



DISCUSSION ITEM

Agenda Item # 10

AGENDA REPORT SUMMARY

Meeting Date: November 10, 2020

Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction" or "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

Prepared by: Emiko Ancheta, Sustainability Coordinator

Reviewed by: James Sandoval, Engineering Services Director

Approved by: Chris Jordan, City Manager

Attachment:

1. Ordinance No. 2020-474 (Option 1)- Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction"
2. Ordinance No. 2020-474 (Option 2)- Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

Initiated by:

City Council, Environmental Commission, and Staff

Previous Council Consideration:

None

Fiscal Impact:

Minimal impact to City for staff time for public education and outreach to businesses

Environmental Review:

Adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) as an action taken by a regulatory agency to protect natural resources and the environment (CEQA Guidelines Sections 15307 and 15308); it is also exempt under section 15061(b)(3) of the CEQA Guidelines as the limitations set forth in this ordinance would not have a significant effect to the environment.

Policy Question(s) for Council Consideration:

- Does the Council wish to postpone the adoption of an ordinance that will ban the sale or distribution of non-reusable, plastic food service ware accessories, specifically plastic straws, plastic cutlery, plastic drink stirrers, plastic drink plugs, and plastic toothpicks, by prepared

Reviewed By:

City Manager

CJ

City Attorney

JH

Finance Director

SE



Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction" or "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

food providers in the City of Los Altos until after the Santa Clara County Health COVID-19 restrictions are lifted?

- Does the Council wish to postpone the adoption of an ordinance that will also restrict non-reusable food service ware accessory items of any material (e.g. napkins, straws, cutlery, drink stirrers, drink plugs, and toothpicks), by requiring them to be provided only upon request, or at self-serve stations until after the Santa Clara County Health COVID-19 restrictions are lifted?
- Does the Council wish to postpone the adoption of an ordinance that will ban the sale or distribution of non-reusable, plastic food service ware items, including cups, bowls, plates, containers, utensils, straws, cup lids, napkins, and drink stirrers and plugs, by prepared food providers in the City of Los Altos until after the Santa Clara County Health COVID-19 restrictions are lifted?
- Does the Council wish to postpone the adoption of an ordinance that will also restrict non-reusable food service ware items of any material (e.g. cups, bowls, plates, containers, utensils, straws, cup lids, napkins, and drink stirrers and plugs), by requiring them to be provided only upon request, or at self-serve stations until after the Santa Clara County Health COVID-19 restrictions are lifted?

Summary:

- Ordinance No. 2020-474 Option 1 or 2 becomes effective 12 months after the Santa Clara County Health COVID-19 restrictions are lifted so businesses can use existing supplies and allow them time to switch to compostable and/or reusable alternative food service ware items
- The primary purpose of Ordinance No. 2020-474 Option 1 or 2 is to reduce the waste, litter, greenhouse gas emissions, and other negative environmental impacts associated with the production and disposal of disposable food service ware items
- Ordinance No. 2020-474 Options 1 or 2 includes a provision specifically addressing disposable food service ware items made of plastic, which may last for hundreds and even thousands of years, and have broad, long-lasting negative impacts on the environment and public health
- Ordinance No. 2020-474 Options 1 or 2 includes an exception to allow providing plastic straws to individuals who request them due to disabilities or medical conditions
- Ordinance No. 2020-474 Options 1 or 2 includes an exemption for the entire chapter in situations declared by the City Manager as an emergency for the immediate preservation of the public peace, health or safety

Staff Recommendation:



Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction" or "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

Postpone the adoption of either Ordinance No. 2020-474 Options 1 or 2, amending Los Altos Municipal Code by adding Chapter 6.48, until after the Santa Clara County Health COVID-19 restrictions are lifted



Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled “Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction” or “Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction”

Purpose

Postpone the adoption of Ordinance No. 2020-474 amending Los Altos Municipal Code by adding Chapter 6.48 - Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction, or Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction, until after the Santa Clara County Health COVID-19 restrictions are lifted.

Background

On November 4, 2020, Los Altos Mayor Pepper asked staff to include an additional ordinance (Option 2), which will enable the City Council to consider a more robust single-use plastics ban that includes food service ware items, including cups, bowls, plates, trays, cartons, boxes, wrappers or liners, and binged or lidded containers (clamshells). Thus, this staff report has been updated to include Ordinance No. 2020-474 (Option 2)- Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled “Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction”.

Environmental Motivation

The City has a substantial interest in protecting its residents and the environment from negative impacts from disposable food service ware items. Disposable (also referred to as single-use, or non-reusable) food service ware items—including cups, bowls, plates, containers, utensils, straws, cup lids, napkins, and drink stirrers and plugs —contribute to street litter, ocean pollution, wildlife harm, and greenhouse gas emissions. The production and disposal of non-reusable food service ware accessories has significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable polluting fossil fuels, greenhouse gas emissions, and increased clean-up and end of life management costs.

Disposable plastic is especially problematic in the environment, as it breaks apart easily into small pieces and is often mistaken as food by birds, fish, and wildlife. The small plastic items addressed in this proposed ordinance, such as straws and stirrers, are light and therefore easily transported by wind and stormwater to waterways. In fact, plastic straws and drink stirrers are among the top 10 most commonly found items on beaches nationally. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable and are present in most of the world’s oceans. These small items are not recyclable in Los Altos (nor other typical curbside recycling programs) because the items are too light weight to be processed in the mechanical systems used by recycling centers.

Relevant Legislation

Existing federal, state, and local regulations align with the adoption of this ordinance, as it addresses issues specifically targeted by those policies. The City’s Climate Action Plan sets forth the goal to support programs and initiatives that promote environmental sustainability at the local level. The proposed ordinance aligns with that goal, as reducing consumption of non-reusable food service ware



Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction" or "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

accessories in Los Altos reduces greenhouse gas emissions associated with their production and disposal.

The Municipal Stormwater Permit is issued by the California State Water Board and implements the requirements of the Federal Clean Water Act. The Municipal Stormwater Permit requires Los Altos to address trash and litter pollution, due to the harm that litter inflicts on local water quality and wildlife in City waterways and downstream water bodies. The proposed ordinance targets litter from disposable food service ware items at its source. Items addressed in this ordinance, such as plastic straws and plastic cutlery, are among the most-commonly found items in regional creek cleanup events, and in Los Altos creek cleanups.

The proposed ordinance is also consistent with the CalRecycle recycling and waste disposal regulations contained in Title 14, Natural Resources and Title 27, Environmental Protection of the California Code of Regulations and Assembly Bill 1884.

The City of Los Altos passed two ordinances in 2013 and 2014, which have successfully addressed two particularly problematic sources of litter. On March 12, 2013, the Los Altos City Council unanimously adopted a Reusable Bag ordinance that can now be found in Chapter 6.40 of the Los Altos Municipal Code, which prohibits retail establishments from providing plastic, single-use carryout bags to customers. On January 28, 2014, the City Council adopted an ordinance banning Polystyrene Foam Disposable Food Service Ware that can now be found in Chapter 6.44 of the Los Altos Municipal Code. Similar ordinances were adopted by many other Santa Clara County and Bay Area municipalities in that timeframe. The City participated in a countywide study in FY 15-16 to characterize trash in full capture systems. Results from the study indicate that 72% fewer single-use bags and are observed in stormwater since ordinances have gone into effect. Likewise, the study estimated a 74% reduction in the volume of polystyrene food service ware in stormwater. (SCVURPPP FY 15-16 Annual Report – Section 10 Trash Controls)

In the Bay Area and in other parts of the state, several cities and municipalities have adopted various forms of legislation regulating food service ware and/or food service ware accessories with the intent of reducing environmental harm caused by these items. These agencies include City of Palo Alto, City of Berkeley, City of San Francisco, City of Oakland, City of Alameda, City of Davis, City of Santa Cruz, County of Santa Cruz, City of Watsonville, and other cities.

- The City of Palo Alto banned plastic straws, utensils, stirrer sticks, drink plugs, produce bags, and other disposable plastic items as of January 1, 2020.



Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction" or "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

-
- The City of Oakland banned polystyrene foam disposable food service ware, straws must be upon request only, and food vendors may only use BPI Certified compostable food service ware; the City of Oakland can impose a fine of up to \$500 for violators.
 - The City of Berkeley adopted an ordinance that included standards to increase reusable food ware over disposable and banned single use plastic food service ware containers, accessories and foam food service ware in 2019.

Other Bay Area cities and counties are currently considering legislation to address reducing or eliminating non-reusable food service ware. However, owing to the COVID-19 pandemic, these efforts are largely being delayed until health order restrictions are lifted.

Discussion/Analysis

The year 2020 has been difficult and in some cases devastating to the business community, especially the food and beverage establishments due to COVID-19 County restrictions. Staff is cognitive and aware of the current situation and we strive to proceed thoughtfully in our approach and to be as sensitive as possible when reaching out to the business community. Staff has made an intentional attempt to balance the outreach to businesses, while continuing to obtain data and information necessary for Council to evaluate the impacts of a potential single-use plastics ordinance at this time. Staff discussed and made modifications to the draft ordinance in order to be considerate but also continuing to pursue Council Priorities.

Development of Ordinance

The model ordinance was a collaboration of several cities in Santa Clara County that also included a representative from Upstream. This included review of adopted legislation in 14 cities and counties in California including Palo Alto, San Francisco, Berkeley, and Santa Cruz. Several Cities collaborated under a work group formed through the County's solid waste Recycling and Waste Reduction Commission (RWRC) TAC group.

At the March 24, 2020 Council meeting, the Council reviewed and adopted the City Council Strategic Priorities Workplan 2020 that included an ordinance to ban single-use plastics. This ordinance proposes a limited portion of the overall model ordinance that was developed.

Staff conducted an online survey to understand the current use of non-reusable plastic accessory items (e.g. utensils, straws, coffee stirrers) and identify whether or not businesses have already made the switch to a compostable or reusable type of accessory item or items. The online survey initially ran from August 3, 2020 to September 11, 2020; the online survey was extended to October 20, 2020, to



Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction" or "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

allow businesses more time to respond to the survey. To reach as many businesses as possible the online survey was sent out in multiple newsletters through the Chamber of Commerce, LAVA (Los Altos Village Associations), and the Economic Development Newsletter. By mid-September the online survey yielded nine responses and staff quickly realized this was not enough responses to provide sufficient information on the current usage of accessory items. Due to the low survey response, staff identified the difficulty in reaching the business community through digital methods and planned an additional method for data collection by means of in-person visits to food and beverage establishments. Staff worked with R3, the City's Solid Waste Consultant, to conduct in-person visits to collect the information at the source. Staff and R3 determined that based on budget and time constraints, 25% of food and beverage establishments at random, would be targeted for in-person visits. The results of the in-person survey visits will be provided to Council verbally due to the timing and completion of the survey.

On September 9, 2020, LAVA hosted a Sustainability webinar and staff presented at the webinar to provide businesses an overview of the upcoming Food Service Ware Accessory Ordinance. During the webinar staff received feedback and comments from attendees which included the business community, Green Town Los Altos, and the Environmental Commission Subcommittee. The Sustainability webinar was recorded by LAVA and provided to the business community to view at their own convenience.

At the September 14, 2020 Environmental Commission regular meeting, staff presented the Commission with the draft ordinance and the Commission reviewed, discussed, and provided feedback and comments to staff. The following is a summary of the feedback received from the Environmental Commission:

- Compostable definition language needs to be revised to be clear and applicable
- Obtain a list of acceptable compostable type of items/products from MITWS
- Have a clear understanding from Council that addressing the accessory items in the proposed draft ordinance is consistent with Council's direction per Council Priorities identified in the March 24, 2020 Council meeting
- More data collection on current item use from the food and beverage establishments is needed; the initial nine online survey responses is not enough
- Allow more time for businesses to switch to compostable products, 12 months from adoption would be better than the six months that was initially suggested



Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction" or "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

All comments and feedback were taken into consideration to draft the ordinance.

Additional input was gathered from the Community Development Department, the Engineering Services Department, the City's solid waste hauler, MTWS (Mission Trail Waste Systems) and the City's solid waste management consultant, R3.

Requirements of Ordinance (Option 1)

The Non-Reusable Food Service Ware Accessory Ordinance becomes effective 12 months after the Santa Clara County Health COVID-19 Order is rescinded in writing by the Health Officer:

1. Bans plastic straws, plastic cutlery, plastic drink stirrers, plastic drink plugs, and plastic toothpicks (section 6.48.020)
2. Requires that non-reusable food service ware accessory items of any material (e.g. napkins, straws, cutlery, drink stirrers, drink plugs, and toothpicks) be provided only upon request or at self-serve stations (section 6.48.020)
3. Requires that non-reusable food service ware accessory items of any material (e.g. napkins, straws, cutlery, drink stirrers, drink plugs, and toothpicks) be provided only upon request for phone and online orders, with the default option being that no food service ware accessories are provided (section 6.48.020)

Requirements of Ordinance (Option 2)

The Non-Reusable Food Service Ware Items Ordinance becomes effective 12 months after the Santa Clara County Health COVID-19 Order is rescinded in writing by the Health Officer:

1. Prepared Food Providers within the City shall only provide Prepared Food in Non-Reusable Food Service Ware that is Compostable including cups, bowls, plates, trays, cartons, boxes, wrappers or liners, hinged or lidded containers (clamshells), except that non-Compostable foil wrappers may be used for burritos, wraps, and other items that require foil to contain and form the food item. (section 6.48.030)

Exceptions & Exemptions

Either ordinance option will allow exceptions to accommodate for emergency situations (for the immediate preservation of the public peace, health or safety), exemptions for plastic straws for disability or other medical or physical conditions or circumstances, and exemptions for businesses, upon approval of application, for undue economic hardship, or for unique packaging issue with no alternative. (section 6.48.030)

Enforcement



Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction" or "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

A penalty may be imposed upon findings made by a city code enforcement officer that any food provider has provided a "non-reusable food service ware accessory" (Option 1) or a "non-reusable food service ware item" (Option 2) in violation of this chapter. The administrative citation structure and enforcement is described in section 6.48.040.

Long-term Plan

Los Altos created the Option 1 draft ordinance based on a portion of the County's model ordinance with the goal of adopting further measures restricting single-use plastic food service ware (cups, plates, containers, clamshells and bowls) that is included in the County model ordinance. The County model ordinance additionally addresses food service ware, an implemented cup charge, reusable food ware and reusable cups at events. Staff plans to address these additional sections as future phases to the existing proposed ordinance after additional research, development, and community outreach is conducted. However, per the Mayor's November 4, 2020, request, staff has accelerated a future phase and included Option 2 herein, which allows the City Council to immediately approve a ban on food service ware.

Options

- 1) Postpone the adoption of Ordinance No. 2020-474 (Option 1) amending Los Altos Municipal Code by adding Chapter 6.48 - Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction until after the Santa Clara County Health COVID-19 Order is rescinded in writing by the Health Officer

Advantages: Modifications can be made to the Ordinance as necessary before being reintroduced; allow businesses more time to prepare and switch to compostable or reusable food service ware accessory alternatives; allow staff time for additional research.

Disadvantages: Not adopting this ordinance would allow for continued environmental harm from the use and disposal of non-reusable food service ware accessories, especially those made from single-use plastics.



Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction" or "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

-
- 2) Adopt Ordinance No. 2020-474 (Option 1) amending Los Altos Municipal Code by adding Chapter 6.48 - Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction

Advantages: The proposed ordinance prohibits food providers from providing disposable plastic food service ware accessories and makes non-plastic, disposable food service ware accessories only available upon request or at self-serve stations, thereby reducing the environmental impact from such products, including harmful effects to natural resources, water bodies, wildlife, landfills, and greenhouse gas emissions caused by their generation and disposal.

Disadvantages: Findings from additional research that could potentially enhance the ordinance would not be included in the ordinance due to timing constraints; businesses may not have enough time and resources to adequately make the change to an acceptable compostable or reusable alternative; puts burden on businesses that may be struggling due to COVID-19 restrictions.

- 3) Postpone the adoption of Ordinance No. 2020-474 (Option 2) amending Los Altos Municipal Code by adding Chapter 6.48 - Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction until after the Santa Clara County Health COVID-19 Order is rescinded in writing by the Health Officer

Advantages: Modifications can be made to the Ordinance as necessary before being reintroduced; allow businesses more time to prepare and switch to compostable or reusable food service ware alternatives; allow staff time for additional research.

Disadvantages: Not adopting this ordinance would allow for continued environmental harm from the use and disposal of non-reusable food service ware items, especially those made from single-use plastics.

- 4) Adopt Ordinance No. 2020-474 (Option 2) amending Los Altos Municipal Code by adding Chapter 6.48 - Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction



Subject: Ordinance No. 2020-474 - Amending the Los Altos Municipal Code, by Adding Chapter 6.48 Entitled "Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction" or "Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction"

Advantages: The proposed ordinance prohibits food providers from providing disposable plastic food service ware items, thereby reducing the environmental impact from such products, including harmful effects to natural resources, water bodies, wildlife, landfills, and greenhouse gas emissions caused by their generation and disposal.

Disadvantages: Findings from additional research that could potentially enhance the ordinance would not be included in the ordinance due to timing constraints; businesses may not have enough time and resources to adequately make the change to an acceptable compostable or reusable alternative; puts burden on businesses that may be struggling due to COVID-19 restrictions.

Recommendation

The staff recommends Options 1 and 3.

ORDINANCE NO. 2020-____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LOS ALTOS AMENDING THE LOS ALTOS MUNICIPAL CODE,
BY ADDING CHAPTER 6.48 ENTITLED "LIMITATIONS ON
NON-REUSABLE FOOD SERVICE WARE ACCESSORIES FOR
LITTER AND WASTE REDUCTION"**

WHEREAS, non-reusable food service ware accessories—including utensils, straws, cup lids, napkins, and drink stirrers and plugs—contribute to street litter, ocean pollution, marine and other wildlife harm, and greenhouse gas emissions; and

WHEREAS, food service ware accessories made from plastic polymers may last for hundreds and even thousands of years, and have broad, long-lasting negative impacts; and

WHEREAS, non-reusable plastic breaks apart easily into small pieces, is difficult to collect and control as litter, and is often mistaken as food by birds, fish, and wildlife; and

WHEREAS, plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans; and

WHEREAS, the production and disposal of non-reusable food service ware accessories has significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable polluting fossil fuels, greenhouse gas emissions, and the increased clean-up and end of life management costs; and

WHEREAS, it is in the interest of the health, safety and welfare of all who live, work and do business in the City that litter on public streets, parks and in other public places be prevented or reduced; and

WHEREAS, the proposed ordinance requiring food providers to limit non-reusable and ban plastic food service ware accessories is intended to reduce the risk of harm to wildlife and improve water quality in City waterways as required by the Municipal Stormwater Permit; and

WHEREAS, this Chapter is consistent with relevant City plans, including the Climate Action Plan, and the CalRecycle recycling and waste disposal regulations contained in Title 14, Natural Resources and Title 27, Environmental Protection of the California Code of Regulations; and

WHEREAS, the City has a substantial interest in protecting its residents and the environment from negative impacts from disposable food service ware accessories; and

WHEREAS, the City Council does, accordingly, find and declare that it should restrict the use of non-reusable and plastic food service ware accessories by food providers; and

ATTACHMENT 1
Option 1

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3), as well as Sections 15307 and 15308 of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE: The Los Altos Municipal Code is hereby amended by adding to Title 6 a new chapter 6.48 entitled “Limitations on Non-Reusable Food Service Ware Accessories for Litter and Waste Reduction.”

**CHAPTER 6.48 - LIMITATIONS ON NON-REUSABLE FOOD SERVICE WARE
ACCESSORIES FOR LITTER AND WASTE REDUCTION**

Section 6.48.010. Definitions.

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall have the meanings set forth below:

- a. “Beverage Cup” means any cup, vessel, glass, container, and any other items in which a beverage is put or packaged in on a Prepared Food Provider’s premises.
- b. “City” means the City of Los Altos.
- c. “Compostable” means an item or material is accepted by the City’s franchised hauler. Compostable items include natural fiber products, including but not limited to paper, wood, or bamboo. Compostable items do not include Compostable Plastics or Biodegradable Plastics, which are disposable products developed from polylactic acid (PLA), which require a specific set of conditions to compost and/or biodegrade that do not exist in the City or the region.
- d. “Food Service Ware” means any products used for serving or consuming prepared food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrappers or liners, hinged or lidded containers (clamshells), and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Provider’s premises.
- e. “Food Service Ware Accessory” means any food service item such as straws, stirrers, toothpicks, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids and spill plugs; and other similar accessory or accompanying items used as part of food or beverage service or packaging.
- f. “Non-Reusable” means an item that is designed to be used once and discarded and is not specifically designed and manufactured for repeated cleaning, disinfecting, and reuse over an extended period of time.
- g. “Plastic” means a material derived from either petroleum or a biologically based polymer, such as corn or other plant sources. “Plastic” includes compostable and biodegradable petroleum or a biologically based polymer.

ATTACHMENT 1
Option 1

- h. “Prepared Food” means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of a Prepared Food Provider for consumption, including, but not limited to, ready-to-eat, dine-in, take-out or complimentary food or beverage. “Prepared food” does not include: (1) raw eggs and raw, butchered meat, fish or poultry that is sold from a butcher case or a similar retail appliance; or (2) prepackaged food that is delivered to the food provider wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the Prepared Food Provider in the same container or packaging.
- i. “Prepared Food Provider” means any establishment, vendor, business, organization, entity, group, or individual located or operating in the City that offers Prepared Food or beverages, regardless of whether there is a charge for the Prepared Food: (1) to the public for consumption on or off its premises; (2) at a catered event; and/or (3) at cafeterias of schools and places of employment, whether or not such establishments are open to the general public. “Prepared Food Provider” includes, but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, delicatessens, fraternal clubs serving the public, mobile or temporary food vendors, vehicles or carts, or roadside stands.
- j. “Reusable” means Food Service Ware and Food Service Ware Accessories, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups, utensils, etc. that are manufactured of durable materials and specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and are safe for washing and sanitizing according to applicable regulations.
- k. “Takeout Food Delivery Service” is a third-party delivery service which picks up takeout food from a Prepared Food Provider and delivers it to a customer for consumption off the premises.

Section 6.48.020. Limitations on the provision of Non-Reusable Food Service Ware Accessories.

Effective 12 months after the Santa Clara County Health COVID-19 Order is rescinded in writing by the Health Officer:

- a. Non-Reusable Food Service Ware Accessories shall be provided only upon request by the customer or at self-serve stations.
- b. Prepared Food Providers located in Los Altos and Takeout Food Delivery Services for those Prepared Food Providers located in Los Altos must provide options for customers to affirmatively request Food Service Ware Accessories separate from orders for food and beverages across all ordering/point of sale

ATTACHMENT 1
Option 1

platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person. The default selected option shall be that no Food Service Ware Accessories are requested. Each Non-Reusable Food Ware Accessory provided with Prepared Food must be specifically requested by the customer in order for a Prepared Food Provider to provide it, except that for safety reasons, Beverage Cups for delivery may include lids, spill plugs, and sleeves without request.

- c. Prepared Food Providers shall not use, provide, distribute, or sell the following Food Ware Accessories made of either Plastic not qualifying as Reusable or any other material not defined as Compostable or Reusable: beverage straws, utensils, drink stirrers or drink plugs, or food picks and toothpicks. Prepared Food Providers may use, provide, distribute, and sell Compostable or Reusable Food Ware Accessories.
- d. Exception for Disability: Nothing in this Chapter shall restrict, or be construed to restrict, the availability of Non-Reusable plastic straws to individuals who may require and request the use of plastic straws due to disability or other medical or physical conditions or circumstances. Prepared Food Providers that customarily offer straws may maintain a small supply of plastic straws to accommodate such requests.

Section 6.48.030. Exemptions.

- a. Emergency Supplies and Service Procurement. City Facilities, Prepared Food Providers, City contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter in a situation deemed by the City Manager or his or her designee to be an emergency for the immediate preservation of the public peace, health or safety.
- b. Food Service Ware Accessories banned by Section 6.48.020 of this ordinance may be used after the effective date of Section 6.48.020 if the Prepared Food Provider demonstrates, in writing, to the satisfaction of the City Manager or his or her designee, that compliance with the provisions of this Chapter will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.
 - i. An undue economic hardship could include, but is not limited to: overstocked supplies that cannot be returned to the distributor or used at another store outside the city; or unique food ware accessory needs for which no suitable alternative exists.
 - ii. The City Manager or his or her designees shall issue a written decision to grant or deny an exemption and may exempt the food

ATTACHMENT 1
Option 1

provider for no more than one (1) year from the date of the demonstration. The City Manager's decision shall be final and is not subject to appeal.

Section 6.48.040. Administrative Penalty.

A penalty may be imposed upon findings made by a city code enforcement officer that any food provider has provided a "non-reusable food service ware accessory" in violation of this chapter. The amount of penalty and the penalty procedures are contained in the Los Altos Municipal Code, Chapter 1.30, entitled "Administrative Citations and Orders."

SECTION 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 3. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 4. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date and implemented 12 months after the Santa Clara County Health COVID-19 Order is rescinded in writing by the Health Officer.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2020 and was thereafter, at a regular meeting held on _____, 2020 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Janis C. Pepper, MAYOR

Attest:

Andrea Chelemengos MMC, CITY CLERK

ORDINANCE NO. 2020-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LOS ALTOS AMENDING THE LOS ALTOS MUNICIPAL CODE,
BY ADDING CHAPTER 6.48 ENTITLED "LIMITATIONS ON
NON-REUSABLE FOOD SERVICE WARE ITEMS FOR LITTER
AND WASTE REDUCTION"

WHEREAS, non-reusable food service ware items—including cups, bowls, plates, containers, utensils, straws, cup lids, napkins, and drink stirrers and plugs—contribute to street litter, ocean pollution, marine and other wildlife harm, and greenhouse gas emissions; and

WHEREAS, food service ware items made from plastic polymers may last for hundreds and even thousands of years, and have broad, long-lasting negative impacts; and

WHEREAS, non-reusable plastic breaks apart easily into small pieces, is difficult to collect and control as litter, and is often mistaken as food by birds, fish, and wildlife; and

WHEREAS, plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans; and

WHEREAS, the production and disposal of non-reusable food service ware items has significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable polluting fossil fuels, greenhouse gas emissions, and the increased clean-up and end of life management costs; and

WHEREAS, it is in the interest of the health, safety and welfare of all who live, work and do business in the City that litter on public streets, parks and in other public places be prevented or reduced; and

WHEREAS, the proposed ordinance requiring food providers to limit non-reusable and ban plastic food service ware items is intended to reduce the risk of harm to wildlife and improve water quality in City waterways as required by the Municipal Stormwater Permit; and

WHEREAS, this Chapter is consistent with relevant City plans, including the Climate Action Plan, and the CalRecycle recycling and waste disposal regulations contained in Title 14, Natural Resources and Title 27, Environmental Protection of the California Code of Regulations; and

WHEREAS, the City has a substantial interest in protecting its residents and the environment from negative impacts from disposable food service ware items; and

WHEREAS, the City Council does, accordingly, find and declare that it should restrict the use of non-reusable and plastic food service ware items by food providers; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3), as well as Sections 15307 and 15308 of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE: The Los Altos Municipal Code is hereby amended by adding to Title 6 a new chapter 6.48 entitled “Limitations on Non-Reusable Food Service Ware Items for Litter and Waste Reduction.”

**CHAPTER 6.48 - LIMITATIONS ON NON-REUSABLE FOOD SERVICE WARE
ITEMS FOR LITTER AND WASTE REDUCTION**

Section 6.48.010. Definitions.

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall have the meanings set forth below:

- a. “Beverage Cup” means any cup, vessel, glass, container, and any other items in which a beverage is put or packaged in on a Prepared Food Provider’s premises.
- b. “City” means the City of Los Altos.
- c. “Compostable” means an item or material is accepted by the City’s franchised hauler. Compostable items include natural fiber products, including but not limited to paper, wood, or bamboo. Compostable items do not include Compostable Plastics or Biodegradable Plastics, which are disposable products developed from polylactic acid (PLA), which require a specific set of conditions to compost and/or biodegrade that do not exist in the City or the region.
- d. “Food Service Ware” means any products used for serving or consuming prepared food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrappers or liners, hinged or lidded containers (clamshells), and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Provider’s premises.
- e. “Food Service Ware Accessory” means any food service item such as straws, stirrers, toothpicks, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids and spill plugs; and other similar accessory or accompanying items used as part of food or beverage service or packaging.
- f. “Non-Reusable” means an item that is designed to be used once and discarded and is not specifically designed and manufactured for repeated cleaning, disinfecting, and reuse over an extended period of time.
- g. “Plastic” means a material derived from either petroleum or a biologically based polymer, such as corn or other plant sources. “Plastic” includes compostable and biodegradable petroleum or a biologically based polymer.
- h. “Prepared Food” means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of a Prepared Food Provider for consumption, including, but not

limited to, ready-to-eat, dine-in, take-out or complimentary food or beverage. “Prepared food” does not include: (1) raw eggs and raw, butchered meat, fish or poultry that is sold from a butcher case or a similar retail appliance; or (2) prepackaged food that is delivered to the food provider wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the Prepared Food Provider in the same container or packaging.

- i. “Prepared Food Provider” means any establishment, vendor, business, organization, entity, group, or individual located or operating in the City that offers Prepared Food or beverages, regardless of whether there is a charge for the Prepared Food: (1) to the public for consumption on or off its premises; (2) at a catered event; and/or (3) at cafeterias of schools and places of employment, whether or not such establishments are open to the general public. “Prepared Food Provider” includes, but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, delicatessens, fraternal clubs serving the public, mobile or temporary food vendors, vehicles or carts, or roadside stands.
- j. “Reusable” means Food Service Ware and Food Service Ware Accessories, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups, utensils, that are manufactured of durable materials and specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and are safe for washing and sanitizing according to applicable regulations.
- k. “Takeout Food Delivery Service” is a third-party delivery service which picks up takeout food from a Prepared Food Provider and delivers it to a customer for consumption off the premises.

Section 6.48.020. Limitations on the provision of Non-Reusable Food Service Ware Accessories.

Effective 12 months after the Santa Clara County Health COVID-19 Order is rescinded in writing by the Health Officer:

- a. Non-Reusable Food Service Ware Accessories shall be provided only upon request by the customer or at self-serve stations.
- b. Prepared Food Providers located in Los Altos and Takeout Food Delivery Services for those Prepared Food Providers located in Los Altos must provide options for customers to affirmatively request Food Service Ware Accessories separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person. The default selected option shall be that no Food Service Ware Accessories are requested. Each Non-Reusable Food Ware Accessory provided with Prepared Food must be specifically requested by the customer in order for a Prepared Food Provider to provide it, except that for

safety reasons, Beverage Cups for delivery may include lids, spill plugs, and sleeves without request.

- c. Prepared Food Providers shall not use, provide, distribute, or sell the following Food Ware Accessories made of either Plastic not qualifying as Reusable or any other material not defined as Compostable or Reusable: beverage straws, utensils, drink stirrers or drink plugs, or food picks and toothpicks. Prepared Food Providers may use, provide, distribute, and sell Compostable or Reusable Food Ware Accessories.
- d. Exception for Disability: Nothing in this Chapter shall restrict, or be construed to restrict, the availability of Non-Reusable plastic straws to individuals who may require and request the use of plastic straws due to disability or other medical or physical conditions or circumstances. Prepared Food Providers that customarily offer straws may maintain a small supply of plastic straws to accommodate such requests.

Section 6.48.030. Limitations on the provision of Non-Reusable Food Service Ware

Effective 12 months after the Santa Clara County Health COVID-19 Order is rescinded in writing by the Health Officer:

- a. Prepared Food Providers within the City shall only provide Prepared Food in Non-Reusable Food Service Ware that is Compostable including cups, bowls, plates, trays, cartons, boxes, wrappers or liners, hinged or lidded containers (clamshells), except that non-Compostable foil wrappers may be used for burritos, wraps, and other items that require foil to contain and form the food item.

Section 6.48.040. Exemptions.

- a. Emergency Supplies and Service Procurement. City Facilities, Prepared Food Providers, City contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter in a situation deemed by the City Manager or his or her designee to be an emergency for the immediate preservation of the public peace, health or safety.
- b. Food Service Ware Accessories and Food Service Ware banned by Section 6.48.020 and 6.48.030 of this ordinance may be used after the effective date of Section 6.48.020 and 6.48.030 if the Prepared Food Provider demonstrates, in writing, to the satisfaction of the City Manager or his or her designee, that compliance with the provisions of this Chapter will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.
 - i. An undue economic hardship could include, but is not limited to: overstocked supplies that cannot be returned to the distributor or

used at another store outside the city; or unique food ware accessory and/or food ware item needs for which no suitable alternative exists.

- ii. The City Manager or his or her designees shall issue a written decision to grant or deny an exemption and may exempt the food provider for no more than one (1) year from the date of the demonstration. The City Manager's decision shall be final and is not subject to appeal.

Section 6.48.050. Administrative Penalty.

A penalty may be imposed upon findings made by a city code enforcement officer that any food provider has provided a "non-reusable food service ware accessory and or non-reusable food service ware" in violation of this chapter. The amount of penalty and the penalty procedures are contained in the Los Altos Municipal Code, Chapter 1.30, entitled "Administrative Citations and Orders."

SECTION 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 3. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 4. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date and implemented 12 months after the Santa Clara County Health COVID-19 Order is rescinded in writing by the Health Officer.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2020 and was thereafter, at a regular meeting held on _____, 2020 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Janis C. Pepper, MAYOR

Attest:

Andrea Chelemengos MMC, CITY CLERK

Please see the Mayor's questions below and our responses (in red):

In reviewing Agenda Item 10 on the council agenda, I have these questions, and one urgent request:

1. The staff report (page 5) states that the model ordinance was a collaboration of several cities in Santa Clara County. What other cities in Santa Clara County have passed this ordinance?

The latest update from the following cities:

Sunnyvale: will recommend a phased approach, which will start with getting the food delivery vendors and restaurants to implement an opt-in for plasticware and condiments. They do not have specifics for Phase 2 (this phase may include: reusable or compostable requirements for take-out food ware, restrictions on fluorinated compounds, reusable requirements for dine-in, charge for single use disposable cups and lids and other disposable items) yet because in Sunnyvale they don't accept any compostable foodware items in the food scraps program and they will likely go straight to requiring reusables, and they can't see doing that until COVID-19 is over.

Mountain View: The ordinance is on pause because COVID-19 created staffing issues, which caused delays. They are looking into moving forward with some changes in the phasing of the program. But owing to the pandemic, they are trying to decide when it would be appropriate to approach restaurants for input.

Palo Alto: Phase 1 (became effective January 1, 2020 – and bans plastic straws, utensils, stirrer sticks, drink plugs, produce bags) was passed prior to COVID-19. They just developed a Phase 2 for additional single-use foodware reduction requirements (such as reusable or compostable requirements for take-out food ware, restrictions on fluorinated compounds, reusable requirements for dine-in, charge for single use disposable cups and lids and other disposable items) and will be meeting with City leadership in the near future to decide when the appropriate time is to engage the public and business community.

Cupertino: has an ordinance on the horizon; single-use plastics (SUP) was on their Council work plan for 2020 and it was pushed to next fiscal year. They are working on bringing an ordinance to Council by fall 2021 after being delayed by COVID-19, and will likely phase in with the utensils and accessories first in early 2022 and require recyclable or compostable foodware (no bioplastics). Phase 2 is trickier and they will need stakeholder input to help inform the progress.

San Jose: Exploring their options of an ordinance for SUPs; preparing for Council subcommittee presentation in Feb 2021. They started working on it in July and are considering the COVID-19 impacts as they develop policy options.

When did they implement the ordinance? None of the cities listed above have implemented the ordinance.

Are any suggesting that implementation be delayed due to the pandemic? Yes, COVID-19 is a significant factor both directly and indirectly. The countywide Ad Hoc Foodware Model Ordinance group has not met since the shelter-in-place (SIP) Order was imposed. Meetings were initially paused per County Directive; in July 2020 the countywide Recycling and Waste

Reduction Commission (RWRC) Technical Advisory Committee (TAC) was allowed to resume and began meeting again in August 2020; only the Commission meeting itself has been approved to be conducted virtually and no other subordinate Committee, Subcommittee or Ad Hoc meetings have been approved to resume at this time. At the RWRC meetings cities have shared that they paused or delayed work on their respective ordinances or they are still developing an ordinance while looking into modifications due to COVID-19 impacts. COVID-19 is a main factor discussed by cities due to the negative impacts on the business community.

Also at the RWRC meetings, Upstream (non-profit assisting the County with the Model Ordinance development) shared recent suggested recommendations: implementation language be revised to be “effective 12 months after all COVID-19 restrictions have been lifted”; strengthening the “opt-in language” for customers to request accessories when ordering from an online/mobile platform; and consider a ‘charge for disposables’ associated with delivery orders and take-out. They are developing the Model Ordinance to include these recommendations.

2. The staff report (page 5) says that the proposed ordinance “proposes a limited portion of the overall model ordinance that was developed”. Can you please provide the full overall model ordinance for our review and possible adoption? We can provide the latest draft of the Model Ordinance, however it is still being developed and modified. The model ordinance is not in an adoptable format (attached is the latest draft).

Can you explain why certain parts of that model ordinance are not recommended at this time? Staff reviewed the March 24, 2020 Council meeting and the Council Strategic Goals and Objectives list section 7.3 and understood that Council requested staff to address the single use plastic accessories. At the same time COVID-19 and the SIP Order was impacting businesses and devastating the food and beverage establishments, but nobody knew how long the pandemic would last. Staff understood Council’s direction to move an ordinance forward that contained SUP accessories by Dec. 2020 and the proposed County Model Ordinance is primarily focused on reusable food ware requirements, this would require more research and outreach to the businesses. We must acknowledge that COVID-19 has impacted our local businesses significantly and we still do not know the extent to which it will continue to impact businesses. Existing food and beverage establishments are overwhelmed and struggling just to stay open (we are hearing reports of 40-60% of businesses may have permanent closures). Accordingly, owing to the economic and logistical impacts the pandemic has had on restaurants and grocery stores, staff recommends rolling out plastic-bans in phases. Our goal is to pursue an ordinance to ultimately address all SUP, but we recommend it occur in phases after the pandemic health orders are lifted.

Have other cities in Santa Clara County adopted the full ordinance? Of the cities that are still working on developing a SUP ordinance (from the discussions at the RWRC TAC meetings) they have experienced delays with moving the ordinance forward, , and we are not aware of any city in Santa Clara County that has adopted the full County Model Ordinance. Please see the

summary in #1 above. These are the updates as we currently know about and they are subject to change.

3. What were the online survey results from the 9 respondents that were conducted in August and September?

Total of 9 responses

7 – Restaurants, 1- Dental Office, 1- Child Care Center

Most used accessory item: Plastic Straw and Utensil items

Plastic Straws: ~150-800 used per month

Plastic Utensil items: ~200-5,000 used per month

The least used: Plastic Stirrers, Toothpicks

None: Plastic Plugs

Compostable Alternative Currently in Use: 2 indicated using compostable utensils

4. What are the results of the in-person surveys that staff and R3 conducted with the business community?

22 businesses visited in-person. The most used accessory items were straws and utensils.

Reusables were being used for dine-in at ~10 locations.

Straws=19 (4 of those are paper or bamboo)

Utensil= 18 (3 compostable PLA product)

Stirrers=9 (all wood but 1)

Toothpicks=8 (all wood)

Plugs=2

5. **URGENT REQUEST** I have to say I am extremely disappointed that this ordinance does not aggressively ban all single-use plastics as directed by the city council when we set our priorities back in March 2020. I don't understand why we're doing so very little in this ordinance when the council directed staff to ban single use plastics. I am requesting that **staff provide two ordinances for the city council to consider at the November 10 meeting** - this very limited ordinance that bans only utensils, straws, coffee stirrers, and toothpicks **AND the county model ordinance that also includes bans on cups, plates, containers, clamshells, and bowls**. By doing so, you provide this council the ability to accomplish what we directed staff to do back in March and provides an opportunity to have both the first and second readings of this ordinance for this city council before 2 of us are termed-out. In order to meet Brown Act noticing requirements, I believe you will need to get this posted at least 72 hours before the council meeting. I am copying Jolie so that she can be engaged in getting this model ordinance to the council for our possible approval.

It has been staff's intention all along to explain at the Council Meeting why we are not recommending any SUP ban at this time, let alone the more robust SUP ban that you were hoping to see. However, staff developed the Phase 1 SUP ban in order to deliver on the Council's Strategic Goals so Council still has the option of approving a ban by December 2020.

And per your request herein, we have added a second more robust ordinance (Option 2) to the staff report for Council's consideration. *However*, we do not recommend Option 2 based on the following:

- Owing to the pandemic, the Food Service Ware items (i.e., cups, plates, containers, clamshells and bowls) have not been fully evaluated, researched or discussed with stakeholders, businesses, the Environmental Commission, or the City Attorney.
- Need for more research on alternative products that are truly compostable, including the availability and costs associated with switching to these food service ware items.
- Additional time is needed to educate and reach out to businesses prior to implementing this section of the model ordinance.
- Due to COVID-19, staff is balancing our approach with the business community so they have the bandwidth to look into alternative options.
- The Environmental Commission recommendation is to not pursue an ordinance this year and allow for more time for businesses to prepare.

Although the Council priorities list banning plastic bottles, the issue is complicated and requires more time and requires working with restaurants *and* retailers (e.g., grocery, drug, & liquor stores, etc.). Our research indicates that only SFO has banned plastic water bottles (utilizing aluminum bottles in their place) and some cities and universities have banned the use of plastic bottles at functions in their institutions (e.g. City of San Francisco).

AN ORDINANCE OF THE CITY OF ___ ADDING CHAPTER ___ OF THE ___
CITY CODE RELATED TO FOOD SERVICE WARE

THE CITY COUNCIL OF THE CITY OF ___ DOES HEREBY ORDAIN AS FOLLOWS:

Chapter ___

REUSABLE FOOD SERVICE WARE FOR LITTER AND WASTE REDUCTION

Optional additions or language variation noted in italics and yellow highlight.

Sections:

1. *Findings and Purpose.*
2. *Definitions.*
3. *Limitation on the provision of Non-Reusable Food Service Ware items.*
4. *Non-Reusable Food Service Ware requirements.*
5. *Non-Reusable Beverage Cup charge.*
6. *Provision of Reusable Food Service Ware.*
7. *Dishwashing Capacity.*
8. *Providing Reusable Beverage Cups at Events.*
9. *Waivers: Process to Obtain.*
10. *Liability and enforcement.*
11. *Severability.*
12. *Chapter supersedes existing laws and regulations.*

Section 1. Findings and Purpose.

The City Council finds and determines that [other findings can be pulled from other cities ordinances to fit your particular City]:

- a. Non-reusable food service ware - including plates, cutlery, cups, lids, straws, "clamshells" and other containers - is a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions.
- b. It is in the interest of the health, safety and welfare of all who live, work and do business in the City that the amount of litter on public streets, parks and in other public places be reduced.
- c. The production and disposal of non-reusable food service ware and food service ware accessories has significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable polluting

fossil fuels, greenhouse gas emissions, and the increased clean-up and end of life management costs.

d. Food service ware made from plastic polymers may last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Non-reusable plastic and polystyrene foam food service ware breaks apart easily into small pieces, can end up as litter, and is often mistaken as food by birds, fish, and wildlife. Plastics in waterways and oceans break down into smaller pieces that are not biodegradable, and are present in most of the world's oceans.

e. The City must eliminate solid waste at its source in accordance with its Zero Waste Goal. Reduction of non-reusable food service ware and food service ware accessories furthers this goal.

f. The proposed ordinance requiring food vendors to use reusable food service ware and food service ware accessories is intended to reduce the risk of harm to wildlife and improve water quality in City waterways as required by the Municipal Stormwater Permit.

The City Council does, accordingly, find and declare that it should restrict the use of non-reusable food service ware and food service ware accessories by food vendors. The City has a substantial interest in protecting its residents and the environment from negative impacts from disposable food service ware. This Chapter is consistent with relevant City plans [list] and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

Section 2. Definitions.

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall have the meanings set forth below:

a. "Beverage Cup" means any cup, vessel, glass, container, and any other items in which a beverage is put or packaged in on a Prepared Food Vendor's premises.

b. "City" means the City of ____.

c. "Compostable" means an item or material is accepted in the City's available compost collection program as fully compostable, as determined by the City's ____ Department, and is listed, described, or referenced on the Department's website as compostable. [include if optional section 4.d. is used]

- d. “Dishwashing Capacity” means adequate onsite or offsite services, including those provided to a Prepared Food Vendor through a contracted service, to wash, rinse, and sanitize, in compliance with the California State Health Code, the necessary quantity of Reusable Food Service Ware items for a Prepared Food Vendor to use only Reusable Food Service Ware for food or beverages to be consumed on the premises of the Prepared Food Vendor.
- e. “Event” means any indoor or outdoor event within the City that is subject to a City permit, and expected to have more than 100 attendees or participants.
- f. “Event Producer” means a person or entity who contracts with or obtains a permit from the City, or an agent acting on the City’s behalf, to hold an Event within the City.
- g. “Food Service Ware” means any products used for serving or consuming Prepared Food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrappers or liners, hinged or lidded containers (clamshells), and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Vendor’s premises.
- h. “Food Service Ware Accessory” means any food service item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids and spill plugs; and other similar accessory or accompanying items used as part of food or beverage service or packaging.
- i. “Fluorinated Chemicals” means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as perfluoroalkyl and polyfluoroalkyl substances, or PFAs chemicals.
- j. “Non-Reusable” means not meeting the definition of Reusable in this Chapter.
- k. “Polystyrene Foam Food Service Ware” means Food Service Ware made of a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding and extrusion-blow molding (extruded foam polystyrene). “Polystyrene Foam” does not include clear or solid polystyrene (oriented polystyrene). *[include if optional sections 4.b or 4.c. are used]*
- l. “Prepared Food” means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the

premises of a Prepared Food Vendor for consumption, including, but not limited to, ready-to-eat, dine-in, take-out or complimentary food or beverage. "Prepared Food" does not include: (1) raw eggs and raw, butchered meat, fish or poultry that is sold from a butcher case or a similar retail appliance; or (2) prepackaged food that is delivered to a Prepared Food Vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the Prepared Food Vendor in the same container or packaging.

m. "Prepared Food Vendor" means any restaurant, private school, bar, grocery store, delicatessen, bakery, food service establishment (carry out, quick service, full-service), cafeteria, food truck, itinerant restaurants, pushcart, farmers market or other similar establishments, selling Prepared Food to be consumed on and off the premises located or operated within the City.

n. "Recyclable" means an item or material is accepted in the City's available recycling collection program as fully recyclable, as determined by the City's ___ Department, and is listed, described, or referenced by the City as recyclable. *[include if optional section 4.d. is used]*

o. "Reusable" means a Food Service Ware or Accessory item that is specifically designed and manufactured for repeated cleaning, disinfecting, and reuse over an extended period of time.

o. "Reusable" means designed and manufactured to maintain its shape and structure, and to be materially durable for 1) repeated (at least 1,000 times each) sanitizing in water at 171 degrees Fahrenheit for at least 30 continuous seconds, 2) washing via commercial dishwashing machine, and 3) reuse. *[use this definition if a specified standard is desired, language from San Francisco Draft Ordinance]*

p. "Takeout Food Delivery Service" is a third party delivery service which picks up takeout food from a Prepared Food Vendor and delivers it to a customer for consumption off the premises.

q. "Vendor" means any store, business, organization, or entity that sells or offers goods or merchandise, located or operating within the City. *[use if optional section 4.c. is used]*

Section 3. Limitation on the provision of Non-Reusable Food Service Ware items.

Effective [6-12 months after ordinance adoption]:

- a. Non-Reusable Food Service Ware Accessories shall be provided only upon request by the customer or at self-serve stations.
- b. Prepared Food Vendors and Takeout Food Delivery Services that deliver Prepared Food within the City must provide options for customers to affirmatively request Food Service Ware Accessories separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smart phone and other digital platforms, telephone and in-person. The default selected option shall be that no Food Service Ware Accessories are requested. Each Non-Reusable Food Ware Accessory provided with Prepared Food must be specifically requested by the customer in order for a Prepared Food Vendor to provide it, except that for safety reasons, Beverage Cups for delivery may include lids, spill plugs, and sleeves without request.
- c. Prepared Food Vendors shall not use, provide, distribute, or sell the following Food Ware Accessories: plastic beverage straws, plastic utensils, plastic drink stirrers or drink plugs, or plastic food picks and toothpicks. *[include to prohibit plastic accessories]*
- d. Nothing in this Chapter shall restrict, or be construed to restrict, the availability of Non-Reusable plastic straws to individuals who may require and request the use of plastic straws due to disability or other medical or physical conditions or circumstances. Prepared Food Vendors that customarily offer straws may maintain a small supply of plastic straws to accommodate such requests.

Section 4. Non-Reusable Food Service Ware requirements.

Effective *[6-12 months after ordinance adoption]*:

- a. Prepared Food Vendors within the City shall only provide Prepared Food in Non-Reusable Food Service Ware that is free of all intentionally added Fluorinated Chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City.
- b. Prepared Food Vendors within the City are prohibited from selling or otherwise providing Prepared Food using Polystyrene Foam Food Service Ware. *[for use by cities that don't already have an ordinance addressing EPS]*
- c. Polystyrene Foam Food Service Ware shall not be sold or provided by any Vendor in the City. *[for use by cities that don't already have an ordinance addressing EPS]*

d. Prepared Food Vendors within the City shall only provide Prepared Food in Non-Reusable Food Service Ware that is Recyclable or Compostable, except that non-Compostable or non-Recyclable foil wrappers may be used for burritos, wraps, and other items that require foil to contain and form the food item. *[for use by cities that want to restrict the type of non-reusable food ware allowed and accept some food ware in both their recycling and compost program]*

e. Prepared Food Vendors within the City shall only provide Prepared Food in Non-Reusable Food Service Ware that is Compostable, except that non-Compostable foil wrappers may be used for burritos, wraps, and other items that require foil to contain and form the food item. *[for use by cities that want to restrict the type of non-reusable food ware allowed and accept some food ware in both their compost program, but not recycling]*

Section 5. Non-Reusable Beverage Cup charge.

Effective *[12-18 months after ordinance adoption]*:

- a. Prepared Food Vendors shall charge at least twenty-five cents (\$0.25) for every Non-Reusable Beverage Cup provided to a customer.
 1. Income from the Non-Reusable Beverage Cup charge shall be retained by the Prepared Food Vendor. Prepared Food Vendors may not waive or absorb the Non-Reusable Beverage Cup charge except in the case of economic hardship as demonstrated by any customer providing, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code, as amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, or a Medi-Cal benefits identification card (BIC).
 2. The Non-Reusable Beverage Cup charge shall be identified separately on any post-sale receipt provided and, pre-sale, be clearly identified to the customer on media such as menus, electronic ordering platforms, and/or menu boards. Customers placing orders in person and by phone shall be informed verbally of the Non-Reusable Beverage Cup charge. The Beverage Cup charge shall be identified separately to customers entering payment for Prepared Food orders placed online or through a mobile application

3. Should customers provide their own Reusable Beverage Cup for beverage service, Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Beverage Cup that is an inappropriate size, material, or condition for the intended beverage or that appears to be soiled or unsanitary. Prepared Food Vendors may instead require use of a Reusable Beverage Cup provided by the Prepared Food Vendor for a beverage to be consumed on the premises, or a Non-Reusable Beverage Cup that conforms to the Non-Reusable Food Service Ware requirements in Section 4, along with any charge required pursuant to this Section.
4. Within one year of a determination by the City that economically and geographically feasible Reusable Beverage Cup return systems are available to Prepared Food Vendors, Prepared Food Vendors must provide the option of Reusable Beverage Cups to all customers, including for takeout.

Section 6. Provision of Reusable Food Service Ware.

Effective [12-18 months after ordinance adoption]:

- a. Prepared Food served for consumption by customers on the premises of a Prepared Food Vendor shall only be served using Reusable Food Service Ware and Reusable utensils, except that Non-Reusable paper food wrappers, sleeves and bags; foil wrappers; and paper tray- and plate-liners shall be allowed so long as they meet the Non-Reusable Food Service Ware requirements in Section 4.

Condiments, such as sauces, ketchup, or mustard, provided for on-site consumption must be served in Reusable containers. Consumption is considered on-premises if it takes place at tables and/or seating provided by the Prepared Food Vendor, either on its own or in conjunction with another Prepared Food Vendor(s).

This requirement does not prohibit a Prepared Food Vendor from providing, upon a customer's request, Non-Reusable Food Service Ware compliant with the requirements in Section 4 to take away leftover Prepared Food after dining on the premises.

Section 7. Dishwashing Capacity.

Effective [12-18 months after ordinance adoption]:

- a. Prepared Food Vendors must have Dishwashing Capacity to comply with Section 6.

Section 8. Providing Reusable Beverage Cups at Events.

Effective [18-24 months after ordinance adoption]:

a. Event Producers providing Prepared Food at Events must either make Reusable Beverage Cups available to no less than ten percent (10%) of their attendees or be able to demonstrate that reasonable effort has been made to ensure that at least this percentage of attendees or visitors brought or will have access to a Reusable Beverage Cup at the Event.

Section 9. Waivers: Process to Obtain.

The City Manager or his or her designee shall prescribe and adopt rules, regulations, and forms for Prepared Food Vendors to obtain full or partial waivers from any requirement of this ordinance that is explicitly subject to waiver. Waivers shall be granted based upon documentation provided by the applicant and, at the City Manager's discretion, independent verification that may include site visits and documentation.

A Prepared Food Vendor or Event Producer may apply for a waiver under the following terms:

- a. Prepared Food Vendors that do not have Dishwashing Capacity may request a waiver or partial waiver. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints, undue financial hardship, and/or other insurmountable circumstances.
1. The City Manager or his or her designees shall issue a written decision to grant or deny an exemption and may exempt the food provider for no more than two (2) years from the date of the demonstration. The City Manager's decision shall be final and is not subject to appeal.
 2. During the waiver term, the Prepared Food Vendor shall make diligent efforts to become compliant. In certain limited and unique circumstances existing prior to adoption of this ordinance, where the Prepared Food Vendor demonstrates diligent efforts to comply but, due to insurmountable space or economic constraints and/or other unique and extraordinary circumstances, may never be reasonably able to comply, the City Manager or his or her designee may grant a waiver for a longer specified term at the end of the initial waiver term, upon application from the Prepared Food Vendor for an additional waiver.

3. All waivers shall expire automatically in the event of a significant remodel, renovation or other alteration of the premises with a construction valuation that exceeds \$60,000 or if the Prepared Food Vendor ceases operations at the location for which the waiver has been granted.
- b. Any Event Producer may petition the City Manager or his or her designee for a full or partial waiver of the requirements of Section 8 as they apply to any one Event, if the Event Producer can demonstrate that the Event Producer is unable to access Reusable Beverage Cups in the necessary quantity for the Event or that the application of Section 8 would create undue economic hardship or practical difficulty for the Event Producer that is not generally applicable to other Event Producers in similar circumstances operating within the City.
- c. Emergency Supplies and Service Procurement. City facilities, Prepared Food Vendors, City contractors and Vendors doing business with the City shall be exempt from the provisions of this Chapter, in a situation deemed by the City Manager or his or her designee to be an emergency for the immediate preservation of the public peace, health or safety.
- d. No waivers will be granted for the use of Non-Reusable Food Service Ware that is not free of all intentionally added Fluorinated Chemicals.
- e. No waivers will be granted for the use of Polystyrene Foam Food Service Ware. *[include if optional sections 4.b. and 4.c. are used]*
- f. Non-Reusable Food Service Ware that is not **[Recyclable or]** Compostable may be used after the effective date of Section 4 if the Prepared Food Vendor demonstrates, in writing, to the satisfaction of the City Manager or his or her designee, that compliance with the provisions of this Chapter will impose a unique problem not generally applicable to other persons in similar circumstances that will result in an undue economic hardship.
 1. An undue economic hardship could include, but is not limited to: overstocked supplies that cannot be returned to the distributor or used at another store outside the city; or unique packaging needs for which no suitable packaging alternative exists.
 2. The City Manager or his or her designees shall issue a written decision to grant or deny a waiver and may exempt the Prepared Food Vendor for no more than

one (1) year from the date of the demonstration. The City Manager's decision shall be final and is not subject to appeal. [*include if optional section 4.d. or 4.e. is used*]

Section 10. Liability and enforcement.

- a. Anyone violating or failing to comply with any requirement of this chapter may be subject to an Administrative Citation pursuant to Chapter ___ or charged with an infraction as set forth in Chapter ___ of the City Municipal Code; however, no administrative citation may be issued or infraction charged for violation of a requirement of this chapter until one year after the effective date of such requirement.
- b. Enforcement shall include written notice of noncompliance and a reasonable opportunity to correct or to demonstrate initiation of a request for a waiver or waivers pursuant to Section 10.
- c. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- d. The remedies and penalties provided in this section are cumulative and not exclusive.

Section 11. Severability.

- a. If any provision of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the City Council that such invalid provision be severed from the remaining provisions of the ordinance.

Section 12. Chapter supersedes existing laws and regulations.

- a. The provisions of this chapter shall supersede any conflicting law or regulations.



November 5, 2020

Mayor Pepper and City Councilmembers
Los Altos City Hall
1 North San Antonio Road
Los Altos, CA 94022

Dear Mayor Pepper and City Councilmembers,

The California Restaurant Association (CRA) is the definitive voice of the food service community in California representing over 22,000 food service establishments. Restaurants are highly regulated businesses which, in a good economic climate, operate on very thin economic margins.

The global pandemic has financially devastated community restaurants and has dramatically altered restaurant operations. The demands of public health have required us to adapt quickly to ensure physical distancing, address the needs of vulnerable populations, and manage all-to-often periodic shutdowns of in-store and dine-in operations. We have expanded the use of curbside pickup, online order and deliveries and outdoor dining to serve our customers in a safe manner.

These operational changes have significantly impacted how we package our food for customers. With the state allowing- and encouraging- restaurants to continue to serve the public as an “essential business” via take-out and delivery of food orders to consumers, the actual food packaging and food service ware itself has taken on an even more critical role to date.

As the state Department of Public Health dictates the reopening and closing of individual restaurants in counties thru the Blueprint for a Safe Economy, the need for take-out and delivery orders will play an even larger role in serving consumers well into 2021. In fact, the state “Guidance for Dine-In Restaurants” is meant to help guide safe restaurant operations and that guidance recommends a

prioritization of take-out and delivery while also paving the way to reopen dine-in restaurant operations at a drastically reduced capacity. In either case, the state issued guidance recommends the use of single-service products at certain times under their “cleaning and disinfecting protocols.”

The COVID-19 pandemic has increased the demand and need for food packaging and food service ware options for restaurants. It is critical to consider these issues in the context of the proposed ordinance.

With restaurant dining rooms closed or limited in capacity during the pandemic, restaurants are heavily reliant upon take-out and delivery order via the telephone and online ordering services. Restricting a restaurant’s ability to provide take-out and delivery customers with straws, napkins and cutlery to consume what they have purchased while in their vehicle or other location likely will cause significant customer inconvenience, frustration, and backlash towards employees once the guest has left the restaurant or received their food via delivery.

For these reasons, we ask that the proposed ordinance be amended to allow for the compliant non-reusable food service ware accessory items (i.e. straws, drink plugs and utensils) to be distributed “upon offer” of the restaurant.

We would like to urge you to support the staff recommendation to postpone the adoption of the proposed ordinance. This will allow more time for modifications to be made to the ordinance to tailor it to the unique needs of the restaurant community as well as provide more time for restaurants to recover from the financial devastation of the COVID-19 pandemic.

Thank you for your consideration. If you have any questions, please feel free to contact me direct at khansen@calrest.org.

Sincerely,



Katie Hansen
Senior Legislative Director
California Restaurant Association

