



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 04/05/2022

ITEM NO: 11

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DATE: March 30, 2022  
TO: Mayor and Town Council  
FROM: Robert Schultz, Town Attorney  
SUBJECT: Introduction and First Reading of an Ordinance Repealing and Replacing  
Article III of Chapter 10 of the Los Gatos Town Code Regulating Food Service  
Ware by Food Facilities to Align with New State Laws

**RECOMMENDATION:**

Accept public comment then move for the introduction and first reading of an Ordinance (Attachment 2), by title only, repealing and replacing Article III of Chapter 10 of the Los Gatos Town Code regulating Food Service Ware.

**BACKGROUND:**

The Town has a substantial interest in protecting its residents, and the environment, from negative impacts associated with disposable food service ware items. Disposable (also referred to as single-use, or nonreusable) food service ware items—including cups, bowls, plates, containers, utensils, straws, cup lids, napkins, and drink stirrers and plugs —contribute to street litter, ocean pollution, wildlife harm, and greenhouse gas emissions. The production and disposal of non-reusable food service ware accessories have significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable polluting fossil fuels, greenhouse gas emissions, and increased clean-up and end of life management costs. Disposable plastic is especially problematic in the environment, as it breaks apart easily into small pieces and is often mistaken as food by birds, fish, and wildlife.

The small plastic items addressed in this proposed ordinance, such as straws and stirrers, are light and therefore easily transported by wind and stormwater to waterways. In fact, plastic straws and drink stirrers are among the top 10 most commonly found items on beaches nationally. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable and are present in most of the world's oceans.

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Reviewed by: Town Manager, Assistant Town Manager, Community Development Director and Parks and Public Works Director

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SUBJECT: Introduction and First Reading of an Ordinance Repealing and Replacing Article III of Chapter 10 of the Los Gatos Town Code Regulating Food Service Ware by Food Facilities to Align with New State Laws

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BACKGROUND (continued):

On December 16, 2014, the Town Council adopted the Polystyrene Foam Food Service Ware Ordinance (2235), creating the Town's first food service ware regulations. This ordinance added Article III to Chapter 10 of the Los Gatos Town Code, prohibiting food providers from using polystyrene foam food service ware and banning retail sale of foam food service ware and foam ice chests or coolers (Attachment 1).

In 2018, California adopted Assembly Bill (AB) 1884, requiring single-use plastic straws to only be provided upon consumer request in full-service restaurants. The State expanded on this and strengthened enforcement through passage of AB 1276 in October 2021. AB 1276 prohibits food facilities from providing consumers, unless requested, certain single-use food service ware accessories and standard condiments packaged for single use. It directs the Town to authorize an enforcement agency to enforce these provisions by June 1, 2022.

On October 5, 2021, Governor Newsom signed AB 1200, prohibiting the sale or distribution of food packaging containing Per and Polyfluoroalkyl Substances (PFAS) by January 1, 2023. This regulation will apply to paper, paperboard, or other natural fiber food packaging.

In 2021, the Town's Youth Commission began working with the Town Attorney to develop a Single Use Disposable Foodware ordinance and on January 25, 2022, the Town Council adopted as one of its Ordinance and Policy Priorities the adoption of Single Use Disposable Foodware Ordinance. Single use disposable foodware and packaging (SUDs) includes plates, cutlery, cups, lids, straws, "clamshells" and other containers. Reducing the use of SUDs and/or requiring compostable products in the Town of Los Gatos is a key strategy to achieve the Town's Zero Waste and Climate Action goals, and to address the many environmental impacts and costs associated with the use and disposal of single-use foodware and packaging.

In the Bay Area and in other parts of the state, several municipalities have adopted various forms of legislation regulating food service ware and/or food service ware accessories with the intent of reducing environmental harm caused by these items. These agencies include Palo Alto, Mountain View, Berkeley, San Francisco, Oakland, Alameda, Davis, Santa Cruz, Watsonville, and other cities. A comprehensive list of jurisdictions that have enacted policies that have restricted disposable foodware items and brought reusables into food service for on-site dining, take-out and delivery can be found at <https://upstreamolutions.org/policytracker>.

Relevant legislation and existing federal, state, and local regulations align with the adoption of the draft Ordinance (Attachment 2) prepared by the Youth Commission and the Town Attorney.

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DISCUSSION:

The draft ordinance is applicable to food providers and addresses the landfilled waste, health impacts, and litter resulting from disposable food packaging in key areas both covered and not covered by the new State legislation. A food provider is any entity serving public food and beverages in Los Gatos regardless of whether there is a charge. Food providers include restaurants, coffee or juice shops, bakeries, mobile food trucks, caterers, event venues, corporate cafeterias, private schools, and convenience stores.

The draft ordinance provisions include:

- Continue the Town's existing polystyrene foam food ware ban.
- Beginning January 1, 2023, food providers may only use nonreusable food service ware (cups, bowls, plates, trays, cartons, boxes, wrappers or liners, and hinged containers, etc.) that is compostable (natural fiber-based) and third-party certified free of PFAS, with the exception of food service ware made entirely of aluminum, which is recyclable.
- Beginning January 1, 2023, food providers may not use the following nonreusable food service ware accessories if made from or packaged in plastic, including biologically based polymers or compostable plastic: straws, stirrers, food picks, or toothpicks. Exceptions for plastic straws may be provided upon request to consumers for medical reasons, and health-care facilities may distribute plastic straws to patients who require them with or without a request.
- Automatic exemptions are provided during an emergency, although food providers will be encouraged to maintain compliance if possible.
- Temporary exemptions for certain food service ware items if the Parks and Public Works Director determines a reasonably feasible compliant alternative does not exist.
- Similar to the original Polystyrene Foam Food Service Ware Ordinance, food providers may apply for a one-year waiver from the requirements that food service ware be compostable and certified PFAS-free. The waiver may be granted by the Parks and Public Works Director due to exceptional circumstances, such as economic hardship or unique food packaging needs.

The ordinance's implementation timeline is consistent with all relevant State laws and designed to give food providers enough time to prepare for the new requirements, including training

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DISCUSSION (continued):

staff, using up noncompliant food ware, and finding compliant food packaging. The Town with the help of the Youth Commission will concurrently provide outreach and education to businesses to assist in understanding the Ordinance.

CONCLUSION:

It is recommended that the Town Council move for the introduction and first reading of an Ordinance (Attachment 2), by title only, Repealing and Replacing Article III of Chapter 10 of the Los Gatos Town Code Regulating Food Service Ware by Food Facilities to Align with New State Laws.

COORDINATION:

This report was coordinated with the Town Manager's Office.

FISCAL IMPACT:

There will be no fiscal impact to the Town at this time.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Current Ordinance
2. Draft Ordinance