Ordinance available to all San Mateo County cities for adoption. The City is one of thirteen San Mateo County cities who adopted the County's model ordinance.

Adoption of 2020 Disposable Foodservice Ware Ordinance (SSFMC Chapter 8.72)

County Ordinance Background

The City's Chapter 8.72, when adopted in 2020, modeled after the County's ordinance. The County of San Mateo's Plastic Food Service Ware ordinance eliminated the unnecessary distribution and use of disposable food service ware that is not reusable or compostable while improving the health and safety of residents of San Mateo County. The ban also helps the County meet its regional stormwater permit requirement by reducing litter in stormwater discharges.

The County ordinance targeted any vendor, business, organization, entity, group or individual, including licensed retail food establishments that provide prepared food for public consumption. The items prohibited include disposable food service ware used to serve/distribute prepared food. Some examples include bowls, plates, clamshells, cups, straws and utensils designed to be discarded after a single or limited number of uses.

The County's ordinance allowed accessories such as straws, stirrers, cup spill plugs, condiment packets, utensils, and napkins shall be only provided (1) when requested by the consumer, (2) upon acceptance by the consumer after being offered by the food facilities, or (3) at a self-serve area and/or a dispenser. Accessories will be distributed unbundled as separate individual units. Take-out food delivery services that utilize digital ordering platforms shall provide clear options for customers to affirmatively request accessories. Per the Polystyrene Ban Ordinance, Polystyrene (#6 plastics, Styrofoam) disposable food service ware remains prohibited.

Food facilities were required to use disposable straws, stirrers, utensils, and cocktail/toothpicks (and the packaging that these individual items are wrapped in, if any) made from non-plastic, compostable materials. Non-plastic, compostable material is defined as, but not limited to, natural fiber based materials such as paper, sugarcane, wheat stalk/stem, bamboo, and wood. Traditional plastics (petroleum based) and compostable plastics (bioplastics or polylactic acid (PLA)) shall not be allowed for the items listed above.

Food facilities were also required to use non-plastic, compostable plates, bowls, cups, food trays, clamshells, boxes, deli containers, and other containers. These items may be lined with, but not made entirely of compostable plastic. Additionally, these items shall be certified by the Biodegradable Products Institute (BPI) or by another third party approved by the County's Office of Sustainability to ensure that the items break down in an industrial composting facility and are free of/have minimal traces of harmful fluorinated chemicals.

There were some notable exemptions in the County's 2020 ordinance, including:

- Disposable food service ware made from aluminum
- Disposable plastic straws may be provided only upon request to consumers with medical needs
- Healthcare facilities may distribute straws and cup sleeves without a request from the consumer
- Drive-thru areas of food facilities may distribute straws without a request from the consumer (however, it is worth noting that as further discussed below, this exemption will no longer be available due to changes in state law)
- If no reasonably feasible disposable food service ware alternative exists.

The County maintained a list of approved disposable food service ware sources and/or references to organizations that maintain regularly updated lists of products that meet the ordinance requirements.

To allow food facilities time to use up their existing non-conforming inventory of disposable food service ware and for education and enforcement efforts, the County has delayed enforcement to October 1, 2022.

City's 2020 Ordinance- Chapter 8.72

The City adopted Chapter 8.72 in 2020, using the County's model ordinance. The benefits to adopting an ordinance modeled after the County's ordinance included:

- **Outreach and Education**

The County of San Mateo is responsible for the education and outreach efforts to the businesses when the ban is implemented. The County's purpose during its initial implementation is to have all businesses become compliant and a large part of that is education.

- **Enforcement**

In addition to education, the County of San Mateo provides enforcement for all cities that choose to adopt their ordinance by reference. Infractions are punishable by civil or administrative remedies under law. The City reserves the ability to enforce the proposed Chapter 8.72 in addition to enforcement by County personnel.

- **Regional Streamlining**

Currently, thirteen San Mateo County cities have adopted the County's ban on plastic food service ware. Not only has this process provided the ability for the County to convene a collaborative process where all cities' viewpoints and concerns are taken into consideration, but it also allows for a regional, streamlined approach to the implementation of policies as they relate to plastic food service ware.

The City's Chapter 8.72 in 2020 incorporated all applicable provisions of the County's ordinance. The City's ordinance further provided the ability for both the City and County personnel to enforce the requirements. The current amendments to Chapter 8.72 would continue to do the same and also would align enforcement timelines with the County.

DISCUSSION

In February 2022, the County's Office of Sustainability returned to the Board of Supervisors to amend the County's model ordinance to align with new state requirements under AB 1276 and AB 1200. As the City adopted its Chapter 8.72 after the County's model ordinance, such changes are also now necessary to comply with state law and align with the County's regulations.

(1) Overview of Changes to Align with AB 1276

The following changes are proposed to Chapter 8.72 pursuant to AB 1276 and mirror the changes the County and other participating cities are now in the process of adopting:

1. Existing Chapter 8.72 requirement: All food facilities may offer single-use foodware accessories to consumers.
 - New AB 1276 requirement: Food facilities can offer single-use foodware accessories only at drive-throughs and public airports.
 - **Recommended change to Chapter 8.72:** Only food facility drive-throughs and food facilities at public airports can offer accessories to consumers.
2. Existing Chapter 8.72 requirement: Food facilities may distribute foodware accessories using dispensers and have them available at self-serve areas, including in open bins/containers for consumers to grab-and-go.
 - New AB 1276 requirement: Open bins/containers are not allowed for distribution of accessories. Consumers must request them from the employee and/or food facilities may have them available at refillable dispensers that dispense accessories one item at a time.
 - **Recommended change to Chapter 8.72:** Food facilities cannot have available accessories in open bins/containers at self-serve areas for consumers to grab-and-go, and explicitly state that dispensers can only dispense accessories one

item at a time.

3. Existing Chapter 8.72 requirement: Food facilities are not prohibited from using self-serve, refillable bulk condiment dispensers (there is no reference to bulk condiment dispensers in the 2020 Ordinance).

- New AB 1276 requirement: Food facilities are explicitly allowed to use self-serve, refillable bulk condiment dispensers to distribute condiments.
- **Recommended change to Chapter 8.72**: Explicitly allow for use of refillable bulk condiment dispensers.

(2) Overview of Changes to Align with AB 1200

The PFAS requirements for all single-use fiber-based foodware under AB 1200 go into effect on January 1, 2023 and supersede those of the current ordinance. Therefore, the recommendation is to sunset the any PFAS requirements under Chapter 8.72 on December 31, 2022. Following the County's direction, the City will look to the State to assume responsibility for implementing and enforcing the new requirements starting on January 1, 2023.

The foregoing recommended changes to align with ABs 1200 and 1276 have been incorporated into the proposed ordinance amending Chapter 8.72. In addition, the proposed ordinance makes other minor modifications to align with the County's most recent ordinance, and to maintain internal consistency across different provisions.

FISCAL IMPACT

There is no known fiscal impact by adopting this ordinance. If adopted, the County will continue to provide all outreach, education and enforcement. Funding for the County's ordinance comes from the County's AB 939 fee, which is levied on all waste disposed of within the county and is designated specifically for waste reduction program.

RELATIONSHIP TO STRATEGIC PLAN

Adoption of an ordinance regulating the use and distribution of disposable food service ware meets the City's strategic initiatives of building and maintaining a sustainable city.

CONCLUSION

It is recommended that the City Council waive reading and introduce an ordinance to amend Chapter 8.72 of the South San Francisco Municipal Code to align with the County of San Mateo's Disposable Foodservice Ware Ordinance and new state requirements under AB 1276 and AB 1200.

Attachments:

- 1- County of San Mateo's Disposable Food Service Ware Ordinance (amended February 2022)