

Agenda Report Reviewed by:
City Manager: 

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM

Meeting Date: January 18, 2022
To: Honorable Mayor and City Councilmembers
From: Larry McLaughlin, City Manager
Toni Bertolero, Engineering Consultant
Subject: Zero Waste Subcommittee Informational Presentation
Recommendation : Introduction and Waiving of First Reading of Zero Waste Food Ware Ordinance
Funding: Currently Budgeted: _____ No X N/A
Net General Fund Cost: N/A
Amount: \$0

Account Code/Costs authorized in City Approved Budget (if applicable) ____Ak____ (verified by Administrative Services Department)

INTRODUCTION/PURPOSE:

The item before the City Council is the second reading of the Zero Waste Food Ware Ordinance. Council approved the introduction and first reading at the January 4, 2022 meeting, without any changes.

BACKGROUND AND DISCUSSION:

On January 4, 2022, Council held a public hearing to introduce the Zero Waste Food Ware Ordinance. This ordinance amends/replaces Ordinance 1125 that prohibits the use and sale of disposable food service ware and other products containing polystyrene foam. The proposed ordinance mirrors the City of Santa Rosa’s zero waste food ware ordinance.

Council asked if there were other cities that would be adopting the Santa Rosa model, and at this time, we are not aware of any others who have. However, we have been informed that the City of Petaluma may be considering the Santa Rosa model. Other local agencies, namely Cotati, Rohnert Park, and Cloverdale have not yet adopted a zero waste food ware ordinance and may be following suit in the near future.

For a detailed discussion of the ordinance, please refer to the agenda report presented at the January 4, 2022 meeting.

GOALS:

This action supports the following City Council Goals or General Plan Actions:

- COS 8-2: Coordinate with Sonoma County and nearby cities to implement regional greenhouse gas (GHG) reduction plans.
- COS 8-3: Encourage local businesses and industries to engage in voluntary efforts to reduce GHG emissions and energy consumption.
- consolidate efforts to reduce GHGs throughout the County.
- COS 9-13: Continue the citywide recycling program, actively encourage recycling citywide, including the recycling/composting of food waste, and advocate for a regional composting facility.
- COS 9-14: Continue efforts to reduce solid waste generation throughout the life of the General Plan

- COS 9-17: Integrate the values and practices of environmental sustainability in government operations.

PUBLIC COMMENT:

As of the writing of this staff report, the City has not received any public comment. However, staff may receive public comment from interested parties following the publication and distribution of this staff report. Such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of the agenda item.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date. In addition, a Legal Notice was posted on December 16, 2021 regarding the public hearing date, time and a brief description of the ordinance.

FISCAL IMPACT:

There is no fiscal impact pertaining to the passage of this ordinance.

RECOMMENDATION:

It is recommended that Council approve the second reading and adopt the ordinance. If adopted, the ordinance will take effect on August 1, 2022.

Attachment:

Proposed Zero Waste Food Ware Ordinance

ORDINANCE NUMBER _____

SECOND READING AND ADOPTION

AN ORDINANCE OF THE CITY OF SEBASTOPOL AMENDING CHAPTER 8.36, DISPOSABLE FOOD SERVICE WARE CONTAINING POLYSTYRENE FOAM OF TITLE 8, HEALTH AND SAFETY, OF THE SEBASTOPOL MUNICIPAL CODE

WHEREAS, the City of Sebastopol adopted Ordinance 1125, an Ordinance to Prohibit Use and Sale of Disposable Food Service Ware and Other Products Containing Polystyrene Foam and is codified in the Sebastopol Municipal Code in Chapter 8.36 of Title 8; and

WHEREAS, on November 2, 2021, the Zero Waste Subcommittee made a presentation to City Council regarding recommendations for future updates to Sebastopol’s ordinance on polystyrene foam ban and disposable food service ware; and

WHEREAS, at the November 2, 2021 meeting, it was recommended by the Zero Waste Subcommittee that the City consider adopting the City of Sebastopol more restrictive and comprehensive Zero Waste Food Ware Ordinance in place of Sebastopol’s Ordinance 1125; and

WHEREAS, City Council agreed with the recommendation the a new ordinance be presented and considered that that mirrors the City of Sebastopol’s Ordinance 2021-008, Zero Waste Food Ware.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SEBASTOPOL DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Amendment. Chapter 8.36, Disposable Food Service Ware Containing Polystyrene Foam of Title 8, Health and Safety, is hereby replaced and amended to read as follows:

Chapter 8.36 – Zero Waste Food Ware Ordinance

Sections:

- 8.36.005 Title.
- 8.36.010 Findings and purpose.
- 8.36.015 Definitions
- 8.36.020 Prohibited products for Dine-In, Take-out, City-Sponsored Events and Retail Establishments.
- 8.36.025 Additional Dine-In Food Ware regulations.
- 8.36.030 Additional Take-Out Food Ware regulations.
- 8.36.035 Additional Retail Establishment regulations and exemptions.
- 8.36.040 Three-bin waste stream containers required.
- 8.36.045 Prepared Food exemption.
- 8.36.050 Waivers: process to obtain.
- 8.36.055 Enforcement and penalties.
- 8.37.060 Administrative appeal.

8.36.005 Title.
This chapter shall be known as the “Zero Waste Food Ware Ordinance.”

8.36.010 Findings and purpose.

- A. The City of Sebastopol has a duty to protect the natural environment and health and safety of residents.
- B. The production and use of single-use disposable food ware, packaging, and plastics is a major contributor to street litter, ocean pollution, marine and other wildlife harm, and greenhouse gas emissions.
- C. The production, consumption and disposal of single-use disposable food ware contributes significantly to the depletion of natural resources and causes plastics to enter our waterways and oceans.
- D. Eighty percent of marine debris originates on land, primarily as urban runoff. Marine plastic degrades into pieces and particles of all sizes and is present in the world’s oceans at all levels.
- E. Marine microplastic has been detected in seafood sold for human consumption and has also been detected in human consumption items such as bottled water, honey, sea salt and more.
- F. In 2017, the Russian River Watershed Association conducted an analysis of trash in the Russian River. The study revealed that of the total litter items collected (2,578) over sixty percent (60%) were single-use plastic items of some variety (plastic wrappers, plastic bags, polystyrene food packaging, lids/straws, etc.). Polystyrene products alone accounted for approximately 10% of the total litter items collected.
- G. Reducing the generation of single-use disposable food ware including plastic utensils, plastic cups, polystyrene clamshells, plastic straws, and disposable food ware maximizes the operating life of landfills, reduces litter, and helps reduce the economic and environmental costs of managing waste. This will also help protect the City’s environment from contamination and degradation making it a cleaner and safer place to all citizens and visitors.
- H. 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, waterways, and other public places be reduced.
- I. The City of Sebastopol must reduce solid waste at its source in accordance with its Zero Waste goals. Reduction of single-use disposable food ware furthers this goal.
- J. This Chapter is consistent with City of Sebastopol Climate Emergency Resolution No. 6274-2019, the County of Sonoma Integrated Waste Management Plan, as amended, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

8.36.015 Definitions.

Unless the context requires otherwise, the terms defined in this chapter shall have the following meanings and are capitalized in the chapter text:

- A. “City” means the City of Sebastopol
- B. “City-Sponsored Events” means City-managed concessions, City-sponsored events and occasions, and City-permitted events.
- C. “Condiment” means a substance that is used to add flavor to food or beverages such as, but not limited to, salt, ketchup, mayonnaise, ranch, sugar, creamer, etc.

- D. "Dine-In" means offering on-site services intended for food and beverage consumption on the food provider's premises.
- E. "Effective Date" means January 1, 2022.
- F. "Food Facilities" means all facilities as described in the California Retail Food Code section 113789 as the same may be amended from time to time, including an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following: (1) an operation where food is consumed on or off the premises, regardless of whether there is a charge for the food. (2) a place used in conjunction with the operations described in the California Retail Food Code section 113879, as the same may be amended from time to time, including, but not limited to, storage facilities for food-related utensils, equipment, and materials. Examples include, but are not limited to a: restaurant, bar, grocery store, delicatessen, bakery, mobile food facilities, catering operation, farmers market, microenterprise home kitchen operation, movie theatre, licensed health care facility, etc.
- G. "Food Ware" means all containers, bowls, plates, trays, cups, lids, boxes, and other like items that are used for Prepared Foods, including without limitation, Food Ware for Takeout and or/leftovers from partially consumed meals prepared by Food Facilities.
- H. "Food Ware Accessories" means types of items usually provided alongside Prepared Food including but not limited to forks, spoons, knives, chopsticks, napkins, cup sleeves, wrappers, beverage trays, condiment containers, straws, stirrers, splash sticks, cocktail sticks, toothpicks, tray-liners, and plate-liners.
- I. "On Request" means that only at the request of a Person shall the product(s) be provided.
- J. "Per- and Polyfluoroalkyl" or "PFAS" means a group of man-made chemicals that includes PFOA, PFOS, GenX, and many other chemicals. PFAS have been manufactured and used in a variety of industries around the globe. These chemicals are very persistent in the environment and in the human body meaning they don't break down and accumulate over time. There is evidence that exposure to PFAS can lead to environmental health effects such as reproductive, developmental, liver, kidney, and immunological effects.
- K. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.
- L. "Polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expanded bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, coolers, packaging peanuts, and egg cartons.
- M. "Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of the Food Facility and includes Takeout Food.
- N. "Retail Establishment" has the meaning set forth in section 9-10-010(H) of the City Code.
- O. "Reusable Food Ware" means Food Ware and/or Food Ware Accessories, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups, utensils, etc. that are composed 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.

- P. "Take-Out" means food or beverages requiring no further preparation to be consumed and which generally are purchased to be consumed off the premises of the Food Facility.

8.36.020 Prohibited products for Dine-In, Take-out, City-Sponsored events and Retail Establishments.

Except as Except as provided for in this Chapter, Food Facilities within the City shall not sell, procure, distribute, or otherwise give away Food Ware and/or Food Ware Accessories for Dine-In, Take- Out or in Retail Establishments or at City-Sponsored Events where such Food Ware, Food Ware Accessories and/or products made from or otherwise contain:

- A. Per – and Polyfluoroalkyl (PFAS); and
- B. Polystyrene.

8.36.025 Additional Dine-In Food ware regulations.

In addition to complying with Section 8.36.020, dine-in food facilities within City Hall shall:

- A. Only use Reusable Food Ware and Reusable Food Ware Accessories; and
- B. Provide Food Ware Accessories upon request only; and
- C. Offer Condiments in a Reusable dispenser or format rather than pre-packaged single-use packets.

8.36.030 Additional Take-Out Food Ware regulations.

In addition to complying with Section 8.36.020, Food Facilities within the City offering Take-out:

- A. Shall provide Food Ware Accessories upon request only; and
- B. Shall comply with the requirements of Chapter 9-10 (Waste Reduction Program for Carryout Bags) of the City Code; and
- C. Shall provide options for customers to affirmatively request Food Ware Accessories separate from orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smartphone and other digital platforms, telephone, and in-person. A Food Facility or a Takeout Food delivery service may include lids, spill plugs, and sleeves without request for non-Reusable cups for delivery; and
- D. Are encouraged, but not required, to charge customers receiving to-go Food Ware Accessories twenty-five cents (\$0.25). Customers must request Food Ware Accessories; and
- E. Are encouraged, but not required, to provide a twenty-five cent (\$0.25) credit to customers bringing in their own hygienic Reusable Food Ware for Takeout.

8.36.035 Additional Retail Establishment regulations and exemptions.

- A. The use of The use of Polystyrene or PFAS by Retail Establishments specifically includes, without limitation, the following: Coolers, ice chests, or similar containers, unless they are wholly encapsulated or encased within more durable material so as to be Reusable; Packaging peanuts or other packaging materials; or Food Ware and Food Ware Accessories;
- B. Notwithstanding section 9-30.035(A), products containing Polystyrene, in which Polystyrene is included for insulating or flotation purposes and is completely encased in more durable material at sold, procured, distributed, or otherwise given away at Retail Establishments are

exempt from the provisions of this Chapter. Examples include surfboards, boats, life preservers, construction materials, craft supplies and durable coolers not principally composed of polystyrene.

8.36.040 Three-bin waste stream containers required.

- A. All Food Facilities All Food Facilities who provide solid waste containers for use by a Person, must provide three separate containers for garbage, recyclables, and organics. Color guidelines should be consistent with City's franchised hauler collection program;
- B. To the extent possible given space constraints, all containers for garbage, recyclables and organics should be placed adjacent to one another; and
- C. Graphic-rich signage must be posted on or above each container following the franchised waste hauler's sorting guidelines.

8.36.045 Prepared Food exemption.

Entities packaging Prepared Food outside the City are exempt from the provisions of this chapter; provided, however, such Persons are urged to follow the provisions of this Chapter.

8.36.050 Waivers: process to obtain.

The City Manager or his/her designee may grant waivers from the requirements of this Chapter under Emergency and Non-Emergency Circumstances.

- A. Emergency Circumstances: Consistent with his/her authority under section 2-24 of the City Code, and for the immediate preservation of the public peace, health, or safety due to an emergency or natural disaster, the City Manager, or designee, may exempt Food Facilities, Retail Establishments and City-Sponsored Events, as well as any City facilities and agents, contractors and vendors doing business with the City, from the provisions of this Chapter.
- B. Non-Emergency Circumstances. The City Manager or his/her designee may, based upon documentation provided by the applicant that the requirements of this chapter would create an undue financial hardship or practical difficulty not generally available to other Persons in similar circumstances.
- C. Waivers for Non-Emergency Circumstances may be granted for a specified term of up to one (1) year. Waivers during Emergency Circumstances may be granted for the duration of the emergency. During the waiver term, the Food Facility shall make diligent efforts to become compliant.
- D. The City Manager or his/her designee shall have full discretion to verify the waiver application including independent verification and site visits. The City Manager's decision to grant or deny a waiver will be put in writing and its determination considered final.

8.36.055 Enforcement and penalties.

- A. The City Manager, or designee, shall have primary responsibility for enforcement of this Chapter. The City Manager is authorized to make all necessary and reasonable rules and regulations with respect to the enforcement of this Chapter. All such rules and regulations shall be consistent with the provisions of this Chapter.

- B. The City Manager, and/or City Attorney, may determine in their discretion to send a notice to cure to a retailer prior to invoking the enforcement provisions of this section if there have not been prior complaints against the retailer for violation of this Chapter.
- C. Anyone violating or failing to comply with any provision of this chapter shall be guilty of an infraction or misdemeanor as determined by the City Attorney under Chapter 1-28. The City Attorney may seek legal, injunctive, administrative or other equitable relief to enforce this chapter. The remedies and penalties provided in this section are cumulative and not exclusive and nothing in this section shall preclude the City from pursuing any other remedies provided by law. In addition to any relief available to the City, the City shall be entitled to recover reasonable attorneys' fees and costs incurred in the enforcement of this Chapter.
- D. Penalties for violations of any provision of this Chapter shall be as follows; provided, however, that 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 the ordinance:
 - i. A fine not exceeding \$100.00 for the first violation
 - ii. A fine not exceeding \$200.00 for a second violation of the same Code provision within one year; and
 - iii. A fine not exceeding \$500.00 for each additional violation in excess of two, of the same Code provision within one year.
 - iv. If continued willful violations occur the City reserves the right to suspend vendors use permit.
- E. The remedies and penalties provided in this section are cumulative and not exclusive.

8.36.060 Administrative appeal.

- A. A person aggrieved by the imposition of an administrative penalty or imposition of response costs pursuant to this chapter may appeal the decision by filing with the City Clerk a statement addressed to the City Manager and setting forth the facts and circumstances regarding the appealed action. The City Clerk shall notify the applicant, in writing, of the time and place set for the hearing on the appeal.
- B. The hearing on the appeal must be held within 30 business days of the City Clerk's receipt of the appeal.
- C. The City Manager or his designee shall serve as hearing officer and shall issue a decision regarding the appeal within 10 business days of the conclusion of the hearing. The hearing officer's decision is final.

SECTION 3. CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(5), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is a governmental, organizational or administrative activity that will not result in direct or indirect changes in the environment.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to

whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same or a summary thereof to be published as required by law. This Ordinance shall take effect and be in full force and effect on August 1, 2022.

APPROVED FOR SECOND READING OF ORDINANCE at the Regular City Council Meeting of January 18, 2022.

VOTE:
AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED: _____
Mayor Patrick Slayter

ATTEST: _____
Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: _____
Larry McLaughlin, City Attorney