



DATE: September 11, 2023

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT: Single-Use Disposable Food Ware Ordinance – Information and Discussion

RECOMMENDATION

That the Council Sustainability Committee (CSC) reviews and comments on this report and provides direction to staff on the potential implementation of a Single-Use Disposable Food Ware Ordinance in Hayward.

SUMMARY

Replacing single-use food ware items such as plastic and paper cups, plates, and utensils with reusable alternatives for dine-in can dramatically reduce the amount of litter in Hayward, and drastically decrease the waste Hayward sends to landfill. The Alameda County Waste Management Authority (ACWMA), also known as StopWaste, drafted a model Disposable Single-Use Food Ware Reduction and Reuse Ordinance in March of 2023. This model ordinance is designed for Alameda County jurisdictions to tailor to meet their specific circumstances to reduce single-use food ware items and transition to reusable food ware. City staff have reviewed the ACWMA model ordinance and presents suggestions for Hayward for the CSC to review and provide direction.

BACKGROUND

Single-use disposable (SUD) food ware and packaging, including plates, cutlery, cups, lids, straws, clamshells, and other containers significantly contribute to street litter and often contaminates feedstock for composting and recycling programs. The production, consumption and disposal of SUDs depletes natural resources and is a major component of the plastic polluting our air, food, drinking water and oceans.

- Food and beverage SUDs make up about 25% of all waste produced in California¹
- Bay Area studies have found that food and beverage packaging make up the majority of street litter, half of which comes from fast food and take-out food establishments²

¹ <https://www.wastedive.com/news/are-the-packaging-wars-coming-to-california/508491/>

² Clean Water Action's "Taking out the Trash" Bay Area Litter study (2011)
http://www.cleanwateraction.org/files/publications/ca/Curr_CA_12%2012%2011final.pdf

- Hayward’s 2022 Litterati Study, presented to the CSC on May 8, 2023³, found straws, cups, and lids to be some of the top 10 littered items within the City.

Prepared food service operators often provide customers handfuls of accessory items, like plastic utensils and single-serve condiment packets, in the interest of greater customer satisfaction. The result is customers often receive large quantities of disposable items they don’t need. Most people have condiments, napkins and utensils at home or at the office. This wasteful practice of distributing SUDs was exacerbated by COVID-19, which brought a 28% increase in take-out and delivery orders that partially contributed to the 10-million-ton increase in plastic waste associated with COVID-19 in the U.S.⁴

Reducing the use of SUD items in Hayward can not only save natural resources but can also play a role in achieving the City’s diversion, litter reduction, and climate action goals. Hayward previously took steps to reduce problematic single-use items by banning polystyrene foam in 2010⁵ and joining the Alameda County plastic bag ban that became effective in Hayward in January 2013.

The Strategic Roadmap adopted by Council in June 2021, listed under the priority of *Confront Climate Crisis & Champion Environmental Justice*, Project #5: *Work with StopWaste to promote a Circular Economy and Explore Regulation of Single Use Products*. This goal was partially achieved in 2021 when the state enacted AB1276, however, SUDs remain problematic in Hayward. AB1276 is a state law that requires all retail food facilities (for onsite dining), and food delivery platforms provide disposable food ware accessories and condiments upon request only. Food ware items covered by the law include all single-use utensils, straws, chopsticks, stirrers, and condiment cups and packets, including those made from bioplastics, compostable plastic, bamboo, and paper. The law requires that disposable utensils cannot be bundled together; single-use food ware accessories and condiments can only be provided upon request (with the exception of airport and drive-through customers); and food facilities using third-party delivery platforms can only provide condiments and disposable utensils that have been requested by a customer during the online ordering process.

Hayward has been enforcing AB1276 on a complaint-driven basis. To achieve more significant reduction in SUD usage, StopWaste recommends enacting requirements for takeout food and policies that go beyond “on-request” requirements.

In addition to the litter and disposal problems caused by SUDs, the manufacturing of SUDs also cause significant greenhouse gas emissions. Hayward’s current draft update to the Climate Action Plan (CAP) specifically calls out reducing single-use food ware and lists developing a zero-waste plan and increasing bans on problematic materials as key implementation programs. Adopting an ordinance to reduce single-use food ware can help Hayward address each of these climate action goals.

³ <https://hayward.legistar.com/LegislationDetail.aspx?ID=6197739&GUID=5BDCCA63-0F7A-46A8-9600-A65B634FEB21&Options=&Search=>

⁴ Mesirow(2022) [How COVID-19 Changed Packaging Forever](#), pp. 5-6- citing McKinsey & Co. from 2020

⁵ <https://portal.laserfiche.com/Portal/DocView.aspx?id=139072&repo=r-b6d2994c>

Managing single-use disposable food ware is a challenge faced not only by Hayward. Other Alameda County jurisdictions that include measures in their CAPs related to reducing food service ware waste are listed in Table 1 below.

Table 1 - Alameda County Jurisdictions with a Food ware Measure in CAP⁶

Jurisdiction	Disposable Food ware-Related Measure in CAP
Albany <i>Climate Action and Adaptation Plan (2019)</i>	Section 3.2.1 – Partner with Stopwaste to develop and adopt an ordinance requiring reusables for dine-in restaurants and sustainable take-out food ware.
Livermore <i>Climate Action Plan (2022)</i>	Section W-1.4 – (includes examples of targeting food and hospitality industries: “efforts may include adopting ordinances for compostables food ware, a ban on single-use individual toiletry bottles in hotels/motels, grant/discount programs for switching to reusables, and working with home meal delivery services (e.g., Blue Apron) , etc. to reduce single-use packaging and encourage reuse” (p.80of PDF)
Oakland <i>2030 Equitable Climate Action Plan (2022)</i>	Section MCW-3 Eliminate single-use plastics & prioritize reuse in food preparation, distribution, and sale
Pleasanton <i>Climate Action Plan 2.0 (2022)</i>	Page 12 – Single use plastic reduction (one of 16 “primary actions” and the only one on material and consumption)
San Leandro <i>Climate Action Plan (2021)</i>	WR-5 Styrofoam and single-use plastics reduction - “Work with regional partners to reduce the prevalence of single-use plastic and ensure that reusable food service ware is the default in din-in, delivery, and takeout dining...Mandate that any single-use food service ware (plates, bowls, cups) and accessories (straws, utensils, condiment cups) are BPI-certified compostable fiber, except in cases where certain materials may be deemed medically necessary or necessary to ensure equal access for persons with disabilities.” (Page 85, page 104 of the PDF)
Union City <i>Climate action Plan (2010)</i>	WR-1.1 - Increase Waste Diversion Target - Section D. Develop ordinances to ban use/sales of unrecyclable plastics and disposable bags/containers Section F. Develop an ordinance that requires take-out food containers to be compostable or recyclable within Union City’s Recycling and Composting System.

⁶ Stopwaste - Explanatory Notes of Disposable Packaging Reduction Ordinance - <https://www.stopwaste.org/file/explanatory-notes-for-disposable-packaging-reduction-and-reusable-food-ware-model-ordinance-for>

In addition to the Alameda County jurisdictions listed in Table 1, as of February, 2023, several jurisdictions in California have enacted policies that go beyond “on-request” requirements for SUDs, and mandate reusable food ware for on-site dining. These include Arcata, Berkeley, Culver City, Cupertino, Fairfax, Goleta, County of Los Angeles, Palm Springs, San Anselmo, Santa Rosa, Sebastopol, Tiburon, and Truckee. ⁷

DISCUSSION

The primary objective of the ACWMA Model Disposable Single-Use reduction and Reuse Food ware Ordinance (see Attachment II) is to reduce the demand for and consumption of certain problematic, single-use food ware items, such as plastic and paper cups, plates, and utensils. These items serve a very short useful lifespan of just minutes, but can impact the environment for hundreds of years, if not longer.

The model ordinance incorporates concepts and lessons learned from polices enacted in Alameda County as well as other jurisdictions and introduces some new approaches designed to further incentivize reuse and address the environmental impacts and costs associated with the use and disposal of single-use food ware and packaging. The model ordinance includes a wide range of methods to reduce SUD-generated waste and is designed for jurisdictions to only enact those methods that align with the jurisdiction’s unique goals and circumstances. Some key provisions of the model ordinance are listed below and followed by a brief overview of Hayward’s current approach to the provision.

- **Reusable food ware required for on-site dine-in establishments.**

Hayward currently has no requirements for reusable food ware for on-site dining. This provision holds the potential to significantly reduce the amount of SUDs in Hayward and should be seriously considered for adoption. However, this provision also holds the potential to significantly disrupt certain businesses’ method of operating, particularly for businesses with no dishwashing capabilities, and therefore staff suggests this provision should only be considered after the City conducts appropriate outreach to and receives feedback from the food service community.

- **Requirements to accept customer-provided reusables.**

Hayward currently has no requirements for businesses to accept customer-provided reusable food ware. This measure should also be considered after conducting outreach and receiving feedback from the food service community.

- **Charges to disincentivize disposable food ware and discounts for reusables.**

Hayward currently has no requirements for businesses to charge customers for disposable food ware. The model ordinance includes provisions to charge customers for disposables. Studies in San Francisco and Berkeley have shown that charging 25

⁷ StopWaste Guide to the Stopwaste Model Ordinance, page 21: <https://www.stopwaste.org/file/explanatory-notes-for-disposable-packaging-reduction-and-reusable-food-ware-model-ordinance-for>

cents per cup is the lowest level likely to influence people's behavior and incentivize them to bring a reusable cup. Charging for disposables makes customers aware of their consumption and has been proven effective in the case of plastic bags to persuade customers to choose reusables over SUDs.⁸ While this type of provision has proven effective with plastic bags, some communities have expressed concern that charges on SUDs could disproportionately impact low-income customers. An exemption to charges could be offered for customers enrolled in WIC or EBT programs. However, not all low-income customers enroll in these programs and there can be a stigma associated with needing to show proof of participation in these programs.

- **Defined criteria for compliant disposable food ware.**

Hayward defines compliant disposable food ware in the Section 5, Article 11⁹ of the Hayward Municipal Code. The definition says "...disposable food service ware means a product used by a Food Vendor and is commonly disposed of after a single use, and includes, but is not limited to, plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single-use disposable straws, utensils or hot cup lids." Since Section 5 Article 11 was adopted in 2010, some portions of the ordinance have been superceded by state law and can be updated and clarified. For example, the Section 5-11 definition of disposable food ware calls out that straws are not considered disposable food ware.

The model ordinance also includes options to address toxicity in food ware products. Many existing local ordinances in California now require that food service ware is recyclable or compostable and some also require that the items be PFAS free. However, none address the broad array of other health threatening chemicals commonly used in the manufacture of food service ware products and are known to migrate out of the packaging into food and beverages prior to and during consumption.¹⁰ The model ordinance contains a provision that can set a precedent for safe exposure by requiring that food service ware be certified by a third party. The model ordinance recommends using Green Screen(™) Certification, as this certification can ensure that over 600 chemicals are not present in the products. Using a third party to ensure food ware is free from toxicity avoids the need for local governments or food service providers to check into the chemical constituents used in food service ware.

- **Reusable cup requirements for large events and venues.**

Hayward has no large venues or recurring events that meet the State definition of 2000 or more attendees. However, Hayward encourages and can require reusable cups as a condition of approval for events requiring a permit.

- **Reusables requirements for City facilities.**

Hayward currently encourages the use of reusables and offers a set of reusable dishware at City Hall for staff to borrow. Hayward can develop an internal policy for reusables without the need for an ordinance. The City could lead by example by only

⁸ StopWaste Guide to the Stopwaste Model Ordinance, pages 24-25 : <https://www.stopwaste.org/file/explanatory-notes-for-disposable-packaging-reduction-and-reusable-food-ware-model-ordinance-for>

⁹https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH5SAHE_ART11POFODIFO_SEWAPRRECOFOSEWARE

¹⁰ StopWaste Guide to the Stopwaste Model Ordinance, page 34 : <https://www.stopwaste.org/file/explanatory-notes-for-disposable-packaging-reduction-and-reusable-food-ware-model-ordinance-for>

using reusables at City events, staff meetings, etc.

- **Restricting sale of certain items such as packaged water and polystyrene foam.** Hayward currently discourages the use of packaged water and offers a set of refillable water stations at City Hall and the main library. Hayward has an internal policy adopted in 2010 (Resolution 10-016) that bans the purchase of bottled water for City operations and events. However, the policy was not strictly followed initially, and was particularly not enforced after the COVID-19 outbreak in 2020. Staff intends to restart efforts to promote the policy now that COVID has waned. Hayward banned polystyrene foam food ware in 2010 with the passage of Section 5, Article 11 of the municipal code.
- **Helium Ballons**
In addition to SUD food ware, Hayward could consider adding the banning of helium balloons at City facilities and City-sponsored events to this ordinance. These balloons are single-use, disposable and harmful to the environment.

The ACWMA model food ware ordinance offers comprehensive vetted policy language and maintains flexibility for a jurisdiction to implement a customized version. Specific modules can be customized or removed. ACWMA has provided a guidance document to help jurisdictions draft their unique ordinance. The guidance document includes a prioritized list of recommended policies and suggested timelines for implementation. These recommended policies are presented in four tiers ranked from the most important (Essential) to suggested policies that can enhance SUD reduction efforts. The tiers are defined below, and the ranked policies with ACWMA's suggested implementation timelines are shown in Table 2.

1. Essential - policies considered to be bare-minimum first steps in transitioning foodservice to reuse and coming into compliance with the major reduction of disposables state law (AB1276) that requires Accessories Only Upon Customer Request.
2. Advised - policies help move the needle from reuse in food service to other sectors, including events, large venues, government facilities and take a step towards replacing disposable beverage bottles with refillable ones.
3. Worth Considering - policies would be the first of their kind in the U.S. While there is some early precedent in Europe, jurisdictions that adopt these policies would be taking a leadership role in the U.S.
4. Other Food ware Policies - policies specify what Food Service Ware will be acceptable for use in food service and for sale and distribution within the City. These policies should be enacted as companions to Reduce and Reuse policies as on their own, they do not serve to reduce environmental impacts such as litter, waste, or greenhouse gasses. However, these policy measures will help to protect public health because they will reduce exposure to high priority toxic chemicals in Food Service Ware.

Table 2 - ACWMA Ranked Recommendations for Model Ordinance Policy Implementation

Essential	Suggested Start Date
Reusable food ware required for dining on premises	12 months after adoption
Customer-provided reusable cups and food containers for take-out	Immediately
Accessories only upon request	Immediately
Advised	
Reusable Cups at Events	12 months after adoption
Reusable Cups at Large Venues	12 months after adoption
Reusable Cups at City Facilities	12 months after adoption
Disposable Cup and Container Charge	12 months after adoption
Accessible Water Bottle Refill Stations	12 months after adoption
Worth Considering	
City Purchase, Sale or Distribution of Packaged Water Prohibited	12 months after adoption
Other Food ware Policies	
Compliant Disposable Food ware for Food Service	12 months after adoption
Sale or distribution of Non-Compliant Food Service Ware Prohibited	12 months after adoption
Polystyrene Foam and Related Products	12 months after adoption

Although following the ACWMA suggested implementation timeline for “Essential” and other policies at this time could result in significant reduction of litter and SUD waste generated in Hayward, staff recommends considering a longer timeline for implementation. There are several Hayward businesses still recovering from the effects of the COVID-19 pandemic and implementing a disruptive ordinance could increase pressure on these already-strained businesses. A longer timeline will allow staff to implement reusables for internal operations and conduct outreach to food service businesses and better understand the potential impacts of a food ware ordinance on Hayward businesses. Staff can also explore potential opportunities for a mini-grant program, technical assistance program, and reusable take-out food ware program should those appear necessary. Staff recommends starting an outreach campaign to Hayward food service businesses in the fall of 2023 and returning to the CSC in 2024 to suggest the best means to address reducing SUDs in Hayward.

FISCAL AND ECONOMIC IMPACT

Studies have shown that the vast majority of businesses that switch from SUDs to reusable dishware save money from not purchasing single-use items as well as from decreased disposal costs. However, the economic impacts for businesses can vary, especially

depending on dishwashing capability. Implementing a surcharge that customers pay on SUDs and allowing the business to keep the money could benefit Hayward businesses.

SUDs often become litter. Therefore, minimizing their use will assist the City in achieving stormwater program requirements and could reduce costs for maintenance of full trash capture devices that the City has installed in storm drains. Adopting an ordinance will entail increased enforcement efforts by the City which could increase staff time.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priorities of *Confront Climate Crisis & Champion Environmental Justice*, including the subcategory of *Reduce waste by promoting a circular economy*, and *Support Quality of Life*, including the subcategory of *Invest in Cleanliness and Blight Reduction*. This item does not relate to a specific project identified in the Roadmap.

SUSTAINABILITY FEATURES

Solid waste management involves the safe and responsible management of discarded material from generation through processing to disposal. Reducing waste landfilled by maximizing the reuse, recycling, and composting of materials increases diversion, conserves natural resources, and plays an important role in making a community sustainable.

PUBLIC CONTACT

Staff is still in the research stages of drafting this potential ordinance and has not conducted any public outreach.

NEXT STEPS

At the direction of the Committee, staff will initiate an outreach campaign to Hayward food service businesses in the fall of 2023 regarding a potential food ware ordinance that minimally requires reusable food ware for dine-in service and potentially requires other requirements outlined in Table 2. Staff would return to the CSC in 2024 to share results of the outreach and suggest the best means to reduce SUDs in Hayward.

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