

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: JOEY HEJNOWICZ, ADMINISTRATIVE ANALYST,
TRANSPORTATION & PUBLIC WORKS
SUBJECT: CONSIDERATION OF A REUSABLE AND COMPOSTABLE
FOOD WARE AND LITTER REDUCTION ORDINANCE

AGENDA ACTION: STUDY SESSION

RECOMMENDATION

It is recommended by the Transportation and Public Works Department that the Council hold a Study Session to receive information, ask questions, discuss and provide feedback on a draft Reusable and Compostable Food Ware and Litter Reduction Ordinance. No action will be taken at this time.

EXECUTIVE SUMMARY

Zero Waste Sonoma has developed a model ordinance for member jurisdictions to consider for adoption. Several jurisdictions in Sonoma County (i.e. Sebastopol, Windsor, Healdsburg) have adopted the model ordinance, titled the *Ordinance to Prohibit Use and Sale of Disposable Food Service Ware and Other Products Containing Polystyrene Foam*. The Ordinance is designed to reduce the use and disposal of single-use food ware that contribute to street litter, marine pollution, harm to wildlife, greenhouse gas emissions and waste sent to landfills.

The City Council Climate Action Subcommittee has reviewed the Zero Waste Sonoma model ordinance and directed staff to pursue a more aggressive approach and present potential policy options for consideration. The proposed ordinance aims to institute a fully compostable food ware program in Santa Rosa.

BACKGROUND

Production and management associated with single-use plastic food service ware, typically used for a short period of time and then discarded, has significant environmental impacts. These environmental impacts include environmental contamination, consumption of energy, water and non-renewable fossil fuels, emission of greenhouse gases, air and water pollutants, depletion of natural resources, plastic litter on streets and waterways and increased litter clean-up and waste management costs.

In a 2011 Clean Water Fund study of Bay Area street litter in areas impacting runoff into the San Francisco Bay, 67% of all the 12,000 litter items counted were single-use food or beverage packaging¹. The data gathered indicates that take-out food and beverage packaging comprises the most significant type of trash on Bay Area streets.

In 2017, the Russian River Watershed Association conducted a quantitative and qualitative analysis of trash in the Russian River titled *Russian River Watershed Trash & Litter Assessment Summary Report*. The study revealed that of the total litter items collected (2,578) over sixty percent (60%) were single-use plastic items of some variety (plastic wrappers, plastic bags, Styrofoam food packaging, lids/straws and miscellaneous plastic pieces). Polystyrene (Styrofoam) products alone accounted for approximately 10% of the total litter items collected.

In 2019, Santa Rosa Stormwater and Creeks cleanup programs removed 1,031 cubic yards of trash deposited directly into our storm drain system or into the active channels of our creeks. According to Stormwater & Creeks staff, polystyrene and plastic food packaging are persistent litter items detected in Santa Rosa waterways. When polystyrene enters the storm drain system or into our creeks it often breaks apart into many smaller pieces that can be virtually impossible to retrieve.

Eighty percent of marine debris originates on land, primarily as trash in urban runoff. Marine plastic degrades into pieces and particles of all sizes and is present in the world's oceans at all levels (surface, water column and bottom)². Marine plastics can cause animal disease and mortality as ocean species ingest the plastic or become entangled in it. Marine plastic has been detected in seafood sold for human consumption and researchers have detected micro-plastics in human consumption items such as bottled water, honey, sea salt and more.

With all of this in mind, it is imperative that societal shifts occur in individual consumption and policies are designed to reduce our collective usage and reliance on single-use plastic material. In today's marketplace there are healthier more sustainable alternatives available. The practice of freely giving out single-use service ware encourages customers and food vendors to pay little attention to the quantity of disposable packaging products they consume and the associated environmental impact.

PRIOR CITY COUNCIL REVIEW

January 28, 2020 – City Council adopts Zero Waste Master Plan – Reusable and Compostable Food Ware Ordinance one of the strategy recommendations
July 28, 2020 – Climate Action Subcommittee received initial report on Zero Waste Sonoma Model Ordinance and requests follow up information from staff

¹ www.cleanwater.org

² www.sfenvironment.org

REUSABLE AND COMPOSTABLE FOOD WARE ORDINANCE

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November 18, 2020 – Climate Action Subcommittee receives follow up report and directs staff to pursue a more aggressive fully compostable food ware ordinance for the entire City Council to consider in a study session

ANALYSIS

Zero Waste Sonoma has developed a model ordinance for member jurisdictions to consider for adoption. Several jurisdictions in Sonoma County (i.e. Sebastopol, Windsor, Healdsburg) have adopted the model ordinance, titled the *Ordinance to Prohibit Use and Sale of Disposable Food Service Ware and Other Products Containing Polystyrene Foam*. The impacts and details of the model ordinance are described below.

Zero Waste Sonoma Model Ordinance

The model ordinance addresses five areas:

1. Prohibits polystyrene foam food ware distributed by food and beverage providers
2. Prohibits polystyrene foam food ware and specified polystyrene foam products sold by retail stores
3. Requires food/beverage providers and special events to use compostable or recyclable disposable food service ware
4. Requires food/beverage providers to provide single-use straws, lids, cutlery and to-go condiments packages only upon request
5. Encourages use of reusables

Some jurisdictions (i.e. Berkeley, San Francisco, Alameda) have instituted additional single-use food measures to increase diversion and reduce environmental impact. The Climate Action Subcommittee reviewed the model Zero Waste Sonoma ordinance, and after deliberation, directed staff to develop a model food ware ordinance that would go above and beyond the Zero Waste Sonoma model to reflect something similar to what jurisdictions like Berkeley and San Francisco have instituted. The Subcommittee desires an ordinance that would ban food ware which contains polystyrene foam, single-use plastics, “compostable” plastics and materials containing Per- and Polyfluoroalkyls (PFAS).

Compostable Food Ware Ordinance Considerations

Most compostable food ware contains Polylactic Acid (PLA) or Per- and Polyfluoroalkyls (PFAS). These chemicals act as a grease/liquid proofing agent and prevent greasy or liquid based food and beverages from leaking out of food and beverage containers. PLA's are made out of fermented plant starch (usually corn). PLA products are meant to be biodegradable, but this breakdown process can often happen slower than advertised and takes more time to decompose than what commercial composters permit in their industrial compost process. PFAS are a family of thousands of chemicals with common commercial household examples including stain- and water-repellant fabrics, nonstick products (i.e. Teflon), polishes, waxes, cleaning products, etc. There is evidence that

exposure to PFAS can lead to adverse human health effects. If humans or animals ingest PFAS (by eating or drinking food or water that contains PFAS), the PFAS are absorbed and can accumulate in the body. Studies indicate PFAS can cause reproductive and developmental, liver and kidney, and immunological effects in laboratory animals. The most consistent findings from human epidemiology studies are increased cholesterol levels among exposed populations with more limited findings related to infant birth weights, effects on the immune system, cancer and thyroid hormone disruption³.

The City Council should be made aware materials containing PLA or PFAS are not accepted and currently screened out of the composting process at the facilities Santa Rosa delivers our compostable material. These products are commonly screened out and taken to the landfill as waste. Additionally, commercial composters are no longer able to market their compost material as “organic” as determined by The National Organics Program (NOP) if they contain synthetic materials like PLA’s or PFAS. Compost that is not certified as organic resales for approximately seventy-five percent (75%) less than organic compost. This means composters have a clear business incentive to maintain their organic compost designation.

The Climate Action Subcommittee directed staff to keep moving forward a fully compostable food ware option recognizing that moving away from single-use plastic is a step in a more sustainable direction and compostable food ware is still a better option than single-use plastic food ware. Staff has followed the Subcommittee’s direction and developed a draft Reusable and Compostable Food Ware and Litter Reduction Ordinance. The draft ordinance features are described below.

Who Would be Affected?

The Ordinance applies to those who sell or distribute disposable food ware and other specified products including food and beverage providers, retailers and special events. Examples include restaurants, bars, retail food vendors (including any shop, sales outlet, convenience store, grocery store or deli) and food trucks. The Ordinance applies to city facilities (including lessees) and special events requiring a permit from the city.

Compliant Food Ware and Food Ware Accessories

Compliant Food Ware is 1.) Biodegradable Products Institute (BPI) certified; 2.) commercially available to food vendors and 3.) made up of paper or natural plant fibers. Natural paper or fiber-based food and beverage containers with PLA coating or lining are considered compostable and compliant.

Complaint Food Ware Accessories are 1.) made entirely of paper or natural plant fibers and 2.) commercially available to food vendors.

³ <https://www.epa.gov/pfas/basic-information-pfas>

Prohibited Food Ware Products

Food Vendors within the city limits of Santa Rosa shall not sell, procure, distribute or otherwise give away food ware and food ware accessory products containing:

- Polystyrene (Styrofoam)
- Plastic
- Compostable Plastic
- PFAS

Dine-In Food Ware Regulations

Food Vendors within the city limits of Santa Rosa:

- Shall sell or provide food and beverages for consumption on the premises using reusable food ware and food ware accessories (plates, forks, knives, spoons, etc.)
- Shall provide all other products as compliant food ware accessories (napkins, cup straws, stirrers, tray-liners, etc.)
- Shall offer condiments in bulk dispensers rather than pre-packaged single-use condiment packages.

Takeout Food Ware Regulations

Food Vendors within the city limits of Santa Rosa:

- Shall provide takeout food in reusable food ware, compliant food ware, or items composed entirely of aluminum
- Are prohibited from provide food ware and food ware accessories that are not compliant food ware (such as polystyrene foam, plastic food ware, plastic food ware accessories, food ware containing PFAS)
- Shall provide food ware accessories only upon request or at self-serve stations
- Shall provide takeout bags composed of paper only. Plastic bags are not compliant.
- Shall provide options for customers to affirmatively request compliant food ware accessories from orders across all ordering and point of sale platforms
- Are encouraged but not required to charge customers receiving to-go food ware accessories twenty-five cents (\$0.25). It is assumed that money collected will go towards the food vendor's purchase of ordinance compliant alternatives.
- Are encouraged but not required to provide a twenty-five cent (\$0.25) credit to customers bringing in their own sanitary reusable food ware containers. It is assumed this will incentivize people to bring in their own food ware containers.

Prohibited Retail Sales

Prohibits the sale of the following polystyrene products (examples of exempted products

listed below under exemptions):

- Food ware that is composed in whole or in part of polystyrene foam
- Coolers, ice chests or similar containers
- Packaging peanuts or other packaging materials

City Purchasing and City Sponsored Events

The following regulations apply to City purchases, facilities, and City-sponsored events:

- All City facilities shall use reusable food ware and compliant food ware accessories
- City-managed concessions, City-sponsored events, and City-permitted events shall use reusable food ware or complaint food ware and food ware accessories
- Food ware that is not reusable or compliant (such as Polystyrene foam, plastic food ware/accessories, and PFAS) are prohibited.
- City departments shall incorporate this prohibition into all new and renewed contracts, leases, permits, agreements, etc. as of the effective date of the ordinance

Three-Bin Waste Stream Requirement

- All food vendors who provide solid waste containers for customer use, must provide three separate containers for solid waste (garbage), recycling and organics. Color guidelines should be consistent with Santa Rosa's franchised hauler collection program
 - Grey/black for solid waste, blue for recycling and green for organics
- To the extent possible given space constraints, all containers for solid waste, recycling and organics should be placed adjacent to one another
- Graphic-rich signage must be posted on or above each container following the franchised waste hauler's guidelines

Exemptions

- Entities packaging prepared food outside the City are exempt. However, such persons are urged to follow the provisions of the ordinance.
- Non-reusable food ware composed entirely of aluminum is exempt (i.e. aluminum foil used for burritos/wraps, etc.)
- Should food ware or food ware accessories made of compliant natural fiber not be commercially available, as determined by the City, the City shall not enforce the requirements on such items until they are made commercially available. Products containing PFAS are always prohibited.
- Polystyrene foam products used for insulating or flotation purposes and is completely encased in a more durable material are exempt.

- Examples include surfboards, boats, life preservers, construction materials, craft supplies and durable coolers not principally composed of polystyrene
- For the immediate preservation of the public peace, health, or safety due to an emergency or natural disaster, the City Manager, or his or her designee, may exempt Food Vendors, persons operating City facilities and agents, contractors, vendors doing business with the City, from the provisions of the ordinance.

Waiver Process

The City Manager or his or her designee shall grant waivers based upon documentation provided by the applicant that the requirements of the ordinance would create an undue financial hardship or practical difficulty not generally available to other persons in similar circumstances. The City Manager or his or her designee shall act on a waiver application no later than 120 days after receipt of such application, including mailing written notification of the City Manager's decision to the address supplied by the applicant.

Waivers may be granted for a specified term of one (1) year. During the waiver term, the Food Vendor shall make diligent efforts to become compliant. Under extraordinary circumstances, should a Food Vendor demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become complaint, compliance remains infeasible, and additional waiver of up to one (1) additional year for a total of two (2) years may be granted. Waivers will not be granted past a two-year timeframe and Food Vendors will be expected to comply with the regulations.

The City Manager or his or her designee shall have full discretion to verify the waiver application including independent verification and site visits. The decision to grant or deny a waiver will be put in writing and its determination considered final.

Enforcement and Penalties

Compliance with the ordinance is required as of the effective date and would be administered through the City's Code Enforcement division. Additional resources may need to be distributed to the Code Enforcement division as a result of the increased responsibility managing additional code enforcement cases that result from this Ordinance. It is believed that an additional full-time (1.0 FTE) Code Enforcement position would be sufficient to cover the increase in workload to proactively enforce this Ordinance.

Enforcement shall first include a written notice of non-compliance and a reasonable opportunity to correct. Food Vendors will have 60 days from the written notice date to become compliant. Food Vendor's not in compliance after the written notice's 60-day timeframe will be subject to the administrative citation penalty schedule below:

- A fine not exceeding \$100.00 for the first violation
- A fine not exceeding \$200.00 for a second violation of the same Code provision within one year

- A fine not exceeding \$500.00 for each additional violation in excess of two, of the same Code provision within one year.

The citation shall be mailed to the Food Vendor and the failure of any interested person to receive the citation shall not affect the validity of the proceedings.

Effective Date of the Ordinance; Authority to Delay or Suspend for the COVID Emergency

The proposed timeline for the Ordinance to become effective is recommended for January 1, 2022. Setting the regulations to become effective over a year from now would provide enough time for food service providers to adapt to the proposed regulations and provide staff adequate time to properly communicate the impacts of the ordinance.

Considering the unknown length and impacts of Covid-19, staff also proposes that Council provide a mechanism for delaying or suspending applicability of the ordinance for the duration of the COVID-19 public health emergency, if possible. If Council agrees with staff's direction, staff will work with the City Attorney's office to prepare the appropriate language to address the ongoing COVID-19 health emergency. .

Fiscal Impact for Businesses

Most food service operators say their operational costs have remained the same after implementing environmentally friendly initiatives (excluding start-up costs). The average increase in costs to switch to compostable products is approximately eight percent (8%).⁴ Much of these increased costs can be recouped with associated decreases in inventory costs --- with food ware accessories being provided upon request only and not automatically. Additionally, in order to assist businesses in covering potential increased costs switching to compostable products the proposed Ordinance permits food service businesses to charge customers receiving to-go food service ware accessories \$0.25 per order.

Providing in-person dining customers reusable food ware provides more significant benefits. Reusables cost more per item to buy than disposables, but they are durable products designed for thousands of uses. Over time, replacing disposables with reusables can dramatically reduce the cost of doing business. Money is saved by reducing the number of disposables purchased and in reducing solid waste hauling fees.

Restaurants can implement other best management practice strategies to reduce costs. Simple changes such as providing condiments in bulk containers vs. single-use packets and training staff to provide to-go food ware upon request only can reduce costs over

⁴ <https://www.foodservicedirector.com/operations/cost-going-green>

time. Furthermore, in today's sustainability conscious environment the switch to more eco-friendly options can often attract new customers and retain brand loyalty.

Community Outreach

An informational email describing the proposed Ordinance and potential policy options was sent to the Santa Rosa Chamber of Commerce, Santa Rosa Downtown District and Hispanic Chamber of Commerce in late October 2020. Groups were informed that City staff would be happy to answer any questions, receive and share comments with the City Council and/or provide a Zoom presentation on the proposed Ordinance.

On November 10, 2020 City staff participated in a Zoom meeting with approximately 8-10 members of the Santa Rosa Downtown District. Participant feedback and comments from this meeting are below:

- California is promoting single-use items currently for health and safety purposes (Covid-19)
- Concerns about the potential increase in cost to switch to compostable food ware, especially under current pandemic conditions. All for sustainable options but not sure now is the best time.
- Not a big fan of the idea of allowing customers to bring in their own reusables for to-go food/beverages

On November 12, 2020 City staff participated in a meeting in Roseland Village with a handful of business owners organized by Planning and Economic Development's Rafael Rivero. The meeting was translated into Spanish for the attendees. Participant feedback and comments from this meeting are below:

- Food Trucks do not have the facilities to provide on-site diners with reusable food ware
- Need to provide enough time for business owners to adapt to regulations and use up any prohibited products
- Conduct outreach in Spanish
- Press Democrat is a good medium for marketing/information sharing

On November 19, 2020 City staff participated in a Zoom call in Spanish with 12-15 members of the Latino Business Owners group. The meeting was organized by Marcos Suarez from the Sonoma County Economic Development Board and Rafael Rivero City of Santa Rosa Planning and Economic Development. Participant feedback and comments from this meeting are below:

- Concern over cost increases to switch to compostable products
- Questions regarding the three-bin system requirement (garbage, recycling, compost)
- Clarifying questions regarding how the proposed Santa Rosa Ordinance may differ from the Zero Waste Sonoma model ordinance

Santa Rosa Impact

Policies designed to promote reusable and compostable food service ware encourage both reuse of materials and reduction of pollutants. Prohibiting single-use plastic to-go food ware items (i.e. polystyrene/plastic clamshells) and guiding businesses to provide reusable and compostable food ware alternatives has a multitude of benefits. These benefits include increasing Santa Rosa's waste diversion from landfill, reducing the amount of litter discharged into our waterways, helping to achieve the goals of the Santa Rosa Zero Waste Master Plan, adhering to the requirements of SB 1383 and supporting Santa Rosa's Statewide Trash Amendment and Municipal Separate Storm Sewer System (MS4) permit.

FISCAL IMPACT

A proactive enforcement program adding 1.0 FTE to the Code Enforcement division would cost approximately \$126,000 annually.

ENVIRONMENTAL IMPACT

This Study Session is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline Section 15378.

Future action on the subject Ordinance is anticipated to qualify for a Class 8 categorical exemption described in Section 15308 of the CEQA Guidelines as action taken by a regulatory agency as authorized by state or local ordinance to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment. Specifically, the forthcoming Reusable and Compostable Food Ware Ordinance will improve landfill diversion, decrease street and waterway litter and promote reusable and compostable to-go food service ware alternatives.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

See Prior Council Review Section

NOTIFICATION

Not applicable.

ATTACHMENTS

- Attachment 1 – Draft Reusable and Compostable Food Ware and Litter Reduction Ordinance

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