



AGENDA BILL

Agenda Item No. 7.C.

Date: November 2, 2021
To: El Cerrito City Council
From: Will Provost, Operations + Environmental Services Division Manager;
Yvetteh Ortiz, Public Works Director/City Engineer, Public Works
Department
Subject: Amended Foodware Ordinance Requiring Foodware to be Reusable or
Compostable and Prohibiting the Use, Distribution, or Sale of Plastic
Straws and Plastic Stirrers

ACTION PROPOSED

Conduct a public hearing, and upon conclusion, introduce by title and waive any further reading of an Ordinance amending Chapter 8.24 Foodware Regulations of the El Cerrito Municipal Code.

BACKGROUND

Litter pollution on streets and in gutters, storm drains, creeks, and San Francisco Bay is a major environmental quality and compliance concern in El Cerrito and the entire Bay Area. Certain components of litter – including single-use plastic food ware – have been identified locally, regionally, and state-wide as being particularly problematic.

In 2013, the City of El Cerrito adopted its current Foodware Ordinance (Ord. No. 2013-04) that prohibits Expanded Polystyrene Foam (“Styrofoam”) foodware and has required foodware to be packaged for takeout in reusable, recyclable, or compostable containers. In support of the City’s goal to keep more materials out of the landfill, reduce recycling contamination and costs, decrease greenhouse gas emissions, and in alignment with the City’s Climate Action Plan and Strategic Plan goals, City staff is recommending changes to the 2013 Ordinance. The proposed Ordinance would phase out single-use plastic foodware items within the City of El Cerrito.

Single-use foodware includes all containers, bowls, plates, trays, cartons, cups, lids, utensils, forks, spoons, knives, straws, and other items that are designed for one-time use and disposal. If approved, all food providers in the City would be required to procure and use reusable or compostable foodware. Food providers include any vendor, business, organization, entity, group, or individual, including any restaurant or retail food establishment, located or operating within the City or providing food or beverage to the public, and any provider of prepared food at organized or special events occurring within the boundaries of the City. Food providers that are subject to the City’s current Foodware Ordinance would be the same food providers covered under the proposed Ordinance.

City staff has conducted a robust public outreach process to seek feedback from businesses and residents including meetings with the Chamber of Commerce, sending letters to all affected businesses, developing and hand-delivering a factsheet in three languages to businesses, and publishing information in articles, bill inserts, and on the City's website. Additionally, the City presented the proposed Ordinance to the Environmental Quality Committee, the Economic Development Committee, and the City's ADA Advisory group. The Environmental Quality Committee has analyzed the proposed Ordinance, discussed impacts, hosted two public meetings to which businesses were invited (one in 2020 and one in 2021), and unanimously recommended the City Council approve the proposed Ordinance at their September 14, 2021 regular meeting, with the note that City staff would make modifications that take into account comments received during the public meeting.

Public Input

Changes to the proposed Ordinance were initially planned for 2020 but were postponed due to the COVID-19 pandemic and concerns about impacts to businesses. Community outreach was conducted in early Spring 2020 and again in Fall 2021, each time including all of the aforementioned activities (i.e., public meetings, distribution of a public draft, mailings, door-to-door business outreach, etc.). During both processes, the City received feedback from businesses and community members and made changes to the proposed Ordinance. As such, the proposed Ordinance includes a longer enforcement timeline to reflect feedback received from businesses, a specific prohibition of products that contain intentionally added fluorinated chemicals, and other smaller changes and refinements suggested by community members.

Some concerns raised by some community members included that the enforcement period should begin sooner (in contradiction with comments received from businesses), that the City should require all single-use foodware accessories to only be provided upon request (a requirement that is being addressed by State law as described below) or only offered for a fee (which differs from the approach of El Cerrito's 2013 Ordinance in effect). In 2020, the City received concerns about the cost to businesses and customers resulting from the proposed changes. However, after incorporating the longer enforcement timeline now proposed (with enforcement beginning January 1, 2024) and perhaps due to the growing prevalence of these types of requirements, feedback received during the 2021 community engagement process for the most part did not include any mention of concerns around cost, including with the businesses most impacted like restaurants. Last, there were some members in the community who noted they are interested in seeing the City continue to develop policies that focus not just on plastic foodware, but all uses and sales of single-use plastic items.

Recent State Regulations

In October 2021, three relevant foodware regulations, Assembly Bill (AB) 1200, AB 1201, and AB 1276, were signed into law by Governor Newsom. AB 1200 prohibits distribution or sale of any food packaging that contains regulated perfluoroalkyl and polyfluoroalkyl substances (PFAs) beginning January 1, 2023. AB 1201 prohibits the sale of products labeled with the term "compostable" or "home compostable" unless the

product satisfies a specified criteria. AB 1276 expands the plastic straws upon request law (AB 1884) to include other single-use food accessories (e.g. utensils), other food facilities, and third-party delivery platforms for food that is taken away, delivered, or served on-site, and requires cities to authorize enforcement of those requirements prior to June 1, 2022. These new state laws are in alignment with the City of El Cerrito's proposed Ordinance, which will prohibit PFAs in permitted foodware in El Cerrito, requires compostable foodware to be compliant with the City's composting programs, and requires permitted straws to be provided only upon request. The proposed ordinance goes beyond the State laws by requiring disposable foodware to be compostable. City Staff is still analyzing the requirements under AB 1276, signed by the Governor in October 2021, and may return to City Council to establish additional mandated programs and requirements as it relates to providing single-use food accessories only upon request.

ANALYSIS

The features of the proposed Ordinance are summarized below:

- Food Providers shall only provide prepared food to customers in foodware that is reusable or compostable.
- City facilities, City Departments, and all City franchisees, contractors, vendors and caterers doing business with the City are prohibited from using foodware that is not reusable or compostable.
- All permitted straws shall only be provided upon request.
- Exemptions to the requirements are summarized below:
 - Prepared foods that are prepared or packaged outside the City as well as prepared foods prepared and packaged in the City for use outside of the City;
 - If no suitable disposable foodware alternative exists;
 - During a local emergency; and
 - Businesses that can demonstrate an economic hardship resulting from complying with the Ordinance.
 - Disposable plastic straws are allowed for persons who require and request them due to disability or other medical or physical conditions or circumstances.

If adopted, the proposed Ordinance is to go into effect on July 1, 2022 to give time for City staff to develop and distribute outreach materials and for businesses to plan for the transition. However, enforcement of the Ordinance is proposed to begin on January 1, 2024, aligning with the timeline for Senate Bill 1383 ("Mandatory Organics Recycling") and allowing for businesses to understand the requirements, use up existing non-compliant stock, and procure reusable or compostable foodware. Enforcement will be based on complaints received by the City and focused primarily on education, similar to enforcement practices under the current Ordinance. Should the proposed Ordinance be adopted, City staff will assist food providers by providing training and technical support and building public awareness.

This includes developing various outreach materials for businesses including a comprehensive brochure to help educate and get businesses into compliance.

STRATEGIC PLAN CONSIDERATIONS

Adoption of the proposed Ordinance will help fulfill the following City of El Cerrito Strategic Plan goals and objectives:

- Goal F: Foster environmental sustainability by reducing the amount of waste generated in El Cerrito as well as by being a leader in setting policies for environmental sustainability. The proposed Ordinance would also reduce recycling contamination and costs from non-recyclable plastic foodware and decrease greenhouse gas emissions from the production of single-use products.
- Goal E: Ensuring the public's health and safety by supporting initiatives that decrease pollution and improve the health and prosperity of future generations.

ENVIRONMENTAL CONSIDERATIONS

If adopted, the amended Foodware Ordinance would reduce plastic foodware litter on El Cerrito streets and public spaces, reduce the presence of plastic foodware litter in storm drains and creeks (the City is required to eliminate trash in stormwater per the Municipal Regional Stormwater Permit), and reduce waste management inefficiencies attributed to single-use plastic foodware.

Pursuant to Title 14 of the California Administrative Code, the City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons: (1) under Section 15061 (b)(3), it is not a project which has the potential for causing a significant effect on the environment; (2) under Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration, enhancement, or protection of the environment.

FINANCIAL CONSIDERATIONS

Financial impacts are expected to be minimal as a result of adopting the proposed Ordinance, and there are no impacts to the City's General Fund. There is expected to be an initial spike in City staff time needed to develop resources including a comprehensive brochure for businesses and to respond to questions and concerns in the first few months after the Ordinance is effective. After such time, City staff time to respond to complaints will largely be absorbed into on-going outreach, education, and communications with businesses as part of other state mandates. The proposed Ordinance builds upon the existing requirements and programs prohibiting the use of Expanded Polystyrene foodware, which is largely complaint driven, and as a result this would not result in a significant cost increase for the City.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the draft Ordinance and found that legal considerations have been addressed.

Reviewed by:

A handwritten signature in blue ink that reads "Karen Pinkos". The signature is written in a cursive style.

Karen Pinkos, City Manager

Attachments:

1. Ordinance
2. Presentation