



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER: OFFICE OF SUSTAINABILITY

File #: 20-066

Board Meeting Date: 2/25/2020

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Jim Eggemeyer, Director, Office of Sustainability

Subject: Adoption of an ordinance repealing Chapters 4.106 and 4.107 of the San Mateo County Ordinance Code and adopting a new Chapter 4.107 regulating the use of disposable food service ware by food facilities

RECOMMENDATION:

Adopt an ordinance repealing Chapters 4.106 and 4.107 of the San Mateo County Ordinance Code and adopting a new Chapter 4.107 regulating the use of disposable food service ware by food facilities, previously introduced on February 11, 2020, and waive the reading of the ordinance in its entirety.

BACKGROUND:

In March 2011, the County of San Mateo Board of Supervisors adopted Ordinance No. 04542 prohibiting the use of polystyrene based disposable food service ware by food vendors ("Polystyrene Ban Ordinance").

Since the adoption of the Polystyrene Ban Ordinance, there has been increasing concern in the community over the impact of disposable food service ware, especially items made from plastic. Disposable food service ware, including containers, cups, lids, utensils and straws, is a major contributor to street litter, ocean pollution, marine and other wildlife endangerment, and climate change. Many plastic disposable food service ware items are used for just a few minutes before becoming waste, which lasts for hundreds or even thousands of years. Supervisor Canepa and Supervisor Horsley contacted the Office of Sustainability (OOS) and requested development of an ordinance to address these single use disposable items. In response, staff from the OOS conducted extensive research and worked closely with the County's Environmental Health Services (EHS) to develop a Disposable Food Service Ware Ordinance (Ordinance) that would repeal and replace the existing Polystyrene Ban Ordinance.

The OOS completed an extensive community engagement and outreach process within unincorporated San Mateo County this past summer and fall to gather feedback from different stakeholders on the draft Ordinance. The process included sending out mailers and emails to all 265

food facilities in unincorporated San Mateo County and holding three public events in June 2019, one webinar and two workshops, in Half Moon Bay and Redwood City. OOS staff also communicated directly with a number of different entities to gather input, including county solid waste haulers, nearby industrial composting facilities, waste and stormwater related joint powers authorities, restaurant and business associations, community advisory councils and committees, non-profit organizations, and educational institutions. Feedback was also collected from incorporated cities within the county that are interested in exploring adoption of similar ordinances for their jurisdictions.

DISCUSSION:

The purpose of the Ordinance is three-fold:

1. Eliminate the unnecessary distribution and use of disposable food service ware that is not reusable or compostable.
2. Improve the health and safety of San Mateo County community members by eliminating disposable food service ware that is harmful.
3. Help the County meet its regional stormwater permit requirement by reducing litter in stormwater discharges.

The provisions of the Ordinance are summarized below.

1. Accessories such as straws, stirrers, cup spill plugs, condiment packets, utensils, napkins, etc. shall be provided only: (1) when requested by the consumer, (2) upon acceptance by the consumer after being offered by the food facility, 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.
2. Polystyrene (#6 plastics, Styrofoam) disposable food service ware is prohibited. (This is a provision that will be carried over from the Polystyrene Ban Ordinance.)
3. Food facilities shall 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* is 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 (a.k.a. bioplastics or polylactic acid [PLA]) shall not be allowed for the abovementioned items.
4. 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 made entirely of compostable plastic. Additionally, these items shall be certified by the Biodegradable Products Institute (BPI) or by another 3rd party approved by the OOS to ensure that the items breakdown in an industrial composting facility and are free of/have minimal traces of harmful fluorinated chemicals.
5. Some notable exemptions that will be allowed are summarized below:

- a. Disposable food service ware made from aluminum.
 - b. Disposable plastic straws may be provided only upon request to consumers with medical needs.
 - c. Healthcare facilities may distribute disposable plastic straws without a request from the patient.
 - d. Drive-through areas of food facilities may distribute straws and cup sleeves without a request from the consumer.
 - e. If no reasonably feasible disposable food service ware alternative exists.
6. The OOS will maintain and have available 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.

The Ordinance will go into effect thirty (30) days after adoption. However, Staff is recommending that the mandatory provisions, except for Section 4.107.050 (a)(1), shall only become operative and subject to enforcement one (1) year after the effective date. This is to provide food facilities sufficient time to use up their existing non-conforming inventory of disposable food service ware and to give the OOS time to develop an education and enforcement program.

Also, the OOS will take the lead in conducting education and enforcement of the Ordinance at food facilities within unincorporated San Mateo County, in close collaboration with EHS. The Ordinance also includes a provision that will allow the County (the OOS, specifically) to conduct both education and enforcement within incorporated cities that adopt the Ordinance. Enforcement will primarily be on a complaint basis.

In addition, the OOS is currently finalizing a similar Administrative Memo with the County Manager's Office for internal County operations to eliminate the use of non-compostable food service ware.

County Counsel has reviewed and approved the Ordinance as to form.

FISCAL IMPACT:

Funding for the implementation of this Ordinance will come 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 programs.