



COMMUNITY DEVELOPMENT AGENCY
ENVIRONMENTAL HEALTH SERVICES DIVISION

April 19, 2022

Thomas K. Lai
DIRECTOR

Gregory Pirie
DEPUTY DIRECTOR

Marin County Civic Center
3501 Civic Center Drive
Suite 236
San Rafael, CA 94903
415 473 6907 T
415 473 4120 F
415 473 2255 TTY
www.marincounty.org/ehs

Honorable Board of Supervisors
Marin County Civic Center
San Rafael, CA 94903

SUBJECT: First reading of a proposed Reusable Foodware Ordinance Amending Chapter 7.25 of the Marin County Code

Dear Supervisors:

RECOMMENDATION: Approve introduction of ordinance amending Chapter 7.25 of the Marin County Code and schedule consideration of adoption of ordinance for May 10, 2022 (consent calendar).

BACKGROUND: Litter that is left on streets and sidewalks can collect in gutters, storm drains, and creeks and ultimately gets discharged into San Francisco Bay and other water bodies which results in a major environmental quality and compliance concern in Marin County and the entire Bay Area. Certain components of litter – including single-use plastic foodware – have been identified locally, regionally, and state-wide as being particularly problematic.

In 2009, Marin County adopted Ordinance No. 3531, prohibiting the use of polystyrene foam (also known as Styrofoam) in packaging for prepared food or takeout food, and encouraging the use of compostable food packaging. The County is seeking to expand its current foodware ordinance to require foodware to be reusable or compostable and prohibit plastic foodware through this proposed Reusable Foodware Ordinance.

PROPOSED ORDINANCE: The proposed ordinance would cover all entities selling prepared food to the public in the County including restaurants, grocery stores and delis, bakeries, carry-out, quick services, farmers markets, food trucks, and any other business that requires a health permit.

The proposed ordinance contains six key features and uses the hierarchy of: reusables are best, natural-fiber compostable foodware is compliant, and single-use plastics, including bioplastics, are prohibited. The ordinance only allows fiber-based compostable foodware as compliant alternatives because the compost facility at the Redwood Landfill will not accept bioplastics given its status as an organic compost production facility.

The ordinance key features include:

1. All takeout disposable foodware must be natural-fiber compostable (no bio plastics). Takeout foodware must be certified by the Biodegradable Products Institute (BPI). Aluminum is allowed. "Foodware" means all containers, bowls, plates, food trays, cups, lids, boxes, and other like items that are used for prepared foods, including without limitation, foodware for takeout foods and/or leftovers from partially consumed meals prepared by food vendors.
2. Takeout foodware accessories must be natural-fiber compostable and available only "upon request" or at a self-serve takeout station. Food vendors shall provide plastic straws only on request, to accommodate any person's access needs. "Foodware accessories" means types of items usually provided alongside prepared food including but not limited to forks, spoons, knives, chopsticks, napkins, cup sleeves, food wrappers, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, toothpicks, tray-liners, and plate-liners.
3. Reusable foodware and utensils must be used if a customer is dining in at a restaurant. Natural-fiber compostable accessories can be provided upon request.
4. All food vendors shall charge customers twenty-five cents (\$0.25) at the point of sale for every non-reusable cup provided. Income from the non-reusable cup charge shall be retained by the food vendor. Exemptions are available for Cal Fresh/SNAP and WIC customers.
5. All food vendors who provide solid waste containers for customer use, must provide separate receptacles for solid waste, recyclables, and organics. Receptacles must have graphic-rich signage. This is a requirement of state laws AB 827 and SB 1383 and would enable customers and employees to properly sort waste.
6. Enforcement of the ordinance begins eighteen (18) months after adoption of the County ordinance to give businesses time to switch sourcing of supplies and deplete existing stock.

IMPLEMENTATION: The proposed ordinance would take a proactive approach in educating all retail food facility owners regularly of the requirements of the proposed ordinance and taking enforcement action only as necessary. This has the potential to result in greater overall levels of compliance, to allow for fairer competition among food vendors, and to have the benefit of staying power because there would be regular education and outreach on an annual basis. The Environmental Health Services Division (EHS) is in a unique position to provide proactive outreach during already scheduled visits to businesses as a part of its food program.

Enforcement will include written notice of non-compliance and a reasonable opportunity to correct, prior to issuance of any penalty. Should foodware or foodware accessories made of compliant compostable natural fiber not be commercially available, as determined by the EHS Director or their designee, the County may approve a temporary exemption of specific nonreusable foodware or foodware accessories items until they are made commercially

available. The County shall maintain a list, updated annually, with foodware and/or foodware accessories deemed not available commercially.

MARIN JURISDICTION PARTICIPATION: With the adoption of this ordinance, implementation and enforcement would apply to all covered food vendors in the County unincorporated areas only. However, one of the primary goals of the ordinance development process was to propose a consistent, countywide ordinance that could be adopted by all jurisdictions in Marin. If all Marin jurisdictions adopt the ordinance, it would level the playing field for all food facility operators across the County, ensure consistent enforcement, and minimize confusion for consumers. The County has determined that if a jurisdiction also adopts this proposed foodware ordinance, it could request to be included in the County's EHS Division implementation and enforcement program.

As there are staff and system costs associated with the development and implementation of the program that would be exacerbated if jurisdictions joined piecemeal over the course of several years, there will be a one-time fee to join the County's reusable foodware enforcement program. However, to encourage and incentivize jurisdictions to join during the initial development phase, the County will waive the on-boarding fee for any jurisdiction that opts into the program within twelve (12) months of the County's adoption of the ordinance. The fee is scaled based on the number of food facility operators within the jurisdiction and ranges from \$311 to \$33,327 (see Attachment 2 for details).

PUBLIC INPUT: The County conducted extensive outreach as a part of this project including development of a technical assistance and grant program, creation of a website with draft ordinance materials and resources, distribution of community and business surveys in English and Spanish, and hosting a variety of meetings and workshops. The City of San Rafael also completed extensive interviews with over 50 business owners or administrators. A detailed inventory of outreach efforts to date is included in Attachment 3.

RECENT STATE REGULATIONS: Adoption of the proposed ordinance would also assist the County and Marin businesses in complying with recent state waste related legislation including Assembly Bill (AB) 1276, AB 1200, and AB 1201. These bills were signed into law by Governor Newsome in October 2021 and address compostable foodware composition and labeling, and foodware accessories distribution. The County's proposed ordinance is in alignment with all three of these new laws which go into effect in 2022, 2023, and 2024, respectively.

EQUITY IMPACT: While there can be lifecycle cost savings from switching to reusable foodware materials and research has shown that fiber-based disposable foodware items are cost competitive with plastic options, there can still be an initial cost to research and transition to compliant materials. This could have an impact on smaller food vendors. In 2021, the County offered a free technical assistance and grant program open to all businesses in the County

(both incorporated and unincorporated areas) to assist with the transition. While the current project has existing funding available to development outreach materials and tools to assist food vendors with the transition, an additional budget proposal has been submitted for FY22-23 to continue this one-on-one assistance and grant program which could focus on small businesses that may need additional assistance with the transition.

FISCAL IMPACT: Financial impacts of implementation are expected to be minimal as a result of adopting the proposed Ordinance. There will be no net impacts to the General Fund. There is expected to be an initial spike in County staff time needed to develop resources and to respond to questions and concerns in the first few months after the Ordinance is effective.

The financial impacts of enforcement of the proposed Ordinance depend on whether all, some, or none of the cities and towns sign onto the County-wide approach. If all cities and towns adopt the County’s Ordinance without exception, and within twelve (12) months of County adoption, the County’s Environmental Health Division will take on the role of enforcement through the food inspection program and the one-time enforcement fees (listed in Attachment 2) would be waived. If jurisdictions adopt the ordinance after the twelve (12) month period following County adoption, the fee by jurisdiction would be assessed for any new jurisdiction adoption the Ordinance and seeking enforcement from the County.

The costs for the full enforcement of the Ordinance and the additional time needed during the inspection will be determined via a fee study or an enforcement cost analysis model. The current estimate for full enforcement across all jurisdictions is \$167,700 annually. Once the final cost impacts are established via the fee study or modeling, permit fees would be increased accordingly to recover the costs.

REVIEWED BY: County Administrator N/A
 Department of Finance N/A
 County Counsel N/A
 Human Resources N/A

SIGNATURE:



Greg Pirie
Deputy Director



Dana Armanino
Principal Planner

Attachments

- 1. Proposed Ordinance
- 2. One-Time Jurisdiction On-boarding Fees
- 3. Summary of Outreach Activities
- 4. Public Comments Received