



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: April 26, 2022

TO: Honorable Mayor and Members of the City Council

FROM: Jovan Grogan, City Manager

PREPARED BY: Matthew Lee, Director

SUBJECT: Waive Second Reading and Adopt an Ordinance Repealing Chapter 10.21 of the San Bruno Municipal Code and Adopting a new Chapter 10.21 Regulating the Use of Disposable Food Service Ware by Food Facilities

BACKGROUND: On August 12, 2008, the City Council adopted a Sustainable Food Packaging Ordinance calling on restaurants and other food service vendors in San Bruno to eliminate disposable food service composed of polystyrene (Styrofoam). Effective April 1, 2010, food vendors were prohibited from dispensing prepared food to customers in disposable food service ware made from polystyrene. Since the adoption of the Sustainable Food Packaging 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. The toxic, carcinogenic chemicals in polystyrene include benzene and styrene, and when heated, leaches into food and drinks.

The City was contacted by the San Mateo County Office of Sustainability (County) in August 2019 and received a summary report and request to consider joining a county wide effort to adopt a Disposable Food Service Ware Ordinance (Ordinance) for food facilities. For over a year, County staff conducted extensive research and worked closely with the County's Environmental Health Services (EHS) to develop the proposed Ordinance, repealing its existing Polystyrene Ban Ordinance. The County engaged cities and stakeholders in the process to try and encourage all of the cities in the county to adopt its Ordinance. The County adopted the Ordinance on February 25, 2020, with thirteen cities following the adoption including the City adopting on September 14, 2021. The Ordinance aimed to regulate and reduce the amount of disposable food service ware, especially those made of plastic which include one-time use items such as straws, stirrers, bowls, plates, cups, utensils, clamshells, etc.

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. Also, 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 perfluoroalkyl and polyfluoroalkyl substances (PFAS), a class of hazardous chemicals. This law goes into effect on January 1, 2023. The new legislation does not direct a specific entity to be the enforcement agency.

The County's Board of Supervisors adopted the amendment to the Disposable Food Service Ware Ordinance on February 8, 2022. On April 12, 2022 the City Council waived the first reading and introduced the ordinance as presented.

DISCUSSION: The previously adopted City Ordinance in September 2021 (2021 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 1200 requires all single-use fiber-based foodware to be PFAS-free, the City's 2021 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 City's 2021 Ordinance with the new state requirements.

Overview of Changes to City's 2021 Ordinance to Align with AB 1276

To align the City's 2021 Ordinance with the new state requirements of AB 1276, the following changes are recommended:

1. Current 2021 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 2021 Ordinance: Amend the 2021 Ordinance so that only food facility drive-throughs and food facilities at public airports can offer accessories to consumers.

2. Current 2021 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 2021 Ordinance: Amend the 2021 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 2021 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 2021 Ordinance).

New AB 1276 requirement: Food facilities are explicitly allowed to use self-serve, refillable bulk condiment dispensers to distribute condiments.

Recommended change to 2021 Ordinance: Amend the 2021 Ordinance to explicitly allow for use of refillable bulk condiment dispensers.

Overview of Changes to City's 2021 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 City's 2021 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 City's 2021 Ordinance. Therefore, the recommendation is to sunset the City's PFAS requirements currently in the 2021 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.

This City entered into a Memorandum of Understanding with the County, who will take the lead in education and outreach, as well as enforcement of the ordinance. This will promote consistency within jurisdictions throughout the County. The City will save staff time and resources by having the County provide these services.

The ordinance will not become operative and will not be enforced until October 1, 2022 to provide food facilities time to use up their existing non-conforming inventory and to give County staff time to develop an education and enforcement program.

FISCAL IMPACT: There is no fiscal impact anticipated as a result of this Ordinance. Limited costs are anticipated for existing food service facilities in the City considering that all have some type of sustainable food service ware in place. The County will manage the outreach, education, and enforcement of the Ordinance at no cost to the City.

ENVIRONMENTAL IMPACT: The action is not a project subject to CEQA. City Council's action is not considered a "Project" per CEQA Guidelines and therefore no further environmental analysis is required

RECOMMENDATION: Waive Second Reading and Adopt a new Chapter 10.21 Regulating the Use of Disposable Food Service Ware by Food Facilities

ALTERNATIVES: Request additional information before adopting the ordinance

ATTACHMENTS:

1. City Disposable Food Service Ware Ordinance