



Item No. 8 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT CALENDAR

TO: HONORABLE MAYOR AND CITY COUNCIL

THROUGH: GEORGE RODERICKS, CITY MANAGER

FROM: ANTHONY SUBER, CITY CLERK / DEPUTY CITY MANAGER

DATE: APRIL 20, 2022

SUBJECT: WAIVE THE FINAL READING AND ADOPT AN ORDINANCE REPEALING CHAPTER 8.56 OF THE ATHERTON MUNICIPAL CODE AND ADOPTING A NEW CHAPTER 8.56 REGULATING DISPOSABLE FOOD SERVICE WARE BY FOOD FACILITIES TO ALIGN WITH NEW STATE LAWS

RECOMMENDATION

Staff recommends that the City Council waive the final reading by substitution of the title and adopt the Ordinance repealing a Municipal Code Ordinance regulating Disposable Food Service Ware under Chapter 8.56 of the Atherton Municipal Code.

BACKGROUND/ANALYSIS

This is the final reading and substitution of the title and adoption of an ordinance repealing Chapter 8.56 of the Atherton Municipal Code regulating Disposable Food Service Ware by Food Facilities to align with new state laws. Council waived the first reading by substitution of the title and introduced the ordinance at the Regular City Council Meeting of March 16, 2022. If approved, this ordinance will be effective thirty days following the adoption.

The Ordinance requires food service facilities to use natural fiber-based compostable food ware instead of single-use plastic products and regulates the distribution of single-use food ware accessories. The ordinance aligns with the County's multi-jurisdictional effort to reduce the waste, greenhouse gasses, and use of resources associated with single-use food service ware.

Since adoption of this ordinance, State law has evolved to further address solid waste concerns. On October 5, 2021, Governor Gavin Newsom signed AB 1276, which restricts the distribution of single-use food ware accessories by restaurants and food facilities. He also signed AB 1200 prohibiting the distribution, sale, or offer for sale of food packaging that contains regulated perfluoroalkyl and polyfluoroalkyl substances. While these changes in State law are consistent with the intent of the Town's ordinance, there are minor differences that require updates to the Town's ordinance.

On February 8, 2022, the County Board of Supervisors adopted Ordinance No. 4860 incorporating the State's new requirements by repealing their existing ordinance governing disposable food

service ware. Through a Memorandum of Understanding (MOU), the Town uses the services of the County to educate and enforce our local ordinance. Therefore, staff recommends a repeal and replace approach to update the Town's Ordinance. Town Ordinance 645 is part of a larger countywide effort to reduce use of disposable food service ware. There is a desire for uniform regulation, monitoring, and enforcement of these requirements; and, with the ever-changing nature of regulating disposable food service ware, it is preferable to incorporate the County's ordinance by reference, eliminating the need to update the Town's ordinance whenever State or regional developments change regulations. This is the same approach taken for the Town's Animal Services Ordinance. Updates to the Ordinance do not require changes to the MOU with San Mateo County, which continues to educate the public and enforce the ordinance. The MOU was approved at the November 17, 2021, Council meeting. The ordinance would be enforced starting October 1, 2022.

FISCAL IMPACT

None.

GOAL ALIGNMENT

This report and its contents are in alignment with the following Council Policy Goals:

- Goal E – Strengthen Community Engagement and Transparency
- Goal F – Be Forward-Thinking, Well-Managed, and Well-Planned

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,400 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service provides (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ___ has or X has not been before a Town Committee or Commission.

- ___ Audit/Finance Committee (meets every other month)
- ___ Bicycle/Pedestrian Committee (meets as needed)
- ___ Civic Center Advisory Committee (meets as needed)
- ___ Environmental Programs Committee (meets every other month)
- ___ Park and Recreation Committee (meets each month)
- ___ Planning Commission (meets each month)
- ___ Rail Committee (meets every other month)
- ___ Transportation Committee (meets every other month)

ATTACHMENTS

1. Disposable Food Service Ordinance

ORDINANCE NO. 22 – XX

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON TO AMEND CHAPTER 8.56 OF THE ATHERTON MUNICIPAL CODE REGULATING DISPOSABLE FOOD SERVICE WARE

The City Council of the Town of Atherton does hereby ordain as follows:

SECTION 1: Chapter 8.56 “Disposable Food Service Ware” is hereby repealed and replaced in its entirety by a new chapter 8.56 to read as follows within Exhibit A.

**Chapter 8.56
“DISPOSABLE FOOD SERVICE WARE”**

SECTIONS:

- 8.56.010** **Statement of Findings and Purpose**
- 8.56.020** **Adoption of County of San Mateo ordinance by reference**
- 8.56.030** **Enforcement**
- 8.56.010** **Statement of Findings and Purpose**

The Town finds and declares as follows:

- A. The production, management, and consumption associated with disposable food service ware, typically used for only a few minutes before being discarded, have significant environmental impacts, including environmental contamination; consumption of precious resources such as energy and water; emissions of greenhouse gases; air and water pollution; litter on streets; and plastic pollution in waterways and oceans.
- B. Disposable food service ware constitutes a substantial portion of the litter found within San Mateo County and the rest of the Bay Area. These types of food service ware are commonly littered or blown out of trash receptacles and migrate through the storm drain system where they eventually end up in the ocean and the county’s beaches and creeks.
- C. Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors. Polystyrene, often referred to by the trademark, Styrofoam, has also become a problematic environmental pollutant given its non-compostable and nearly non-reusable nature. The most effective ways to reduce the negative environmental impacts of disposable food service ware include, in order of priority, using reusable food service ware; using natural-fiber-based compostable materials, many made from renewable resources such as bamboo, wheat stalk/stem, and sugarcane that do not contain toxic chemicals; and recycling food service ware. When products are reused and recycled, natural resources are spared, less energy is used for the production of new products, and premium landfill space is preserved. When compostable

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products are turned into compost, they can reduce water use and lessen the need for fertilizer at the site where the compost is applied (e.g., gardens, yards, farm land).

- D. Compostable food service ware such as cups, plates, clamshell containers, and utensils are now made from paper, sugarcane stalk, bamboo, wheat stalk/straw, and other blends of natural plant fibers. As these products degrade, they pose less of a danger to the environment.
- E. Even with the emergence of compostable plastics, which are derived from renewable biomass sources such as plants and microorganisms, there are limited certified types of compostable plastic that biodegrade in a marine environment.
- F. Certain disposable food service ware, including compostable paperboard containers, may contain fluorinated chemicals, also known as per- and polyfluorinated alkyl substances (PFAS), which are synthetic chemicals commonly used in disposable food service ware to repel water and grease. Fluorinated chemicals pose a public health risk as they have been linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty, and obesity.
- G. Plastics in waterways and oceans break down into smaller pieces, called microplastics, that do not biodegrade and are present in most of the world's oceans. Microplastics consumed by marine organisms make their way into animals' tissues and are beginning to show up in the fish that humans consume. Plastic debris also attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish and other seafood that is eventually sold for human consumption.
- H. Reduction of disposable food service ware in the environment will advance compliance with federal, state, and county clean water mandates, including the County's Municipal Regional Stormwater Permit requirement, by helping to reduce trash and litter in stormwater discharges.
- I. Understanding the importance of and need for reducing plastic litter, the Town adopted this Ordinance to help further reduce the amount of litter entering the county's storm drains, creeks, the bay, and the ocean.
- J. The Town does, accordingly, find and declare that it should restrict the use by food facilities of polystyrene-based disposable food service ware and require the replacement of non-compostable or non-recyclable disposable food service ware with compostable alternatives that are non-plastic, natural fiber-based, and free of all intentionally added fluorinated chemicals, when and where possible.
- K. The Town wants to be consistent with the County of San Mateo's regulation of disposable food service ware.

8.56.020 Adoption of County of San Mateo ordinance by reference.

Chapter 4.107 of Title 4 of the Santa Mateo County Code of Ordinances, entitled “Regulating the Use of Disposable Food Service Ware” and any amendment thereto, are hereby adopted by this reference and made part of the Atherton Municipal Code and are, accordingly, effective in this City. Certified copies of Chapter 4.107 of Title 4, as adopted hereby, and any subsequent amendment, shall be deposited with the City Clerk, and shall be at all times maintained by the Clerk for use and examination by the public.

8.56.030 Enforcement.

- A. The City Manager or designee may enforce this Chapter.
- B. Notwithstanding the Section 8.56.030(A), the County Manager of San Mateo County or their designee may also enforce this Chapter for so long as the Town and the County have a Memorandum of Understanding or some similar agreement in place providing for the County’s enforcement of this Chapter.
- C. A violation of this Chapter is an infraction and is also punishable by administrative fines as set forth in Chapter 1.40 of the County of San Mateo Municipal Code.
- D. Violation of this Chapter is a public nuisance subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures contained in this ordinance code and state law including, but not limited to, an action for abatement or injunctive relief.
- E. This Section shall not be interpreted to limit any otherwise available civil or administrative remedies under law.

SECTION 2: California Environmental Quality Act (CEQA) Finding. This Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15061 (b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the provisions contained herein may have a significant effect on the environment. Further, the Ordinance is also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 of Title 14 of the California Code of Regulations as actions taken by regulatory agencies to assure the maintenance, restoration, enhancement of natural resources, or protection of the environment.

SECTION 3: Severability. If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 8.36, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

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SECTION 4: Effective Date. This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption. However, the mandatory provisions of this Ordinance, except for Section 4.107.050 (a)(1), shall only become operative and subject to enforcement one year (365 days) after the effective date.

Introduced on the ____ day of _____, 2022.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the _____ day of _____, 2022 by the following vote:

Rick DeGolia, Mayor
Town of Atherton

ATTEST:

Anthony Suber, City Clerk

APPROVED AS TO FORM:

Mona Ebrahimi, City Attorney



County of San Mateo's Disposable Food Service Ware Ordinance Proposed Amendment Discussion

1/3/22

1. Background

The County of San Mateo Office of Sustainability (OOS) is recommending an amendment to the County's existing Disposable Food Service Ware Ordinance (Ordinance) to align with new state laws, AB 1276 and AB 1200.

On October 5, 2021, California adopted [AB 1276](#), which requires restaurants and other food facilities (FFs) to provide food and beverage accessories (e.g., utensils, straws, stirrers, condiment packets, etc.) and condiments only upon request to consumers. **Per state statute, it is the responsibility of each local government (counties and cities) to ensure that these new requirements are enforced within their jurisdiction.** The new legislation specifically directs 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 perfluoroalkyl and polyfluoroalkyl substances, a class of hazardous chemicals known as PFAS, a class of hazardous chemicals, which is used to make foodware water and grease resistant. These "forever" chemicals persist in the environment and the human body leading to continued exposure and health risks. AB 1200 goes into effect on January 1, 2023. The new legislation does not direct a specific entity to be the enforcement agency.

The County's 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 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 Ordinance with the new state requirements.

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

Fortunately, similar requirements around accessories distribution that are in AB 1276 already exist within the County's Ordinance. As such, the rational next step would be to ensure that the requirements in the Ordinance align with the new state requirements under AB 1276. To that end, OOS recommends that the Ordinance be amended to require the following:

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

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

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

3. Overview of Changes to County’s 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 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 Ordinance. Therefore, the recommendation is to sunset the County’s PFAS requirements currently in the 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.

4. Ordinance Enforcement Start Date

The OOS recommends extending the current enforcement start date of the 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.

5. Timeline

The OOS will be bringing the proposed ordinance amendment to the County’s Board of Supervisors for consideration for adoption on January 25, 2022, with the second reading of the ordinance amendment anticipated to take place on February 8, 2022 (official date of anticipated adoption).

6. Impact on our City Partners

To City Partners with March 25, 2022 Enforcement Start Date

- The OOS asks our city partners with the March 25, 2022 enforcement start date to also consider the change in date to October 1, 2022. (Currently, nine jurisdictions share the March 25, 2022 timeline: County, South San Francisco, Burlingame, Atherton, Belmont, Millbrae, Brisbane, Colma, and Hillsborough.)

Benefits of changing the enforcement start date to October 1, 2022 are listed as follows:

- The change will provide additional time for food facilities to come into compliance with the new state requirements, especially those associated with AB 1276. Keeping the existing March 25, 2022 enforcement state date would significantly reduce the amount of time needed for impacted food facilities to learn about the new state requirements and prepare accordingly for compliance.
 - The change will provide each jurisdiction more time to conduct outreach and provide support (via the County's Foodware Aware Team) to the impacted food facilities regarding the new state requirements.
 - Assuming adoption of the County's proposed ordinance amendment by all jurisdictions, the first cohort of nine jurisdictions will be joining the second cohort of city partners that has adopted the County's model foodware ordinance with an already existing enforcement start date of October 1, 2022. (This second cohort includes four cities: San Mateo, Daly City, San Bruno, and San Carlos.) Having one enforcement start date will be advantageous for all 13 jurisdictions as it will result in more consistent and cohesive messaging to impacted food facilities and the general public across all 13 communities.
- If a city partner decides to keep its March 25, 2022 enforcement start date and not move forward with the change to October 1, 2022, **please alert OOS staff ASAP**, so that next steps can be planned accordingly around marketing and outreach to the impacted food facilities in your jurisdiction.
 - For those city partners that move forward with the October 1, 2022 enforcement start date, the marketing and outreach campaign will be pushed to the summer of 2022 (around July to coincide with Plastic Free month). OOS staff will communicate with you regarding next steps closer to the launch date.

To All City Partners that Adopted the County's Ordinance

- If not already completed, the OOS recommends that city staff consult with your respective attorneys to determine if an amendment to the city's existing foodware ordinance is needed. (For those cities that adopted the County's Ordinance by reference, an amendment may or may not be needed. Please check with your attorney.) If needed, the OOS recommends that city partners bring the proposed ordinance amendment to their councils (**ideally, by March 2022**) for consideration for adoption soon after the hopeful adoption by the County's Board of Supervisors. The sooner the better to allow for as much time for food facilities in your jurisdiction to comply with the new state requirements. Also, a timely adoption of the ordinance amendment by all relevant city partners will ensure a smooth launch of the marketing and outreach campaign by the OOS across all

relevant jurisdictions simultaneously during the summer of 2022, in prep for the new enforcement start date of October 1, 2022.

- If the proposed ordinance amendment is adopted, the OOS also recommends that each city partner send out a mailer soon after the adoption alerting your food facilities of the new state requirements and the change in the enforcement start date, if applicable. If city partners are interested, OOS staff will be happy to share a mailer template that you can adapt for use.
- OOS staff will also share with city partners the proposed ordinance amendment text, staff report, and PPT slides along with presentation talking notes. OOS staff will also be available to participate in council meetings to support city staff during the introduction of the ordinance amendment.