



## CITY MANAGER'S OFFICE

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### SUSTAINABILITY COMMISSION STAFF REPORT

Meeting: January 20, 2022

#### **Subject**

Consider draft ordinance language and phasing for a Single-Use Plastics Ordinance

#### **Recommended Action**

Discuss and recommend that City Council adopt the proposed ordinance language and phasing for a Single-Use Plastics Ordinance

#### **Background**

- In 2014, Cupertino City Council adopted an ordinance to ban food vendors from selling or otherwise providing prepared food in expanded polystyrene foam food service ware.
- In 2017, Cupertino City Council adopted a Zero Waste Policy, which includes support for policies that demonstrate a preference for less toxic and more durable products over single-use products, acknowledges that reusable foodware is preferable to single-use, and seeks to reduce the proliferation of unnecessary plastic single-use food service ware and packaging.
- In 2018, City staff began participating in regional discussions and working groups on the topic of single-use foodware and model policy language. That work was inspired in part by changes in international markets for recycled plastics in 2018, concerns about plastic waste and microplastics in the environment, and health concerns from chemicals leaching into food.
- In 2018, California adopted Assembly Bill (AB) 1884 to require plastic straws to be provided only upon request.
- In 2019, the Youth Climate Action Team brought a request to restrict single-use plastic food service ware to the Cupertino City Council. The issue was also raised multiple times at Sustainability Commission meetings and was part of the Commission's suggested City Work Program items for Fiscal Year 2020-2021.
- The City Council accepted the Commission's suggestion, and the Single-Use Plastics Ordinance became a City Work Program item for Fiscal Year 2020-2021 and then was continued on to the Fiscal Year 2021-2022 City Work Plan.
- At the October 2021 meeting of the Sustainability Commission, a single-use plastics subcommittee was formed. The Committee met once in December 2021 to consider policy options and phasing.

- Beginning on June 1, 2022, state law will require food facilities to make certain single-use food service ware accessories and standard condiments packaged for single use available only on request.
- Beginning January 1, 2023, AB 1200 will prohibit the sale or distribution of food packaging (including fiber-based food service ware) containing per- and polyfluoroalkyl substances (PFAS).

### **Discussion**

City staff has prepared a proposed ordinance amending Municipal Code Chapter 9.15, which prohibits the use of expanded polystyrene (EPS) foam foodware. The proposed ordinance includes requirements that will reduce the amount of single-use plastic food service ware in Cupertino and encourage a shift toward more reusable food service ware for dining on location, for takeout, and at large events. It also proposes expanding the prohibition on EPS to local sale of certain non-foodware items such as packing peanuts.

Multiple life cycle analyses (LCAs) show reusable food service ware has less environmental impact compared to single-use products once a break-even point of repeated use occurs. LCAs consider metrics such as greenhouse gas emissions, energy inputs, and water consumption from the materials extraction phase through consumption and finally to disposal.<sup>1</sup> LCAs do not consider the impacts when products become litter as opposed to being disposed of properly, the impacts of plastic pollution in the environment, or the human health impacts of chemicals migrating from food service ware into food and beverages.<sup>2</sup> Reusables do have advantages over single-use products in these areas.

Elements and phases of the proposed ordinance are summarized here and presented in Attachment A.

The first phase of the ordinance mirrors the requirements of state law (AB 1276) and requires that food service ware accessories such as utensils, chopsticks, condiment cups and packets, straws, stirrers, splash sticks, and cocktail sticks be provided only upon request by customers. These requirements become effective on June 1, 2022.

The second phase of the ordinance includes elements that would go into effect one year later, on June 11, 2023. These requirements include:

1. Prohibiting the use of non-complaint food service ware by food providers:
  - Continue to prohibit use of expanded polystyrene foam food service ware

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<sup>1</sup> Oregon Department of Environmental Quality. "[Food Service Ware LCA Harmonization](https://www.oregon.gov/deq/FilterDocs/FoodLCAreport.pdf)," Prepared for the City of Portland Bureau of Planning and Sustainability (BPS). 2019. Retrieved from <https://www.oregon.gov/deq/FilterDocs/FoodLCAreport.pdf>

<sup>2</sup> Muncke, Jane et al. "Impacts of food contact chemicals on human health: a consensus statement." Environmental health: a global access science source vol. 19,1 25. 3 Mar. 2020, doi:10.1186/s12940-020-0572-5. Retrieved from <https://pubmed.ncbi.nlm.nih.gov/32122363/>

- Prohibit use of single-use plastic items (even if accepted as recyclable)
  - Prohibit use of compostable food service ware that contains PFAS
  - Prohibit use of bio-plastics (compostable plastics)
2. Reusable food service ware required for dining on premises:
    - Reusable food service ware must be provided for customers dining on site at the food provider's location. Requires sufficient dishwashing capacity or a contract with a dishwashing service.
  3. Imposing the following nonreusable beverage cup and food container charges:
    - \$0.25 for a disposable cup and \$0.25 for a disposable container
    - Charges kept by the business
  4. Prohibiting the sale of non-compliant foodware:
    - Ban local sale of single-use plastic, expanded polystyrene foam, and bio-plastic food service ware
  5. Prohibit sale of other expanded polystyrene products beyond food service ware:
    - Packing materials such as peanuts and blocks
    - Pool or beach toys, coolers, and ice chests where the foam is not fully encapsulated within a more durable material
  6. Exemptions:
    - Paper, wood, bamboo, and other fiber-based compostable food service ware items accepted in the City's compost program would be allowed
    - Containers made entirely from aluminum and aluminum foil would be allowed
    - Plastic straws allowed for those with medical need
    - Does not apply to food prepared and packaged outside of the City
    - Single-use food service ware still allowed for taking home leftovers from dine-in situations
    - Temporary exemptions allowed if additional time needed to comply
    - Allows for compliant paper food liners, wrappers, sleeves, bags, and foil wrappers
    - Exemption from charges for customers with certain economic hardships
    - Customers are allowed to bring their own containers
    - Businesses may refuse to use a customer's container if it is not suitable or is unsanitary
    - Exemption to packaging requirements for shipments received from outside the city or materials reused within the City

The third phase of the ordinance would go into effect on June 1, 2024 and would address prepared beverage and food containers used at events. Covered events would be required to comply with the following requirements:

- 25% of prepared beverage sales in reusable containers, phasing to 50% by June 1, 2026
- 25% of prepared food sales in reusable containers starting 6/1/2026 phasing to 50% by June 1, 2028

### Subcommittee Feedback

The Sustainability Commission formed a subcommittee to consider elements of the single-use plastics ordinance, and the subcommittee met on December 16, 2021. Subcommittee members Anna Weber and Meera Ramanathan heard presentations from staff and considered the following questions:

- 1) Who should be covered by the ordinance – all food providers, or just food vendors?
  - Citing concern about food service ware in use by health care providers, subcommittee members suggested focusing on food vendors first with a broader set of food providers considered at a later phase. However, because compliant single-use food service ware could be used in those settings, “providers” is recommended.
- 2) Speed of the phasing
  - The subcommittee suggested allowing more time for businesses to make the required changes called for in phase two, and therefore phase two was pushed to one year after implementation of phase one.
  - The subcommittee had concerns about the dishwashing requirements and economic impacts of reusables for dine-in services with a sensitivity to wanting to remain welcoming to existing and new businesses. The proposed ordinance includes waivers and temporary exemptions in cases of economic hardship or other challenges.
  - The subcommittee was in favor of providing incentives, such as technical assistance and grant funding. There is at least one independent organization that provides financial assistance to restaurants seeking to deploy reusable food service ware. The City could also consider hiring a consultant to provide technical assistance to help make changes, which could include mini grants to purchase reusable food service ware.
- 3) Ban plastic single-use food service ware items, even if recyclable?
  - Strong support for such a ban, which was also recently adopted by the City of Mountain View.
- 4) Mandate charges or credits to encourage use of reusables, either brought in by customers or for dine-in?
  - While the subcommittee voiced support for credits for customers bringing their own cups, charges are more common and have been shown to be more effective than credits.

- The question of a charge for takeout containers in addition to a charge for single-use cups was not fully considered and requires further discussion.
- 5) Ban the sale of non-compliant food service ware items?
    - The subcommittee supported the idea of banning the sale of compostable plastics first, as those are not accepted for composting in Cupertino, they do not have a better LCA than other plastics, and they create customer confusion and end up contaminating both the recycling and compost streams.
    - After a discussion of economic equity, the suggestion was made to phase in a ban on the sale of traditional plastic food service ware, especially if there is a significant price difference. Note that Mountain View has adopted an ordinance banning the sale of both bio-based and traditional single-use plastic food service ware items beginning January 1, 2023.
  - 6) Ban local sale and use of expanded polystyrene foam packing materials?
    - There was support for including such a ban, which would be limited to packing that occurs within the City.
  - 7) Require large events of 100 people or more to provide a percent of their beverages and food in reusable containers?
    - The subcommittee supported that idea, and San Francisco has already adopted rules requiring that 10% of prepared beverages be provided in reusable cups at large events.
  - 8) Ban City use and purchase of single-use bottled water?
    - While not addressed in the ordinance, this item had support from the subcommittee and could be included in the next update of the Environmentally Preferable Purchasing Policy.
  - 9) Reusable Take-Out Food Service Ware
    - While not addressed in the ordinance elements, the subcommittee expressed its desire to learn more about businesses that provide reusables for takeout food and beverages. There are several businesses already providing this service in San Francisco and Berkeley, and as a service available to hire for events. Such a service is planned for demonstration at the 2022 Earth Day and Arbor Day Festival to work in partnership with any food trucks, but the subcommittee members also suggested a pilot of such a third-party business model in Cupertino.

#### Outreach to Businesses and Customers

In the summer of 2021, City staff contracted with Environmental Innovations (EI) to conduct outreach to food service businesses and customers about single-use plastic foodware and the potential ordinance. EI partnered with the Peninsula Chinese Business

Association to do direct food facility outreach, who surveyed 100 businesses (51% of food service businesses with active business licenses), many of them via in-person interviews. EI and City staff also conducted additional interviews with several institutional food service providers such as West Valley Community Services, Apple, and the Forum, seeking to understand the needs of large service providers and the concerns of special interest groups representing youth, low-income, and persons with disabilities. Responses from food facilities included independently owned and franchised, fast food and sit-down, boba tea shops, grocery stores, coffee shops and bakeries. While there was openness to switching to a different type of product, the primary concerns about switching to compostable food service ware were increased cost and availability of compliant products, customer satisfaction, and the administrative burden of imposing fees. 57% of those surveyed indicated they were interested in technical or financial assistance to help make the required changes. When asked about switching to reusable food service ware, businesses were also open to that idea, but worried about changing their operations, had concerns about safety against covid, and thought that staffing for dishwashing or dish storage might be an issue. 65% said they would be interested in receiving information about reusable to-go foodware services.

The survey answers provided by customers showed strong support for limiting single-use plastic food service ware, that environmentally friendly practices are important to customers, and that customers worry about the amount of waste from to-go foodware. 88% of the 111 customers who responded said they have received unwanted single-use foodware when ordering takeout, and 91% said they would still go to a restaurant that stopped using single-use plastic. 39% indicated that they would be interested in a service that provided to-go containers that you could return for sanitizing and reuse. 67% said that being offered a discount would encourage them to bring their own cup or container, although the distinction was not made between a charge and a discount.

Staff and EI presented to the Teen Commission in August 2021 and received supportive feedback. Staff also presented to the Chamber of Commerce in August 2021, and the response was favorable. In September, the City staffed a table at the Fall Festival and promoted community feedback via the customer survey, and the in-person conversations on the topic were largely favorable. Staff plans to present to these groups again with the more specific proposed language and will encourage community attendance at a planned Council Study Session on March 1, 2021. To track the ordinance as it progresses and provide information, the City also launched a dedicated web page at [engagecupertino.org/single-use-plastics](http://engagecupertino.org/single-use-plastics).

#### CEQA

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to

have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action to regulate the use of single-use foodware by food providers and local sale of prohibited foodware and other expanded polystyrene products would have no or only a de minimis effect on the environment because reducing disposable plastic foodware items such as straws, utensils, and stirrer sticks and having compostable alternatives offered only upon request and other provisions of the ordinance would not have the potential for causing a significant effect on the environment. In addition, if the proposed ordinance were a project under CEQA, the project would be exempt from CEQA under CEQA Guidelines section 15307, which exempts from CEQA actions taken by regulatory agencies for the protection of the environment. The foregoing determination is made by the City Council in its independent judgment.

#### Next Steps

Staff plans to conduct a Study Session before City Council on March 1, 2022 followed by a first reading of the ordinance on April 5, 2022. The Mayor's Cup Challenge, which is focused this year on the broader topic of plastics, is scheduled for March 26, 2022. While not addressing food service ware specifically, the event will occur before the first reading of the draft ordinance and the two processes will cross-inform and support each other.

#### Sustainability Impact

The proposed ordinance is consistent with two actions in the Cupertino Climate Action Plan as well as California State law. The proposed ordinance encourages a push towards more reusable foodware which is consistent with Climate Action Plan Measure C-SW-1: Zero Waste Goal. The proposed ordinance promotes the collection of organics from the local waste stream, which will reduce greenhouse gas emissions from the landfill consistent with Climate Action Plan Measure C-SW-2: Food Scrap and Compostable Paper Diversion. Enabling organic items to reach the compost stream supports the diversion requirements of California SB1383, the state's short-lived climate pollutant reduction regulations.

#### Fiscal Impact

Staff recommends contracting for technical assistance to help Cupertino's approximately 200 food service businesses understand and adjust to the requirements of the ordinance if it is adopted. A consultant who is deeply knowledgeable about food service business requirements, regulations, supplies, and challenges who also has experience with making these types of transitions will best be able to provide such assistance. In anticipation of ordinance approval, funding for an RFP to hire technical support will be put forward as part of the FY 22-23 budget in the amount of \$80,000 to cover support both before and after the implementation of phase two. Of the \$100,000 budgeted to the Single-Use Plastics Ordinance and Mayor's Cup Challenge City Work Program Item, it is anticipated that

approximately \$60,000 could be allocated for a technical assistance contract. The balance would be drawn from the Resource Recovery Enterprise Fund.

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Prepared by: Ursula Syrova, Environmental Programs Manager  
Reviewed by: Chad Mosley, Acting Director of Public Works  
Attachments: Single-Use Plastics Ordinance Elements and Phasing  
Draft Single-Use Plastics Ordinance