



DATE: November 14, 2019

TO: Programs & Administration Committee
Planning Committee/Recycling Board

FROM: Justin Lehrer, Senior Management Analyst

SUBJECT: Food Service Ware Ordinance: Options and Impacts

SUMMARY

The purpose of this item is to discuss with the Board and gather input on potential policy approaches to help reduce consumption of single-use food service ware (e.g. plates, bowls, utensils, and cups) in Alameda County eating and drinking establishments, and promote a shift away from disposables and towards a culture of reuse.

DISCUSSION

During the priority setting discussions, the Board expressed a strong interest in addressing plastic pollution. Single-use food service ware items, often made from non-recyclable plastic, compostable plastic, or fiber, are prevalent in daily life and result in significant impacts to human health and the environment. At the May 9, 2019 committee meetings, staff provided an overview of environmental issues associated with different types of food service ware. Based on direction received at these meetings, staff has been researching food service ware policies regionally and nationally, and developed concepts for an Alameda County ordinance to address food service ware waste that could be implemented countywide, or provided as a model ordinance to member agencies interested in moving forward on their own.

Ordinance Overview

The primary objective of a food service ware ordinance is to reduce consumption of these disposable materials, leading to a reduction in litter, plastic pollution, and compost contamination. Single-use food service ware has a short useful life (often only used for minutes), and must be managed and successfully routed to a recycling facility, industrial compost facility, or a landfill at considerable expense. A critical aspect of any strategy to reduce food service ware is to foster widespread adoption of durable reusable cups, containers, cutlery, and accessories. Switching from single-use plastics to compostable fiber is *not* a solution because it does not reduce consumption – the compostable materials must still be managed and sent to compost facilities that accept the material but would prefer not to. Even worse, the compostable materials would be screened as contaminants and landfilled. Single-use items also result in more GHG emissions than reusables, due to the energy and material inputs that go into manufacturing each new item. Reusables are the

best option for reducing food packaging waste at the source and shifting away from the disposable culture that has become a societal norm. This shift requires a long-term effort. Clear policy, combined with investment in infrastructure, outreach, and technical assistance can be an effective vehicle to help move in this direction.

We propose that a **basic ordinance** includes the following elements:

1. Reusable food service ware required for all dine-in establishments
2. Single-use food ware (plates, cups, bowls) and accessories (straws, utensils, condiment cups) must be BPI certified¹ compostable fiber (non-plastic)
3. Single-use accessories (straws, utensils, condiment cups) available only on demand/self-service

A more **comprehensive ordinance** could include the above elements as well as the following:

4. \$0.25 charge on single-use cups
5. \$0.25-0.50 charge per meal for to-go food service ware if requested

Implementation

The ordinance can be developed as a model, ready for customization and adoption directly by member agencies, or implemented countywide. Rolling out the ordinance in distinct phases that add more complex elements over time would allow time for affected parties to prepare for the changes and address operational considerations. Additionally, a phased approach can gradually expand the affected audience – starting with municipal operations and expanding over time to include special events, food vendors, and third party delivery services. If implemented countywide, the ordinance could affect up to 6,000 establishments, including restaurants, food trucks, catering businesses, prepared food vendors, and food provided via third party delivery.

A **countywide ordinance** offers the potential for greatest impact on reducing waste and pollution caused by single-use food service ware. For a countywide ordinance to be effective, it is critical to have commitment and support from all member agencies. Consistent requirements across the county will greatly simplify implementation and enforcement, as well as reduce confusion for businesses and consumers affected by the ordinance. Implementing a countywide ordinance that has inconsistent rules across the jurisdictions adds unnecessary complexity and cost for StopWaste, and will likely lead to confusion and frustration among the public, who will be expected to comply with different rules depending on which city they are dining in.

A **model ordinance** offers the greatest flexibility to member agencies. If some jurisdictions seek a more comprehensive ordinance while others prefer a basic approach or prefer not to use a regulatory approach to address single-use food service ware waste, they can design a policy that meets their needs. StopWaste may coordinate technical assistance and provide countywide outreach, promotional tools and campaigns but *not* implementation or enforcement. If Member agencies are interested in different approaches, a model ordinance is the best option.

¹Compostable certification by the Biodegradable Products Institute (BPI), requires all items are PFAS-free.

Challenges

There are a number of challenges and considerations that inform the design of an effective food service ware ordinance.

Avoiding disposable alternatives. In order to be truly effective, the ordinance must reduce consumption of single-use food ware rather than shifting consumption to an alternative that is still disposable. There are many materials and formats used for food service ware that claim to be recyclable or compostable yet pose significant challenges for collection and processing. Many of these items still end up as litter, or are not successfully processed as recycling or compost, and end up in the landfill.

Building up reusables infrastructure. Reusables have the potential to significantly reduce consumption of single-use food ware, but local infrastructure for reusables is not well developed in Alameda County. Significant investment is needed to support the growth of services and solutions that facilitate the use of reusables for takeout dining, such as dishwashing services, cup and container rental services, reusable dining ware designed for takeout, etc.

Inconsistency across the county. As mentioned above, a countywide ordinance can only be efficient and effective if applied uniformly across the county. Supporting and enforcing an ordinance that affects a portion of cities in Alameda County is a major expense and logistical challenge and StopWaste would need to reassign resources for such an effort. When the Mandatory Recycling Ordinance (MRO) was implemented, a number of Member agencies opted for a phased approach to participation, resulting in varied implementation schedules and rules across the county. City-specific outreach and training materials and technical assistance were required, and the implementation process had to be repeated multiple times as new rules were phased in across jurisdictions. Business owners with affected eating establishments across multiple jurisdictions would bear the additional burden of keeping track of and complying with city-specific rules. With uniform adoption of a countywide ordinance, not only is compliance simplified for businesses, but consumers only need to learn one set of rules regardless of the Alameda County city they are dining in. Ultimately, an inconsistently implemented countywide ordinance will cost more, create more confusion and inefficiency, and is not recommended.

Concurrent implementation with SB 1383. New regulations coming from SB 1383 will go into effect January 2022 and considerable effort is needed from both StopWaste and member agency staff to prepare for compliance countywide. Staff anticipates that SB 1383 will require additional enforcement resources and potential passage of additional local ordinances in order to develop clear guidance and an enforceable mechanism for recovery of edible food from food establishments. These additional State-mandated requirements will add regulatory burden to some of the same businesses that would be covered by a food service ware ordinance. The Technical Advisory Committee members voiced a strong desire for StopWaste's assistance in complying with SB 1383 requirements.

Burden on businesses and consumers. Outreach and education to food vendors is needed to address health code-related concerns about reusables, and to ensure equity and accessibility to less-abled customers, lower-income individuals, and transient populations just 'passing through'

and not likely to have reusable food service ware readily available. As mentioned earlier, if ordinance terms are inconsistent across the jurisdictions, it will cause confusion and frustration among the public, and unfair burden on some businesses.

Agency Role

StopWaste has developed and implemented several countywide ordinances and can apply this experience to plan and develop an effective food service ware ordinance. Some roles the Agency can play in this process include:

Convening regional partners and stakeholder outreach. StopWaste has been involved with two food service ware stakeholder groups – one for Alameda County member agency staff and the other a regional working group comprised of Bay Area municipal staff, elected officials, and nonprofits working to reduce disposable food service ware. This regional working group provides Agency staff insight on innovative reusable food ware infrastructure, newly passed or proposed ordinances and best practices, as well as feedback and input on potential ordinance approaches. Coordinating efforts regionally is an important step to create infrastructure and align policies throughout the Bay. Outreach to additional stakeholders, including affected food vendors, third party delivery services, water and energy agencies, and reusable packaging innovators will be part of the ordinance development timeline.

Environmental review. Overseeing environmental impact study to assess impacts under the California Environmental Quality Act (CEQA) can be centralized with StopWaste, saving member agencies from this time consuming and costly effort, and providing some protection against legal challenges from packaging and materials industry opposition.

Funding for innovation and reusables infrastructure. StopWaste may consider directing grant funds to support projects that develop infrastructure to support the adoption of reusables and identify other opportunities to provide funding and support for innovation in this area.

Outreach and marketing (for countywide ordinance). StopWaste can develop outreach and promotional content that ensures clear and consistent messaging countywide, as we have done in the past for the Mandatory Recycling Ordinance, Reusable Bag Ordinance, and more recently the Stop Food Waste campaign.

Technical assistance (for countywide ordinance). StopWaste manages contracted technical assistance (TA) to support MRO implementation and works with Clean Water Fund's Rethink Disposable campaign to help food establishments make the switch to reusable food service ware. Some member agencies have their own contracts with Clean Water Fund and others may contribute funds toward a master contract to augment efforts in their jurisdictions; this approach could be utilized to implement TA for a countywide food service ware ordinance.

Enforcement (for countywide ordinance). Based on the Agency's experience implementing both a routine inspection program for MRO enforcement and a complaint-based approach for the Reusable Bag Ordinance, staff recommends a complaint-based approach to enforcement for a countywide food ware ordinance. The focus is on compliance and helping affected parties comply

with the law rather than issue citations that place a burden on small businesses. Even complaint-based enforcement entails significant costs; some member agency staff have already signaled willingness to contribute funds from Measure D or other sources in support of a centralized enforcement effort conducted by StopWaste. In the case of a model ordinance, member agencies that opt to implement the ordinance in their jurisdiction would be responsible for enforcement, which potentially could be addressed through existing environmental services staff.

Resource Analysis

The Agency's guiding principles, adopted in December 2018 to inform Agency strategy and budget development, direct staff to conduct a comprehensive resource analysis prior to adopting new mandatory measures so we understand the full impacts on budget and staff assignments.

Developing, adopting, and implementing an ordinance of this nature is a major undertaking, as we know from experience with MRO and the Reusable Bag Ordinance. We estimate development, adoption, and rollout of the ordinance will require approximately 1.5 FTE and up to \$1,000,000 in hard costs, depending on whether the Agency develops a model ordinance or adopts a countywide ordinance and assumes responsibility for technical assistance and enforcement. Member agencies may also contribute funds in support of ordinance implementation. The above estimates cover impacts anticipated in FY 19-20 and 20-21. Ongoing costs thereafter are estimated to be \$300,000-\$400,000 per year. Approximately 500 hours of staff time have already shifted from other Agency projects in order to staff the effort this year.

Adopting a food service ware ordinance would add another resource intensive, regulatory project to the Agency's budget. We continue to be responsible for implementing other mandatory projects, most notably the Mandatory Recycling Ordinance (MRO). The timing is also challenging because *new* regulations from SB 1383 will go into effect in January 2022 and considerable effort is needed from both StopWaste and member agency staff to prepare for compliance countywide. Some member agencies may opt to contribute funds to assist with implementation of SB 1383 instead of a food service ware ordinance.

Other Efforts

Several jurisdictions in California and elsewhere are considering or adopting food service ware ordinances. To date, we are aware of 27 ordinances in place or in development throughout California, with nine in the SF Bay Area. [Attachment 1](#) includes a map of local ordinances currently adopted in the nine Bay Area counties. There is also the prospect of state legislation addressing food service ware in 2020, although a state law would likely not be as comprehensive as a local effort and would still leave cities responsible for implementation and enforcement. Recology, the waste hauler, along with some environmental groups filed a proposed plastic waste reduction initiative for the November 2020 ballot. The measure would require manufacturers to make all plastic packaging and single-use food ware items, including cups, straws and utensils, recyclable or compostable by 2030 and charge manufacturer's a fee for production of plastic food ware items. See [Attachment 2](#).

Next Steps

At the November 14 meeting, staff and Board members will discuss options for moving forward. This discussion will include the factors described above, giving consideration to resource impacts on existing Agency work, and impacts on other anticipated needs, such as SB 1383. Board members will be asked to bring the discussion back to their cities and assess if there is interest in a uniform countywide ordinance or a customizable model ordinance. This item will be brought to the WMA Board in January for further discussion and direction.

RECOMMENDATION

This item is for discussion and information only.

Attachment 1: Map of Bay Area ordinances

Attachment 2: California's plastic pollution fight may be headed to voters - SFChronicle.com

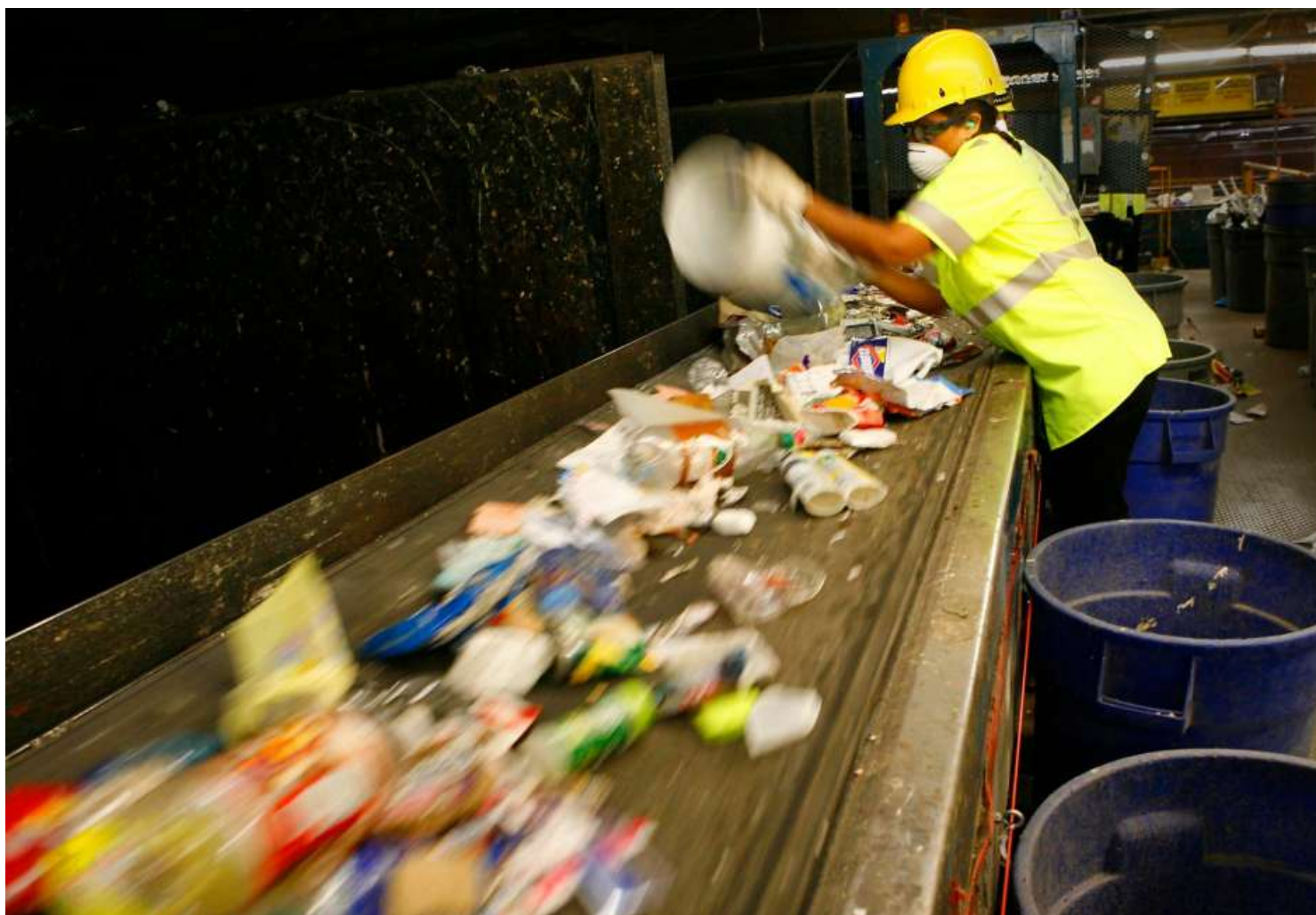
Bay Area Foodware Ordinances - November 2019



voters

Dustin Gardiner

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Plastics are separated from other recyclables on a conveyor belt in this 2007 file photo. An initiative proposed for California's November 2020 ballot would dramatically reduce the amount of disposable plastic that could be used in the state.

Photo: Michael Maloney / The Chronicle 2007

SACRAMENTO — California environmentalists battling to stop plastic from polluting the ocean and piling up in landfills say they can't wait for state lawmakers to act — they're hoping to take the fight to the ballot box.

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The initiative, aimed at the November 2020 ballot, is a more far-reaching version of two waste-reduction bills that died at the state Capitol this year, both were opposed by the plastics and petroleum industries.

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Eric Potashner, vice president of Recology, said the consequences of inaction are mounting as plastic strangles marine habitats and overwhelms recycling facilities. He also signaled that qualifying the initiative for the ballot is intended in part to get state lawmakers to do something in 2020 that they could not this year — pass a major bill designed to cut plastic pollution.

“We’re running out of time,” Potashner said. “We need a backup plan if the Legislature is not able to do something significant on plastic-packaging pollution.”

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“This new initiative proposal will only serve as a distraction, and resources that could be going toward recycling could now be unnecessarily wasted,” Shestek said in an email.

The measure would require manufacturers to make all plastic packaging and single-use foodware items, including cups, straws and utensils, recyclable or compostable by 2030. It would also:

- Create a fee of up to 1 cent for manufacturers on every plastic item or product with plastic packaging. The money would be used to build recycling and composting facilities, and to pay for restoration projects such as beach cleanups.
- Prohibit food vendors, including restaurants and grocery stores, from using Styrofoam and other plastic-foam takeout containers.
- Require manufacturers to reduce to the “maximum extent possible” the plastic packaging and single-use products they create. That could require them to offer more reusable containers.

Caryl Hart, a member of the California Coastal Commission who lives in Sebastopol, co-authored the initiative. She said the popularity of plastic, made from fossil fuels, has exacerbated climate change.

“We’re seeing activity in the Legislature, but there’s not success,” Hart said. “If California is not going to lead, who is going to?”

Potashner said the penny-or-less fee would build infrastructure like recycling plants and composting facilities so more California communities can dispose of waste locally instead of shipping it overseas.

“This initiative aims to hold the plastics industry accountable for the products they create,” Recology CEO Mike Sangiacomo said in a statement.

Recology has pledged to spend \$1 million to qualify the initiative for the ballot, but the effort could cost at least several million dollars more. Potashner said other groups plan to contribute to the fight, but none has made a public commitment.

Environmentalists anticipate opposition from the deep-pocketed plastics industry, which spent heavily to defeat bills in the Legislature this year. One company, Novolex, spent more than \$959,000.

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