



CITY COUNCIL AGENDA REPORT

Meeting Date: March 18, 2021

From: Adrienne Etherton, Sustainability Manager

Subject: Disposable Food Ware Ordinance

Community Goal/Result

Ecological Sustainability - Brisbane will be a leader in setting policies and practicing service delivery innovations that promote ecological sustainability

Purpose

To introduce an Ordinance that will ultimately allow the County of San Mateo to perform education and enforcement services on the use of disposable food service ware in the City of Brisbane.

Recommendation

1. Adopt Ordinance No. 660 "Repealing Chapter 8.18 of the Brisbane Municipal Code and Adopting a New Chapter 8.19 Regulating the Use of Disposable Food Service Ware by Food Facilities.
2. Authorize the City Manager to enter into a Memorandum of Understanding with the County of San Mateo to provide education and enforcement of the food service ware ordinance.

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"). The City of Brisbane adopted Ordinance No. 590 in November 2014 extending the polystyrene ban within city limits, with the County providing enforcement.

Since the adoption of the Polystyrene Ban Ordinance, there has been increasing concern over the impact of disposable food service ware, especially items made from plastic. Disposable food service ware is a major contributor to street litter, ocean pollution, marine and other wildlife endangerment, and climate change. Many plastic food service ware items are used for just a few minutes before becoming waste, which lasts for hundreds or even thousands of years.

Accordingly, the County of San Mateo's Office of Sustainability (OOS) and Environmental Health Services conducted extensive research and outreach to develop a Disposable Food Service Ware Ordinance (Ordinance) that would repeal and replace the Polystyrene Ban Ordinance. On February 25, 2020, the Board of Supervisors adopted San Mateo County Ordinance No. 04823, with an effective date of March 25, 2021. Because the County repealed and replaced their previous Polystyrene Ban, the City's Polystyrene ban is no longer being enforced.

City staff had followed and contributed to the County effort with the intention of bringing forward a local ordinance to extend the new provisions within Brisbane and continue to align with the County requirements to retain their role in enforcement. Unfortunately, shortly thereafter, the Coronavirus

Pandemic broke out and city staff did not feel it was an appropriate time to bring forward new regulations on struggling food businesses. However, several other cities in the County have moved forward: South San Francisco, Burlingame, Atherton, Half Moon Bay, Belmont, San Mateo, and Millbrae (first reading 2/26/21). Recently, the County adopted an amendment that pushed their enforcement date back to March 25, 2022.

Discussion

The provisions of the proposed 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 or 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 San Mateo County Office of Sustainability (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.

OOS is developing a “Sustainability Ambassadors” program for summer 2021 which will provide materials and training to volunteers to encourage food businesses to immediately begin providing accessories only upon request, which would save businesses money by minimizing the distribution of disposable utensils, napkins, condiments and other accessories. The pandemic has led to an increase in take-out, often brought to a home environment not in need of these accessories, which are then thrown away or stashed in ever-growing piles in our homes. Eliminating these unnecessary items can help offset potentially higher costs for other compostable food ware items and save considerable waste. Staff intends to promote this volunteer opportunity and run related articles through city communications channels.

In February, County staff presented their ordinance to the Open Space and Ecology Committee, who expressed concern about the impact on the local restaurants and discussed various methods of support. City staff reported that outreach to all impacted businesses in summer 2019 indicated many Brisbane eateries are already using compliant items. OSEC recommended adoption of the ordinance paired with a program to provide up to 6 months of compostable containers and education encouraging restaurants not to provide accessories unnecessarily.

Enacting the support proposed by OSEC would impose a significant burden on staff and an unknown but potentially considerable cost. The City Council has recently made a commitment of \$50,000 to help local small businesses, in addition to the grants available from County, State, and Federal sources. With local businesses already reporting to be largely in compliance in 2019, and a one-year lead time to use any non-compliant items stocked, staff believes the impact will be minimal. In addition, the requirements will be imposed uniformly on food businesses, preventing any competitive disadvantage between local establishments.

Fiscal Impact

There is no direct fiscal impact to the City upon adoption of this ordinance because the County of San Mateo will be responsible for outreach and enforcement. Should Brisbane not adopt this ordinance, the existing Polystyrene Ban would require city enforcement at our own expense. Provision of material support to businesses would be an additional cost.

Measure of Success

An overwhelming transition to non-disposable food service ware by Brisbane food service businesses.

Attachments

1. Brisbane Disposable Food Service Ware Ordinance No. 660
2. Disposable Food Service Ware Ordinance MOU



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