



DATE: November 9, 2021

CATEGORY: Public Hearing

DEPT.: Public Works

TITLE: **Food Service Ware Ordinance**

RECOMMENDATION

1. Introduce an Ordinance of the City of Mountain View Repealing and Replacing Article V of Chapter 16 of the Mountain View City Code Related to Food Service Ware, to be read in title only, further reading waived, and set a second reading for December 14, 2021 (Attachment 1 to the Council report).
2. Direct staff to explore an amendment to the Reusable Bag Ordinance to regulate the distribution of single-use plastic bags by restaurants and other food providers.

BACKGROUND

Council adopted the [Polystyrene Foam Food Service Ware Ordinance](#) on March 25, 2014, creating the City's first food service ware regulations. This ordinance added Article V to Chapter 16 of the Mountain View City Code, prohibiting food providers from using polystyrene foam food service ware and banning retail sale of foam food service ware and foam ice chests or coolers. The ordinance reduces plastic litter in the environment to improve water quality, comply with municipal Stormwater Permit requirements, and progress the City's environmental sustainability objectives.

On June 19, 2018, the City Council enacted a Zero Waste Policy ([Council Policy K-22](#)), with the goal of diverting 80% of waste from landfill by 2020 and 90% by 2030. The policy includes a guiding principle that the City will "reduce the proliferation of plastic food service ware and packaging in daily commerce, to the extent practicable."

Council approved the [Zero Waste Plan](#) on October 29, 2019 as a road map to achieve the zero-waste goals of Council Policy K-22. Among the 39 Plan initiatives are food service ware reduction measures divided into two implementation phases. The Zero Waste Plan's Food Ware Packaging Reduction, Phase 1, and the 2019 Sustainability Action Plan 4 (Item Z1.2) include a recommendation to expand the Polystyrene Foam Food

Service Ware Ordinance to address other types of single-use food service ware, prohibit the use of toxic per- and polyfluoroalkyl substances (PFAS), and require food vendors to provide nonreusable food service ware accessories only upon customer request.

In 2018, California adopted [Assembly Bill \(AB\) 1884](#), requiring single-use plastic straws to only be provided upon consumer request in full-service restaurants. The State expanded on this and strengthened enforcement through passage of [AB 1276](#) in October 2021. AB 1276 prohibits food facilities from providing consumers, unless requested, certain single-use food service ware accessories and standard condiments packaged for single use. It directs the City to authorize an enforcement agency to enforce these provisions by June 1, 2022.

On October 5, 2021, Governor Newsom signed [AB 1200](#), prohibiting the sale or distribution of food packaging containing PFAS by January 1, 2023. This regulation will apply to paper, paperboard, or other natural fiber food packaging.

ANALYSIS

Nonreusable food service ware is a large waste source locally and nationwide, with 561 billion of these items used annually in the United States. Most items are discarded after only one use and landfilled or end up as litter. Food and beverage take-out packaging is 67% of litter in the San Francisco Bay Area, based on a [study by the Clean Water Fund](#). Single-use plastics, including “compostable” plastics, do not decompose in the environment and pollute stormwater and other runoff that can carry them to the Bay and ocean. These items break into smaller pieces often mistaken as food by birds, fish, and other wildlife.

Many disposable food service ware items such as straws and utensils create unnecessary waste by being automatically included with take-out orders when they are not needed. Restaurants, especially counter-service and fast food, often use disposables for both dine-in and take-out orders. COVID-19 has exacerbated the problem as restaurants shifted to take-out only and began using disposables in place of reusables. Many restaurants shifted to disposables despite guidance from the Centers for Disease Control and Prevention and U.S. Food and Drug Administration that existing food safety codes contain adequate measures for disinfecting reusable items used in food preparation and service, and disposables are not needed as an infection control measure.

Zero Waste Goals

Figure 1 shows progress towards the Zero Waste Policy goal of diverting 80% of waste from landfill by 2020 and 90% by 2030. The City fell just short of its 80% target in 2020

with a 79% diversion rate. The increase in diversion is likely due to COVID-19 decreasing business waste generation by one-quarter (due to temporary or permanent closures and telecommuting employees) and is not reflective of stable progress toward reducing landfilled waste. As businesses return to normal operations, disposal rates are projected to increase to prepandemic levels and the diversion rate will fall without further action to reduce landfilled waste.

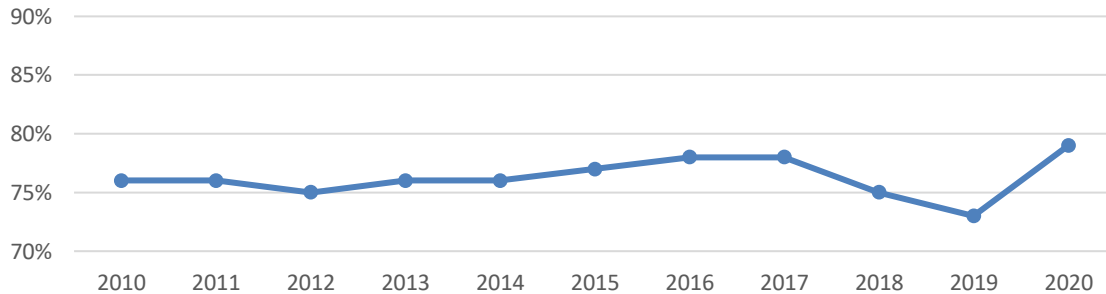


Figure 1: Diversion Rate, 2010-2020

To achieve the zero-waste goal of 90% landfill diversion by 2030, the City must reduce and prevent waste at its source. The Zero Waste Policy principle of “highest and best use” prioritizes reduction and reuse before recycling and composting. For food service ware, this means less disposables, more reusables, and ensuring disposable food service ware can be composted or recycled in Mountain View.

Landfilled Waste from Food Service Ware

Single-use food service ware made of plastic, plastic-lined paper, or “compostable” plastic cannot be recycled or composted in the City’s programs because strong end markets do not exist, especially after China’s import ban of postconsumer mixed plastics at its recycling processors in 2017. The City’s Solid Waste Program is transparent about what is actually recyclable, rather than accepting materials that will be removed during processing and landfilled. Plastic “clamshells,” plastic beverage cups, and black plastic take-out containers are on Mountain View’s “[Dirty Dozen](#)” list of nonrecyclables often placed in recycling carts. These items increase recycling facility costs and degrade the quality of the recyclable materials collected.

Plastics labeled as “compostable” often only break down under specific industrial conditions and do not biodegrade sufficiently within the time frame most composting facilities need, including where Mountain View’s organic materials are processed. When placed in the compost cart, the compost facility must remove compostable plastics and send them to landfill. One problem is clear: compostable plastic containers look very

similar to recyclable plastic containers and become incorrectly sorted into recycling bins. Recycling processors try to remove compostable plastics but, in doing so, may remove recyclable types of plastic.

Recommended Food Service Ware Ordinance

The recommended Food Service Ware Ordinance is provided in Attachment 1. It is based on and consistent with the Zero Waste Plan's Food Ware Packaging Reduction Plan and new State laws.

Food Ware Packaging Reduction Plan

To reduce waste from disposable food ware, the Zero Waste Plan included an action to develop a Food Ware Packaging Reduction Plan. The Food Ware Packaging Reduction Plan (Attachment 2) is a high-level framework for the City's efforts to reduce generation and disposal of nonreusable food service ware. Implementation is a two-phased approach that begins with primarily voluntary measures (Phase 1) while developing the infrastructure to support mandatory restrictions (Phase 2). This allows time for businesses to adapt, encourages early adoption of future mandatory measures, and eases the transition away from single-use items.

The Food Ware Packaging Reduction Plan includes the following five steps:

1. Reduce disposable food service ware through on-request measures and voluntary transition to reusables. (Phase 1)
2. Transition to disposable food service ware that can be diverted from landfill. (Phase 1)
3. Require reusable food service ware for dine-in service and events. (Phase 2)
4. Incentivize reusable food service ware for take-out. (Phase 2)
5. Mandate a reusable option for take-out food service ware. (Phase 2)

The recommended ordinance, along with State AB 1276 regulations and a City free technical assistance program to help businesses transition to reusable food service ware, will address the first two steps and implement Phase 1 of the Food Ware Packaging Reduction action outlined in the City's Zero Waste Plan.

New State Laws Regulating Disposable Food Service Ware

AB 1200 regulates food packaging and single-use food service ware. Beginning January 1, 2023, AB 1200 will prohibit the sale or distribution of food packaging, which includes food service ware that is substantially comprised of paper, paperboard, or other natural fiber containing PFAS. PFAS are toxic additives used to coat paper or fiber-based food service ware to improve water or grease resistance. These “forever chemicals” are a health concern because they do not break down in the environment or in the human body and can accumulate over time. According to the [U.S. Environmental Protection Agency](#), PFAS can affect the human immune system, result in lower infant birth weights, and are linked to thyroid disruption and cancer. The bill does not designate a regulatory agency with oversight or enforcement duties, nor does the bill include a verification mechanism to assist food providers in identifying whether food packaging is PFAS-free, so noncompliant items will likely remain available in California after the ban. Therefore, the recommended ordinance includes a provision requiring certification of nonreusable food service ware used by food providers to ensure it is PFAS-free.

AB 1276 requires food facilities to only provide food service ware accessories (utensils, straws, stirrers, etc.) and standard condiments packaged for single use upon consumer request. Food providers may not proactively offer these items except for drive-through orders. Food ordering platforms, including third-party delivery, must provide consumers an option to affirmatively request each accessory or standard condiment. Accessories must be individual and not packaged together. Self-service dispensers that dispense one accessory at a time and self-serve bulk condiment dispensers are acceptable. Health-care facilities and schools are exempt. This provision was in the Zero Waste Plan’s recommended Phase 1 Food Ware Packaging Reduction measures, but is not in the recommended ordinance since it is now State law. However, the City is charged with enforcing these requirements under AB 1276.

Summary of Ordinance

The recommended ordinance is applicable to food providers and addresses the landfilled waste, health impacts, and litter resulting from disposable food packaging in key areas not covered by the new State legislation. A food provider is any entity serving public food and beverages in Mountain View, regardless of whether there is a charge. Food providers include restaurants, coffee or juice shops, bakeries, mobile food trucks, caterers, event venues, corporate cafeterias, private schools, and convenience stores.

Recommended ordinance provisions include:

- Continue City's existing polystyrene foam food ware ban.
- Beginning January 1, 2023, food providers may only use nonreusable food service ware (cups, bowls, plates, trays, cartons, boxes, wrappers or liners, and hinged containers, etc.) that is compostable (natural fiber-based) and third-party certified free of PFAS, with exception of food service ware made entirely of aluminum, which is recyclable.
- Beginning January 1, 2023, food providers may not use the following nonreusable food service ware accessories if made from or packaged in plastic, including biologically based polymers or compostable plastic: straws, stirrers, food picks, or toothpicks. Exceptions for plastic straws may be provided upon request to consumers for medical reasons, and health-care facilities may distribute plastic straws to patients who require them with or without a request.
- Automatic exemptions are provided during an emergency, although food providers will be encouraged to maintain compliance if possible.
- Temporary exemptions for certain food service ware items if the Public Works Director determines a reasonably feasible compliant alternative does not exist.
- Similar to the original Polystyrene Foam Food Service Ware Ordinance, food providers may apply for a one-year waiver from the requirements that food service ware be compostable and certified PFAS-free. The waiver may be granted by the Public Works Director due to exceptional circumstances, such as economic hardship or unique food packaging needs.

The ordinance's implementation timeline is consistent with all relevant State laws and designed to give food providers enough time to prepare for the new requirements, including training staff, using up noncompliant food ware, and finding compliant food packaging.

The City will concurrently roll out the free business technical assistance reusables program, outlined in the Food Ware Packaging Reduction Plan, to support the transition from disposable to reusable food ware. This voluntary program encourages early adoption of reusables, develops local case studies, assesses cost-saving opportunities, and will uncover any unanticipated challenges to reusable food service ware implementation. It lays the groundwork for mandatory measures in the Zero Waste Plan's Food Ware

Packaging Reduction Phase 2, including the recommendation to require reusables for dine-in.

Impact on Food Providers

Food provider impact will be highly dependent on the type of business, their existing practices, and current type of food packaging used. These factors can vary significantly between different businesses; however, a high-level summary of potential impacts by common food provider types is in Table 1. It includes the number of permitted vendors by type, percent of total Citywide food providers of each type, and expected impact. Factors influencing ordinance impact include ratio of take-out versus dine-in orders, whether reusable food ware is used for dine-in, and types of food ware currently used.

Table 1: Summary of Common Food Provider Types in Mountain View and Impacts

Type of Food Provider	Number*	% of Total	Expected Impacts
Restaurants and Bars (full-service restaurants and bars/nightclubs)	112	23%	<u>Low:</u> <ul style="list-style-type: none"> • Most orders dine-in • Disposables for takeout/leftovers
Corporate Food Service (on-site, nonpublic food facilities at private companies)	86	18%	<u>Moderate:</u> <ul style="list-style-type: none"> • Unknown use of reusables • Centralized purchasing – easier to implement
Counter Service (counter service restaurants, bakeries, ice cream shops, etc. – excludes “Fast Food”)	80	17%	<u>Moderate:</u> <ul style="list-style-type: none"> • High disposable item usage: More take-out, 76% dine-in disposables • Chains require corporate approval for food ware changes
Shoreline Concessions (each permitted vendor – includes individual carts)	46	10%	<u>Moderate:</u> <ul style="list-style-type: none"> • Primarily using disposables • Mostly single owner – easier to implement
Coffee/Tea/Juice	30	6%	<u>High:</u> <ul style="list-style-type: none"> • Disposables for takeout and dine-in • High usage of noncompliant clear plastic cups
Fast Food (chain fast-food restaurants, primarily takeout/drive-through)	22	5%	<u>High:</u> <ul style="list-style-type: none"> • Disposables for dine-in and take-out • Switching food ware requires corporate supply chain changes • High use of items with PFAS
Grocery Deli/Bakery (24 vendors at 12 markets)	26	5%	<u>Low:</u> <ul style="list-style-type: none"> • Food ware generally not corporate-branded, easier to switch

Type of Food Provider	Number*	% of Total	Expected Impacts
Mobile/Food Truck	13	3%	<u>Moderate:</u> <ul style="list-style-type: none"> Use only disposables
Hotel	14	3%	<u>Low:</u> <ul style="list-style-type: none"> Primarily dine-in service, low use of disposables
Convenience Store	8	2%	<u>Low:</u> <ul style="list-style-type: none"> Prepared food small % of overall sales – mostly beverage cups

* Number of individually permitted vendors. Some locations may have multiple permitted vendors in a single facility.

Compliant food service ware is not universally more expensive than noncompliant items, so the cost difference will vary depending on packaging needs of each business. Certified PFAS-free and compostable fiber-based options may be more expensive than the cheapest plastic packaging alternative. However, most food providers do not use the cheapest possible food packaging. For example, black plastic take-out containers with clear lids have a comparable compliant compostable fiber option at a similar cost and aluminum trays (also allowed with the recommended ordinance) are at a lower price point. “Compostable” plastics, not permitted under the ordinance, are most expensive for many packaging types, so food providers using these items will reduce costs by switching to compliant food ware. Attachment 3 is a price survey of common disposable food ware.

Providing accessories only upon request, as required by AB 1276, can result in significant cost savings for food providers that do not already have this policy. Businesses adopting this practice reported a more than 80% decrease in food service ware accessory purchases.

Those with at least some dine-in disposables can also benefit by changing to reusables as [case studies](#) have shown potential savings of thousands of dollars a year from implementing reusables with relatively small upfront investment. The City’s free technical assistance program for reusables launching in 2022 is designed to assist businesses that want to voluntarily implement more reusable items ahead of the proposed mandatory provisions in the Zero Waste Plan Food Ware Packaging Reduction Phase 2 measures. Program funding was allocated in the Fiscal Year 2021-22 Solid Waste Fund budget.

Outreach and Public Input

The recommended regulations were developed in response to community input, including the second Environmental Sustainability Task Force. The Task Force was a Council Advisory Body convening public engagement from September 2017 to June 2018 with 18 public meetings, eight community input events, and a survey. They presented

their [Final Report](#) to Council in June 2018 as the initial recommendation to ban single-use disposable plastic food ware. City staff presented an analysis of the Task Force recommendations on December 4, 2018 and endorsed the Task Force's single-use plastic food ware ban consideration. This proposed ban was incorporated into the Zero Waste Plan and Sustainability Action Plan 4.

To develop the Food Service Ware Ordinance, staff conducted extensive community outreach to gauge public opinion and make affected businesses aware of the proposed regulations. City staff created a Fact Sheet (in English, Spanish, and Chinese), Frequently Asked Questions guide, and survey, which were all available online at MountainView.gov/Foodware. Additional public outreach is listed below.

- Postcards (480 total) mailed to all food providers within the City of Mountain View and the listed owner notifying them of the proposed changes and directing them to MountainView.gov/Foodware for more information and to fill out the survey.
- Letters and fact sheets sent to private schools and corporate offices for chain restaurants and franchises with locations in Mountain View.
- Notices in the City's Economic Development, Sustainability and City Hall Connection newsletters as well as the Chamber of Commerce newsletter.
- Posts on City and Chamber of Commerce social media channels.
- At the Castro Street Open House on August 12, staff discussed the proposed changes with downtown businesses and had sample compliant food service ware on display.
- Two virtual webinar public information sessions on August 11 and August 19.
- Tabling at the Thursday Night Farmer's Market on July 22 and September 9.
- Downtown Committee presentation at the September 7 meeting.
- Individual meetings with several of the City's larger food providers.

There were 246 survey responses, primarily from residents (86%) and only five responses from owners or managers of food service businesses. Overall responses indicated concern for plastic pollution impacts and strong support for the proposed ordinance (93%). A majority (86%) said they are more likely to support a business offering reusable and/or compostable food and beverage packaging options. Most written comments

reacted positively regarding the ordinance's intent. Several expressed concern about the financial impact to businesses. Attachment 4 has full survey results and comments.

Regional Coordination

The recommended ordinance is part of a broad regional effort to address single-use food ware. More than 30 Bay Area cities and counties have adopted restrictions requiring nonreusable food service ware compatibility with local recycling and compost programs. Over 15 additional jurisdictions, including Mountain View, are considering similar measures. The City of Palo Alto and 11 other cities adopted regulations, including most of San Mateo County, effective March 2022.

Mountain View led a Countywide effort to develop a model food service ware ordinance to encourage consistency amongst locally adopted regulations and streamline the process for each entity. In July 2019, the County Recycling and Waste Reduction Commission's Technical Advisory Committee (TAC) formed a Model Food Ware Ordinance Ad Hoc Subcommittee chaired by former Solid Waste Program Manager Lori Topley with participation from other County jurisdictions and nonprofit interest groups. The TAC received a draft model ordinance in October 2020 and the City used this as the basis for the recommended Food Service Ware Ordinance.

The first phase of the draft Countywide model ordinance aligns with the City's Zero Waste Plan Phase 1 Food Ware Reduction measures. Other draft model ordinance provisions align with the City's Phase 2 Zero Waste Plan measures and will be incorporated into a future reusable-focused food ware ordinance. Attachment 5 compares locally adopted food service ware ordinances to the Countywide draft model ordinance, as aligned with Phase 1 and 2 of the City's Zero Waste Plan food ware measures.

Single-Use Plastic Bags

Public feedback also indicated a strong desire to reduce waste from restaurant single-use plastic carry-out bags. To expand single-use plastic bag requirements, the City would need to consider changes to the Reusable Bag Ordinance, not the Food Service Ware Ordinance.

Mountain View's 2013 [Reusable Bag Ordinance](#) banned grocery stores and other retailers from providing single-use plastic carry-out bags to customers, and the State has a single-use plastic carry-out bag law. Both City and State laws exempt certain food providers (e.g., restaurants and farmers' markets) and types of bags (e.g., plastic produce bags and other precheckout bags). California law preempts local jurisdictions' regulation of single-

use bags at covered retailers, but cities can impose restrictions on businesses not regulated by State law such as restaurants and bag types not covered.

The City's Zero Waste Plan already has an item to analyze whether to increase the Reusable Bag Ordinance minimum charge for carry-out bags, but it does not consider reevaluating types of businesses and single-use bags not covered by existing City or State regulations. As part of considering increases to the Reusable Bag Ordinance minimum charge, staff recommends also evaluating an amendment to the Reusable Bag Ordinance to further reduce single-use plastic bag use.

Next Steps

Successful implementation of the new food service ware regulations requires continued direct education and engagement efforts with businesses and the wider community. Solid Waste staff will help food providers understand the new regulations and find compliant food service ware items with in-person meetings, fact sheets, purchasing guides, employee training guides, and model signage. This may include additional mailings, webinars or workshops, event tabling, and resource fairs to connect businesses with manufacturers and distributors of compliant food ware items.

Solid Waste staff will ensure the broader Mountain View community is aware of the new regulations and understands how to compost compliant fiber food service ware to successfully divert it from landfill. Staff will develop resources for residents and employees to support proper waste sorting and integrate into existing communication methods, like City newsletters, social media, and the annual *Resource* recycling guide.

Ordinance enforcement will occur through site observations and investigation of public complaints, like the existing Polystyrene Foam and Reusable Bag Ordinances, emphasizing education and technical assistance to help with new law compliance. First and second ordinance offenses will result in notices of violation and City staff supporting resources. Citations, fines, or other enforcement remedies may be pursued for those remaining noncompliant.

FISCAL IMPACT

As presented to Council when the Zero Waste Plan was adopted on October 29, 2019, additional staffing resources are necessary to successfully carry out the short-, medium-, and long-term zero-waste initiatives. Implementation of the Plan's Food Ware Packaging Reduction, Phase 1, and preparation for Phase 2 will require staffing resources to develop outreach materials educating businesses and helping them identify compliant compostable packaging, to establish a technical assistance program in support of

businesses that voluntarily want to transition from disposable to reusable packaging, and to conduct enforcement starting in 2023. This additional staffing would be funded by the Solid Waste Fund and will be requested as part of the annual budget process for Fiscal Year 2022-23.

CONCLUSION

Single-use food packaging creates landfilled waste, litter and ocean pollution, and potential negative health impacts. Most petroleum-based plastic and “compostable” plastic food ware is not readily recyclable or compostable in Mountain View or elsewhere and will be landfilled. The best way to mitigate single-use plastic waste and litter is to reduce or prevent its use. This new ordinance will require natural fiber-based packaging that is accepted in the City’s composting program and certified as free of toxic PFAS to protect the community’s health, or recyclable aluminum. This ordinance is an initial step and lays groundwork for future Food Ware Packaging Reduction Plan steps. These City Zero Waste Plan measures provide a path to achieve the goal to divert 90% of waste from landfill by 2030.

Along with these measures already in the Zero Waste Plan, staff seeks Council direction on whether to explore further restrictions on single-use plastic carry-out bags. Reducing plastic bags at restaurants and others not regulated by the City’s Reusable Bag Ordinance or State law would address a single-use plastic packaging separate from the current Food Ware Packaging Reduction Plan that is still a significant problem, providing even more litter, waste reduction, and environmental benefits.

ALTERNATIVES

1. Do not introduce the attached ordinance.
2. Propose modifications to the attached ordinance.
3. Do not direct staff to explore an amendment to the Reusable Bag Ordinance.
4. Provide other direction.

PUBLIC NOTICING

Agenda posting. The public hearing notice was published in the *Daily Post Journal*, and a courtesy noticed was published in the *Mountain View Voice*. In addition to the City's standard agenda posting requirements, staff provided notice of this meeting on the City's Recycling and Zero Waste website, via social media, and through emails to community members who signed up to receive updates about the City's Sustainability program.

Prepared by:

Erin Brewster
Analyst II

Jennifer Cutter
Solid Waste Program Manager

Approved by:

Dawn S. Cameron
Public Works Director

Kimbra McCarthy
City Manager

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- Attachments:
1. Food Service Ware Ordinance
 2. Food Ware Packaging Reduction Plan
 3. Food Service Ware Price Comparison
 4. Survey Results
 5. Food Service Ware Ordinance Comparison