



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER: OFFICE OF SUSTAINABILITY

File #: 22-050

Board Meeting Date: 1/25/2022

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Carolyn Bloede, Director, Office of Sustainability
Subject: Introduction of an ordinance repealing and adopting a new Chapter 4.107 regulating the use of disposable food service ware

RECOMMENDATION:

Introduction of an ordinance repealing Chapter 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 to align with new state laws and waive the reading of the ordinance in its entirety.

BACKGROUND:

Many disposable foodware items, such as cups, utensils, straws, and clamshells, are made from polystyrene and plastic and are used for mere minutes before becoming waste that remains in our landfills for hundreds of years. They are also a major contributor to street litter, ocean pollution, marine and other wildlife endangerment, and climate change. In addition, foodware made from natural fiber (e.g., paper, sugarcane, etc.) can contain perfluoroalkyl and polyfluoroalkyl substances, a class of hazardous chemicals known as PFAS, which is used to make fiber-based foodware water and grease resistant. These “forever” chemicals persist in the environment and the human body, leading to continued exposure and health risks.

In March 2011, this Board took early leadership action and adopted Ordinance No. 04542 (2011 Ordinance) prohibiting the use of polystyrene-based disposable foodware by food vendors in the unincorporated areas of the county. Polystyrene is an environmental pollutant that is non-biodegradable, non-recyclable, and nearly non-reusable. On February 25, 2020, this Board repealed and replaced the 2011 Ordinance with Ordinance No. 04823, also known as the “Disposable Food Service Ware Ordinance” (2020 Ordinance). The 2020 Ordinance expands on the 2011 Ordinance to further reduce plastic pollution and litter by limiting the use of additional single-use plastic and other foodware waste, such as plastic straws, utensils, cups, and clamshells. It also restricts many single-use fiber-based foodware from containing intentionally added PFAS.

Recognizing the hardship caused by COVID-19 on restaurants and other food facilities, this Board

amended the 2020 Ordinance by adopting Ordinance No. 04840 on February 23, 2021, which extended the enforcement start date of the 2020 Ordinance by one year from March 25, 2021 to March 25, 2022 to give food facilities additional time to comply.

In 2018, California adopted Assembly Bill (AB) 1884 requiring that full-service restaurants only provide single-use plastic straws upon consumer request versus distributing them automatically without a specific request from the consumer. The State expanded on this law by passing AB 1276 on October 5, 2021. Under AB 1276, food facilities must go beyond just plastic straws and require consumers to request additional foodware accessories such as utensils, stirrers, splash sticks, and condiment packets. The State also strengthened enforcement by directing local governments to authorize an enforcement agency to enforce these statutes by June 1, 2022. The law, however, does not provide a specific implementation date. Furthermore, AB 1276 allows local governments to adopt more restrictive requirements at their discretion.

On October 5, 2021, Governor Newsom signed into law AB 1200, which prohibits the sale or distribution of single-use foodware comprised of paper or other plant-based natural fiber that contains intentionally added PFAS. This law goes into effect on January 1, 2023. The new legislation does not direct a specific entity to be the enforcement agency.

DISCUSSION:

The County's 2020 Ordinance includes key provisions that are well aligned with many of the requirements on foodware in AB 1276 and AB 1200 including:

1. Requirement that food facilities only distribute foodware accessories upon request by the consumer;
2. Prohibition of food facilities from bundling/packaging single-use foodware accessories for distribution;
3. Requirement that third-party food delivery platforms (e.g., Uber Eats, DoorDash, etc.) provide options for consumers to affirmatively ask for single-use foodware accessories; and
4. PFAS restrictions on single-use fiber-based foodware. (While AB 1276 requires all single-use fiber-based foodware to be PFAS-free, the County's 2020 Ordinance requires the following select items to be PFAS-free: plates, bowls, cups, food trays, clamshells, boxes, deli containers, and other containers.)

Some discrepancies, however, do exist. Below is a summary of the new state requirements and the recommendations for aligning the County's 2020 Ordinance with the new state requirements.

Overview of Changes to County's 2020 Ordinance to Align with AB 1276

To align the County's 2020 Ordinance with the new state requirements of AB 1276, the following changes are recommended:

1. Current 2020 Ordinance 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 2020 Ordinance: Amend the 2020 Ordinance so that only food facility drive-throughs and food facilities at public airports can offer accessories to consumers.

2. Current 2020 Ordinance 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 2020 Ordinance: Amend the 2020 Ordinance so that 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. Current 2020 Ordinance 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 2020 Ordinance: Amend the 2020 Ordinance to explicitly allow for use of refillable bulk condiment dispensers.

Overview of Changes to County's 2020 Ordinance 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. To align the County's 2020 Ordinance with the new state requirements of AB 1200, the following changes are recommended:

1. The PFAS requirements in AB 1200 go into effect on January 1, 2023 and supersede those of the County's 2020 Ordinance. Therefore, the recommendation is to sunset the County's PFAS requirements currently in the 2020 Ordinance on December 31, 2022. The County will look to the State to assume responsibility for implementing and enforcing the new requirements starting on January 1, 2023.

2020 Ordinance Enforcement Start Date

Staff recommends extending the current enforcement start date of the 2020 Ordinance from March 25, 2022 to October 1, 2022 to provide additional time for food facilities to come into compliance with the new state requirements, especially those associated with AB 1276.

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

FISCAL IMPACT:

There is no Net County Cost associated with this Ordinance amendment.