



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: March 1, 2022

Subject

Consider a Study Session on the proposed ordinance language and phasing for a Single-Use Plastics Ordinance.

Recommended Action

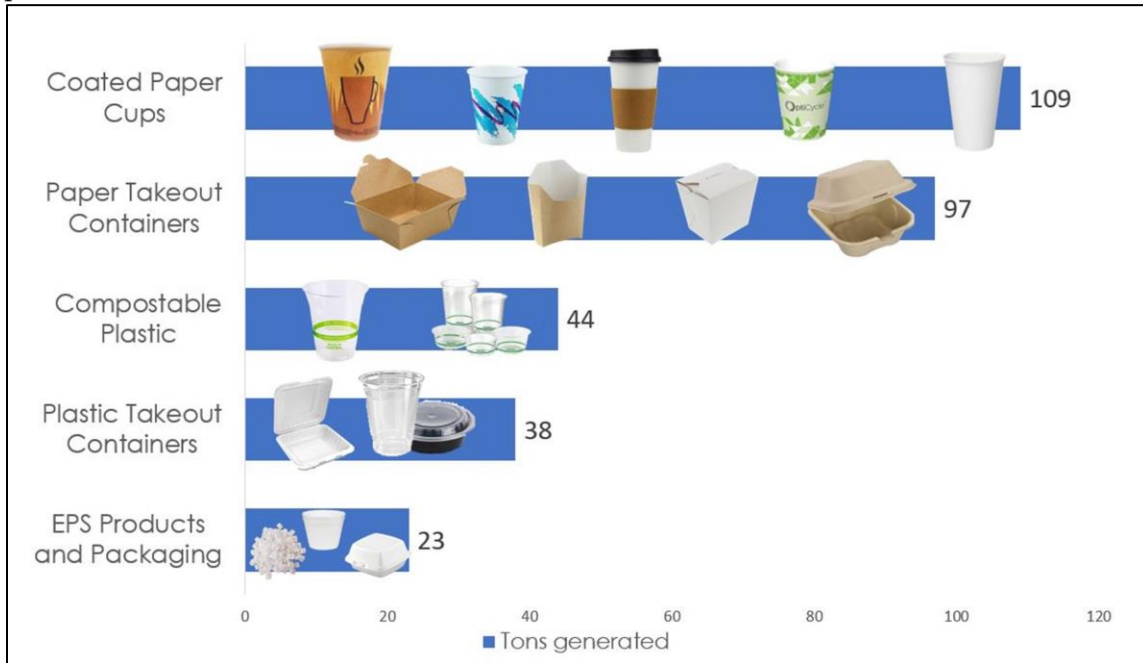
Conduct a Study Session on the proposed ordinance language and phasing for a Single-Use Plastics Ordinance.

Background

Due to concern for litter, marine impact, and chemical migration into food, Cupertino banned restaurant use of expanded polystyrene (EPS) foam foodware in 2014, joining 13 other cities in Santa Clara County who adopted similar ordinances. In 2018, a State law AB 1884 went into effect which required full-service restaurants to only provide plastic straws upon request. This law will expand under AB 1276 in June 2022 to include other accessories such as utensils and condiments at all food facilities. Beginning in January 2023, State law AB 1200 will prohibit foodware containing per- and polyfluoroalkyl substances (PFAS). A detailed history is available in Attachment A.

As shown in Figure 1, Cupertino residents and businesses discard over 300 tons of single-use foodware and expanded polystyrene packing material per year. This tonnage amount has likely increased because of the pandemic and increased takeout food orders. These tonnages include foodware brought in from outside the City.

Figure 1: Tons of single-use disposable foodware being disposed of in Cupertino by type per 2018 and 2019 waste characterization studies



While some plastic foodware containers are currently accepted as recyclable in Cupertino, recycling does not address all problems with plastics. Meanwhile, foodware containers and utensils made from polylactic acid (PLA) or other “compostable plastics” are not accepted in Cupertino’s organics recycling program because they take too long to degrade. Biodegradable Products Institute (BPI)-certified compostable plastic bags are allowed for collecting food scraps. If bio-plastics are disposed in landfill they create methane as they degrade. If they are disposed of as recyclable or compostable they must be sorted out as contaminants and sent to landfill. There is no place for bio-plastics in Cupertino’s waste streams.

Fiber-based foodware items such as paper or bagasse cups and containers, and wood or bamboo utensils are accepted for composting in Cupertino’s organics program. While acceptable, they are not as nutritive for the compost process as food scraps or yard trimmings. Fiber-based items also still require resource inputs during production for just a few minutes of use. Thus, fiber-based items do not fully address environmental concerns arising from single-use foodware. Thus, shifting to reusable foodware wherever possible better addresses resource use, health, economic, and environmental concerns as further described in Attachment A on page 2.

Desiring to go beyond the State laws and the City’s earlier foodware ordinance, Cupertino City Council directed that a Single-Use Plastics foodware ordinance become a City Work Program item. The goal was to reduce the use of single-use plastic foodware such as cups, plates, containers, straws, utensils, and other accessories like spill plugs and stir sticks.

Discussion

Environmental Programs Division staff prepared proposed amendments to Municipal Code Chapter 9.15 that would enact a dramatic shift away from single-use plastic foodware and toward compliant compostable and reusable foodware. Staff is seeking input from City Council on this suite of elements and their phasing to determine the best fit for Cupertino businesses and customers.

Cupertino currently prohibits food service providers from using EPS foam foodware. The amended language proposes to expand on that by banning single-use plastic foodware from use, banning sale of bio-plastic foodware, and requiring reusables for dining in. The two phases and their elements are summarized here and presented in Attachment B, which serves as an index to the draft ordinance itself (Attachment C).

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 proposed ordinance includes elements that would go into effect one year later, on June 1, 2023:

1. Prohibit the use of non-complaint food service ware by food providers:
 - Continue to prohibit use of expanded polystyrene foam food service ware.
 - Prohibit use of single-use plastic items (even if accepted as recyclable).
 - Prohibit use of compostable food service ware that contains PFAS (as required by AB1200).
 - Prohibit use of bio-plastics (compostable plastics).
2. Require reusable food service ware for dining on site:
 - Reusable food service ware must be provided for customers dining on site at the food provider's location. This would require sufficient dishwashing capacity or a contract with a dishwashing service.
3. Prohibit the sale of certain non-compliant foodware:
 - Ban local sale of expanded polystyrene foam and bio-plastic food service ware.
4. 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 would be allowed for those with medical need.
 - Ordinance does not apply to food prepared and packaged outside of the city.

- Compliant single-use food service would still be allowed for taking home leftovers from dine-in situations.
- Temporary exemptions allowed if additional time needed to comply.
- Temporary exemptions allowed for significant economic hardship.
- Temporary exemptions allowed for unique packaging hardship.
- Allows for compliant paper food liners, wrappers, sleeves, bags, and foil wrappers.

Sustainability Commission Recommendation

The Sustainability Commission reviewed a larger list of proposed elements, exemptions, and phasing on January 20, 2022. The commissioners raised concerns for existing and new businesses and maintaining Cupertino as a desirable place to do business. They also expressed interest in knowing what surrounding cities have done or are planning to do. Ultimately, they recommended the language and phasing presented to them at that time with the addition of:

- Offer technical and financial assistance to businesses during the year before enforcement to enable transition.
- Amend the City's Single-Use Carryout Bag Ordinance to prohibit plastic bags used for takeout food orders and require produce bags to be compostable.
- Enable a pilot of reusable takeout foodware in the city. Business models already exist where reusable containers are provided for takeout orders and then returned by customers, sanitized properly, and re-deployed to restaurants.

From an environmental perspective all the proposed elements originally considered and recommended are valuable. However, after further consideration of what neighboring cities have done and are planning to do, the impact of COVID on the prevalence of takeout food, and staff ability to enforce all the proposed elements, a more measured approach is recommended. The proposed approach described above would place Cupertino as a leader in Santa Clara County for reducing the prevalence of single-use plastic foodware and create a plan for future additional amendments.

Elements Recommended for Future Consideration

Incorporating items suggested by the Sustainability Commission, staff recommends the following elements for consideration in 2024:

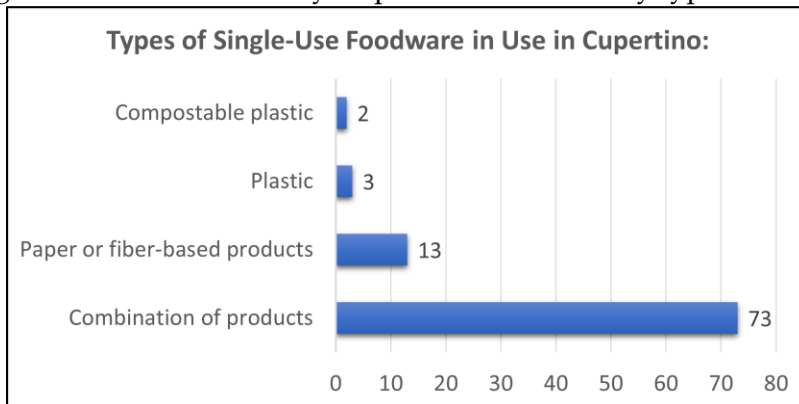
1. Ban local sale of single-use plastic foodware items: This would restrict local sale of plastic cups, utensils, containers, and accessories made from traditional plastic. Stores would still be able to sell fiber-based compostable items.
2. Reusable to-go foodware pilot: Consider the availability of reusable to-go foodware business models and pursue a pilot in partnership with interested local food and beverage providers.
3. Ban local sale and use of other EPS products beyond food service ware:
 - a. Packing materials such as peanuts and blocks

- b. Pool or beach toys, coolers, and ice chests where the foam is not fully encapsulated within a more durable material
- 4. Charges to customers for single-use foodware: Evaluate the state of the COVID pandemic and the use of single-use foodware for pre-ordered takeout dining. Based on that evaluation, consider the idea of requiring a charge for single-use cups, containers, or both to further encourage use of reusable foodware. Adding a charge for a single-use item is a well-established method of increasing use of reusable alternatives, as demonstrated by charges for single-use carryout grocery bags. Concern over proximity to other customers while dining on site at a restaurant or café during COVID has meant a big shift to more takeout orders that are pre-prepared for pickup or delivery. Ordering takeout for pickup or delivery precludes using a cup or container from home, so there is no easy way to avoid the charge the way there is with a grocery bag or walk-in service with a coffee travel mug.
- 5. Reusables at large events: Events of more than 100 attendees would be required to offer a percentage of prepared food and beverages in reusable containers. Containers could for instance be souvenir items or returnable for a deposit refund.
- 6. Amend the City’s Single-Use Carryout Bag Ordinance to prohibit plastic bags used for takeout food orders and require produce bags be compostable.

Impact on food service providers, including City facilities

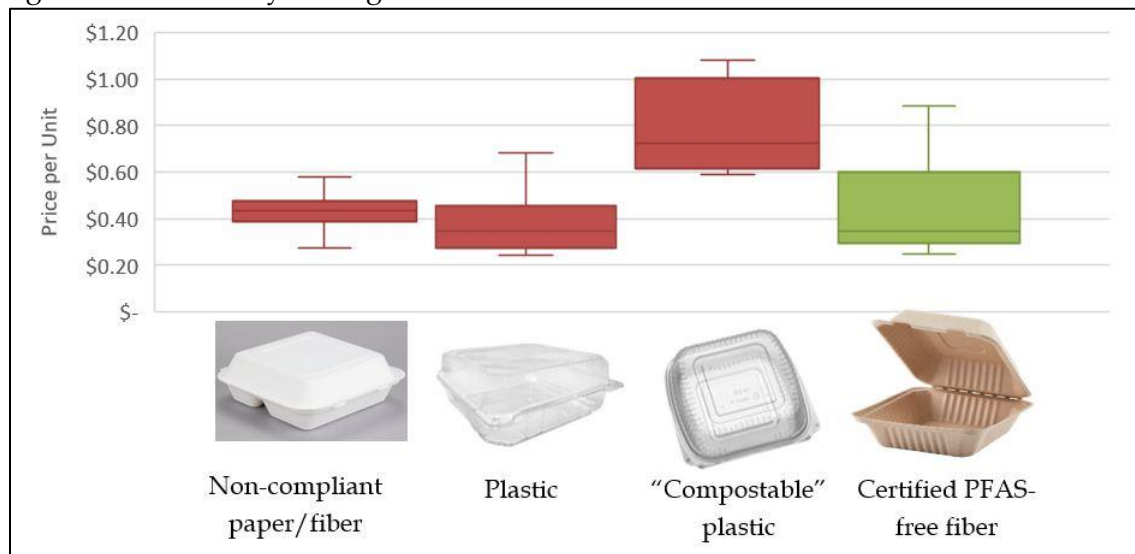
Economically, the impact of the ordinance could be mixed. With the implementation of the first phase per AB 1276 to offer utensils and accessories only on demand, providers could see cost savings from not giving out unwanted items. When the additional foodware requirements go into effect, providers using single-use plastic or bio-plastic food ware will need to begin purchasing and using compliant PFAS-free compostable or aluminum foodware. The cost of transitioning to use compliant products could vary widely and is not universally more expensive. Figure 2 shows what types of single-use items are being used by existing businesses based on the survey conducted in summer 2021. As indicated by the results most providers are using a combination of products.

Figure 2: Single-use foodware used by Cupertino businesses by type



Providers using mostly bio-plastics for takeout orders could see cost savings when switching to fiber-based alternatives versus those providers using traditional single-use plastics which could see a price increase. Attachment D shows cost comparisons for a variety of types of foodware. As a representative example, Figure 3 below shows a hinged container made from different materials and how the cost can vary widely depending on source and volume. Cupertino would like to thank the City of Mountain View for sharing this data and imagery, which was prepared in Fall 2021 and verified to be an accurate representation of current price ranges.

Figure 3: Price survey of hinged containers



Reusables for Dining In - Dishwashing

The requirement to serve food on reusable foodware for dining-in could mean a need for increased dishwashing capacity (including labor) for providers primarily using single-use foodware even when diners stay on site. For providers serving high volumes of meals eaten on site, this shift could require installing additional dishwashers and hiring additional staff or contracting with a dishwashing service. However, case studies¹ from an organization that has assisted several hundred businesses in the Bay Area to switch to reusables for dining in, show savings of thousands of dollars a year with relatively small upfront investment. According to a survey of food businesses conducted in summer 2021, 71% of businesses who responded to the question are using a three-sink system for dishwashing, while 15% have mechanized washers. Businesses needing to install or increase dishwashing capacity may apply for a temporary exemption based on economic hardship or needing extra time to comply.

Based on the items proposed above, Figure 4 provides a high-level summary of potential impacts by common type of food provider.

¹ ReThink Disposable case studies: <http://www.rethinkdisposable.org/businesses>

Figure 4: Summary of Common Food Provider Types in Cupertino and Potential Impacts (based on business license data)

Type of Food Provider	Number of Businesses	% of Total	Expected Impacts
Dine-in (Full-service restaurants)	73	49%	Moderate: <ul style="list-style-type: none"> Over half of full-service restaurants that offer dine-in provide reusables, but some provide only single-use plastic or a combination of both
Fast-food/casual (Includes locations that also offer dine-in with limited seating, but operates primarily through takeout orders)	34	23%	High: <ul style="list-style-type: none"> Majority of fast-food/casual locations offer only single-use items or a combination of products such as single-use plastics and paper/fiber-based items
Café/bakery/dessert	22	15%	Moderate: <ul style="list-style-type: none"> Majority offer only single-use disposables
Boba tea	13	9%	High: <ul style="list-style-type: none"> High-usage of single-use plastic cups and straws
Grocery/Supermarkets	6	4%	Low: <ul style="list-style-type: none"> Single-use items not primarily given out
Catering Trucks	2	1%	Moderate: <ul style="list-style-type: none"> Use only disposables

Grocery stores

Grocery stores selling prepared food would face the same issues as food providers and would additionally need to adjust any on-site packaging of produce, such as the practice of containing fruits or vegetables on EPS trays with plastic film wrap. In other jurisdictions, exemptions have been made for containers of cut fruit or salads prepared by the grocery store and packaged in clear plastic on site and made available for sale. If the store sells single-use plastic foodware, those items will need to be eliminated and compliant alternatives made available for sale.

Retailers

There are stores in Cupertino that sell single-use foodware, including grocery stores, convenience stores, big box stores, and specialty stores. To get an estimate of economic impact if the sale of single-use plastic foodware were prohibited, staff contacted these stores but received limited if any information on the sales numbers. It should be noted

that party supplies tend to be single-use plastic, so stores specializing in those items might feel the impact more strongly while customers might choose to buy the same items online or from stores in neighboring cities.

Customers

Increased costs to food providers would likely be passed on to customers, but it is difficult to estimate because of the wide variety of options and pricing for foodware and as noted above, not all providers may see a cost increase. Food providers surveyed said they were concerned about customer experience with different types of foodware. When customers were surveyed, however, they were strongly in favor of switching away from single-use plastics and said it would not change where they dined.

What are other jurisdictions doing?

A growing number of jurisdictions in California have passed or are considering passing some form of regulation on single-use plastic foodware. No other city in Santa Clara County or the wider Bay Area has yet passed the full suite of elements contemplated in this draft ordinance and the future possible amendments, but Figure 5 shows a survey of neighboring jurisdictions for many of the elements.

Figure 5: Comparison of Foodware Ordinances in Neighboring Jurisdictions

Comparison of Food Service Ware Ordinance Provisions		Cupertino (Recommended)	Mountain View	Palo Alto	Sunnyvale	Berkeley	County of San Mateo	San Francisco	Santa Cruz (City)	Sonoma (County)
Use of Single-Use Foodware Ware	All single-use food service ware must be compostable FC/AL = Fiber-based compostable or aluminum C/R = compostable or recyclable	FC/AL	FC/AL	x		x	FC	C/R	FC/R	C/R
	Prohibit use of some single-use plastic foodware accessories	x	x	x		x	x	x	x	x
	Prohibit use of expanded polystyrene (EPS) foam foodware	x	x	x	x	x	x	x	x	x
Require Reusable Food Service Ware	Requires reusable foodware for dine-in P = Planned for future phase E = Encouraged	x	P	P		x	E		P	E
	Require events to make reusable beverage cups available							x		
Sale of Single-Use Foodware	Prohibit sale of EPS foam foodware	x	x	x	x			x	x	x
	Prohibit sale of single-use plastic accessories		x							
	Prohibit sale of single-use compostable plastic foodware	x								
	Prohibit sale of single-use traditional plastic foodware									
Sale of other EPS Products	Prohibit sale of EPS ice chests, other items		x	x				x	x	x
	Prohibit sale of EPS packing peanuts, blocks			x				x	x	x
Cup Charges	Require a charge for single-use cups E= Encouraged					x			x	E
Container Charges	Require a charge for single-use containers									
Compostable Produce Bags	Require grocery stores and farmer's markets to use compostable bags for meat and produce. C/R = compostable or recyclable			x				C/R		
No Plastic Bags for Takeout Food Orders	Prohibit use of plastic bags for takeout food orders							x		

Outreach to Businesses and Customers

To understand the current state, needs, and concerns of local businesses on the topic of single-use foodware and some of the other policy elements under consideration, 100 businesses (51% of food service places with active business licenses at the time) were interviewed via surveys, over 80 of which were conducted in person. Survey responses were also received from 111 customers. Staff also presented twice to the Chamber of Commerce and once to the Teen Commission and a dedicated web page is available at

engagecupertino.org/single-use-plastics. A more detailed account of that outreach is on page 6 of Attachment A. More recent outreach includes a postcard and an email about this study session mailed out to food service businesses and an article in the February edition of the Business Connect newsletter.

Next Steps

If so directed by Council, feedback from this study session will be incorporated into the draft language and the ordinance could appear for a first reading 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

Fiscal impact will depend largely on direction received from Council. If directed to proceed with an ordinance, staff recommends contracting for technical and financial assistance to help Cupertino's food service businesses understand and adjust to the requirements. 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. The cost to hire technical assistance as described is expected to be approximately \$100,000 to cover support both before and after the implementation of the most significant changes, including offering a defined number of small grants to help cover the costs of switching to reusables or purchasing compliant foodware. Of the money budgeted to the Single-Use Plastics Ordinance and Mayor's Cup Challenge City Work Program Item, it is anticipated that approximately \$60,000 will be available that could be allocated for a technical assistance contract. The balance would be drawn from the Resource Recovery Enterprise Fund. Ongoing compliance monitoring and support can be conducted by existing staff conducting inspections and outreach for stormwater pollution prevention program and SB 1383.

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Reviewed by: Jimmy Tan, Acting Director of Public Works

Approved by: Dianne Thompson, Assistant City Manager

Approved for Submission by: Jim Throop, City Manager

Attachments:

A – Sustainability Commission Staff Report

B – Single-Use Plastics Ordinance Elements and Phasing

C – Single-Use Plastics Draft Ordinance

D – Single-Use Foodware Cost Comparisons