



# City Council Report

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City Council Meeting: August 14, 2018  
Agenda Item: 7.E

To: Mayor and City Council  
From: Susan Cline, Director, Public Works, Office of Sustainability & the Environment  
Subject: Introduction for First Reading of an Ordinance Modification Prohibiting Distribution of Non-Marine Degradable Food Service Ware by Santa Monica Food Providers

## **Recommended Actions**

Staff recommends the City Council Introduce for first reading the attached ordinance modifying Santa Monica Municipal Code Chapter 5.44 to prohibit the distribution of certain non-marine degradable disposable food service ware and polystyrene beverage lids by food and beverage providers.

## **Executive Summary**

Santa Monica has a long-standing commitment to the environment, which includes a goal to achieve Zero Waste through diversion, composting, and recycling by 2030. Other cities with similar commitments have begun moving forward on the issue of curtailing plastic waste from food service.

On June 13, 2017, Council directed staff to review the Non-Recyclable Plastic Food Service Container Ordinance and recommend modifications that would align with the City's sustainability goals. In response, staff recommends modifying the 2007 Non-Recyclable Plastic Food Service Container Ordinance to prohibit the distribution of non-marine degradable disposable food service ware (including plates, bowls, trays, containers, straws, utensils, stirrers, cups, and lid plugs, but excluding beverage lids) by all food and beverage providers in the City. Beverage lids could be non-marine degradable but may not be made of polystyrene. The revisions to the ordinance would protect the Santa Monica Bay from plastic pollution while reducing landfill waste.

The ordinance would further require that all marine degradable disposable straws and utensils be provided to customers only upon request. The ordinance would apply to all food and beverage providers, including but not limited to restaurants, delicatessens, grocery stores, non-profit and for-profit organizations, groups and individuals serving prepared food in Santa Monica as part of their services. The ordinance would also apply to all City facilities, City sponsored events, and City permitted events that serve prepared food. The Director of Public Works may authorize food and beverage providers as well as City facilities, City-managed concessions, City-sponsored events, and City-permitted events to retain and dispense upon request a limited number of disposable plastic drinking straws to customers with medical conditions for whom flexible marine degradable straws are unsuitable or to the caretakers of such customers.

	Current Ordinance	Proposed Revisions	Upon Request Only (Proposed Ordinance)	Upon Request Medical Conditions (Proposed Ordinance)
<b>Plastic #1-5 (Polyethylene, Polypropylene)</b> (Plates, Bowls, Trays, Hinged/Lidded Containers, Stirrers, Lids Plugs, Utensils, Cups)	✓	✗	✗	✗
<b>Plastic #1-5 (Polyethylene, Polypropylene)</b> (Straws)	✓	✗	✗	✓
<b>Plastic #1-5 (Beverage Lids Only)</b>	✓	✓	✓	✓
<b>Plastic #6 (Polystyrene)</b> (Containers, Plates, Bowls, Trays, Cups)	✗	✗	✗	✗
<b>Plastic #6 (Polystyrene)</b> (Straws, Lids, Utensils, Lids Plugs, Stirrers)	✓	✗	✗	✗
<b>Plastic #7 (Bioplastic)</b>	✓	✗	✗	✗
<b>Metal/Tin/Foil</b>	✓	✗	✗	✗
<b>Paper/Fiber/Wood (Marine Degradable – includes straws and utensils)</b>	✓	✓	✓	✓
	✓ = Allowed/Yes      ✗ = Prohibited/No			

In alignment with the proposed prohibition, staff would launch an educational campaign encouraging members of the public to reduce disposable food ware, refuse items when not needed, and switch to products they can reuse.

Approving the recommendation would impact all food and beverage providers operating in Santa Monica. As of the 2017-2018 fiscal year, over 800 business licenses were issued to food- or beverage-related businesses. Staff anticipates those businesses could see minor cost increases related to compliance with the ordinance. Staff interviewed local food service providers who reported their largest expenses were for rent and labor costs and that food service ware costs typically ranged between one and eight percent of their overall expenses, depending on the specific type of business and their operations.

## **Background**

The City has long demonstrated stewardship of the natural environment and taken a leadership role with sustainability initiatives:

### Past Council Actions

<b>09/20/94 (Attachment A)</b>	Sustainable City Plan affirming the City's commitment to protecting, preserving and restoring the natural environment
<b>01/14/14 (Attachment B)</b>	Zero Waste Strategic Plan to divert 95 percent of the City's waste from the landfill by 2030
<b>01/09/07 (Attachment C)</b>	Non-Recyclable Plastic Food Service Container Ordinance

The Non-Recyclable Plastic Food Service Container Ordinance adopted in 2007 prohibits food and beverage providers from dispensing prepared food to customers in polystyrene and expanded polystyrene food service containers such as plates, bowls, cups, trays, and hinged or lidded containers. Other food service ware including straws, utensils, lid plugs and lids are not addressed in the existing ordinance.

Since the food service container ordinance was adopted in 2007, the City's Code Enforcement Division has issued five citations and written 69 warning letters

representing an average of seven warning letters per year. Before the ordinance was adopted, staff identified 16 types of containers on the market and available to food service providers that complied with the ordinance. Two years after adoption, staff identified 76 types of containers that complied with the ordinance. With the trend of municipalities prohibiting polystyrene, the disposable food service ware market has expanded to provide more non-polystyrene materials.

## **Discussion**

### Ocean Pollution

Single-use plastics are not just a problem in Santa Monica, but across the globe. Plastic products in the ocean could take up to several hundred years to decompose and pose a threat to the marine environment. The increase in usage of disposable plastic products over the years coincides with the increase in ocean pollution. With the current trend, The World Economic Forum predicts that by 2050 there will be more plastic in the ocean than fish by weight (Attachment D).

Straws, stirrers, take-out containers and lids are among the top 10 most common items found on the beach, according to the 2018 Ocean Conservancy Report (Attachment E). The increased use of disposable straws is directly impacting Santa Monica beaches. According to Heal the Bay's Marine Debris database, the number of straws collected during their Santa Monica beach cleanups has increased over 43 percent since 2014 (Figure 1). Additionally, these small items are ending up on the streets, in storm drains, on the beach, and in the ocean.

Disposable food service ware, such as straws, utensils, and lids, are made with different types of plastic, not just polystyrene. Prohibiting polystyrene straws, utensils, and lids would eliminate the number of polystyrene products currently being distributed by Santa Monica food and beverage providers, but it would not solve the problem of plastic pollution.



Figure 1: Marine Debris Data from Heal the Bay

### Waste Management

The recycling of small items such as straws, utensils, lids, stirrers and lid plugs is not economically viable at the municipal level. Items that are sent to the recycling facility are sorted on a conveyor belt and baled before being shipped to buyers. Small, lightweight items easily fall off the conveyor belt or

become stuck in confined spaces within the equipment. The operational and labor costs of bundling these items exceeds the value of the items and therefore they are typically sent to the landfill rather than recycled.

Recyclable plastic food service ware soiled with food residue is considered contaminated and no longer recyclable. Currently, 20 percent of the materials collected for recycling by the City is contaminated and sent to the landfill. It is unknown how much of that percentage is related to food service ware.

Additionally, the recycling market has recently experienced a huge disruption. Earlier this year, China—traditionally the largest importer of U.S. recyclable material—began enforcing stricter requirements for importing solid waste. Since January 1, 2018, China has prohibited 24 types of solid waste materials, including household waste plastics such as food service ware. This has significantly impacted the recycling industry in the U.S., making recycling of many waste streams including plastics and mixed paper uneconomical.

### Bioplastics

Some disposable food service ware is made with plant-based polymers known as bioplastics. Unlike petroleum-based plastics, bioplastics are made from renewable resources such as corn, sugar, and soy protein and are often labeled “compostable.” Bioplastics are not recyclable like petroleum-based plastics; however, they are capable

of decomposing in some industrial compost facilities (but not in the natural environment). Santa Monica's compost facility does not accept these materials, and there is no facility in the Southern California region that can compost them.

When the food service container ordinance was originally adopted in 2007, bioplastics were fairly new to the market. The ordinance did not prohibit bioplastics at the time because they represented a very small percentage of the food service packaging market, they were very expensive relative to other alternative products, and because of their potential to be composted in the future. Since that time, many more of these bioplastic food service products have come on the market and their usage has increased. However, there has not been a significant change in the compost market in Southern California in the last 11 years, so after disposal these items are still being sent to the landfill.

Because bioplastics look and feel very similar to petroleum-based plastics, it can be difficult for consumers and sorters to distinguish them from recyclable plastics. However, because they are not recyclable like petroleum-based plastics, bioplastics are viewed as contaminants by recycled materials processors. Bioplastics that end up in recycling and composting bins are separated and sent to landfills.

### Marine Degradable Ware

Marine degradable disposable food service ware refers to products designed to biodegrade under the marine environmental conditions of aerobic marine waters or anaerobic marine sediments. This specification excludes products predominantly made with either petroleum based or biologically based plastics. Some examples of marine degradable material include, but are not limited to, paper, fiber, bagasse (fibrous matter that remains after sugarcane or sorghum stalks are processed), wheat straw, seaweed, wood and food (pasta and licorice straws). Disposable food service ware made from this type of material can be disposed of in the City's organics collection containers and composted whether or not food residue is present. By requiring marine degradable disposable food service ware, the City would create a more uniform stream of material

that can be repurposed into compost, would reduce contamination of the recycled waste stream, and would reduce the amount of food service ware going to the landfill.

Figure 2 below shows the current disposal options for a variety of food service ware based on material type and on the City’s current recycling and recovery operations:

	Recycle Bin	Organics Bin	Landfill Bin
Plastic #1-5 (Large/Clean) (Containers, Cups, Plates, Bowls, Trays)	✓	✗	✗
Plastic #1-5 (Large/Dirty) (Containers, Cups, Plates, Bowls, Trays)	✗	✗	✓
Plastic #1-5 (Small) (Straws, Utensils, Lids, Stirrers, Lid Plugs)	✗	✗	✓
Plastic #6 (Polystyrene/Styrofoam)	✗	✗	✓
Plastic #7 (Bioplastic)	✗	✗	✓
Paper/Fiber/Bagasse/Wood	✗	✓	✗
✓ = Appropriate Bin      ✗ = Inappropriate Bin			

Figure 2: Appropriate Bins for the Different Food Service Ware Materials

### Policy Recommendations

Staff recommend the following additions and modifications to the Food Service Container Ordinance to address environmental impacts related to disposable products not included in the original version of the ordinance. The revised ordinance requires that:

- All disposable food service ware distributed by food and beverage providers must be marine degradable to reduce or eliminate the amount of disposable food service ware that is sent to the landfill and the amount of plastic pollution in the ocean and on the beach. The revised ordinance would also add utensils, straws, stirrers, and lid plugs to the Disposable Food Service Ware definition. Disposable food service ware made from bioplastics would also be prohibited.
- Beverage lids are excluded from the definition of disposable food service ware because there is not a suitable marine degradable alternative at this time.

However, food and beverage providers would be prohibited from distributing all polystyrene beverage lids.

- Marine-degradable disposable straws and utensils may only be provided to customers upon request. In other words, disposable straws and utensils would be prohibited from being distributed automatically or from being on display over the counter. This change would reduce the amount of disposable food service ware being distributed and thereby reduce the amount of debris that would end up polluting the environment.
- The ordinance would also authorize the Director of Public Works to promulgate rules consistent with this Chapter to implement its policies and effectuate its purpose. New disposable food service ware products and materials could enter the market at any given point. The Director of Public Works would be able to address those new products without having to amend the ordinance each time.
- The ordinance contains updated language regarding enforcement to align with other sections of the Code as they have been updated in recent years.

Because the modified ordinance would now require marine degradable materials and no longer just prohibit non-recyclable plastic, staff also recommends revising the name of the ordinance to Disposable Food Service Ware. This language is commonly used among other cities implementing similar ordinances. The term “ware” is more inclusive than the term “container.”

### Community Engagement

On January 22 and March 19, 2018, staff presented the proposed recommendations to the Task Force on the Environment.

On March 20, 2018, staff presented the proposed recommendations to the following organizations to solicit feedback: Surfrider, 5 Gyres Institute, Heal the Bay, The Bay

Foundation, Sustainable Works, Climate Action Santa Monica, Measure V Oversight Committee, Shark Allies, Algalita Marine Research and Education, Plastic Free SMC, and Team Marine (Santa Monica High School Club). There was a general consensus among the groups in attendance that they support prohibiting single-use plastic food ware, including bioplastics.

On May 31, 2018, staff hosted a public meeting and presented the draft policy recommendations and answered questions. Over 40 members of the public attended the meeting, including a number of food service industry businesses. There were no significant concerns raised by businesses in attendance. One attendee recommended that the ordinance be expanded to include a ban on plastic bottles.

On June 19, 2018, the City of Santa Monica co-hosted a business mixer with Sustainable Works titled “The Future of Santa Monica Restaurants: Food and Sustainability.” The purpose of the mixer was to inform businesses about the proposed revisions to the disposable food service ware ordinance, state legislation on organics collection, the City’s Sustainable Food Commitment, and the Green Business Certification Program. There were 32 businesses in attendance. Staff answered any questions about the ordinance revisions.

In addition, staff mailed surveys to over 500 food and beverage providers with physical locations in Santa Monica (some food and beverage providers offer services here but do not have physical locations within the City), requesting information about what disposable food service ware items are distributed to customers regularly. Out of those businesses, 56 businesses responded (Figure 3).

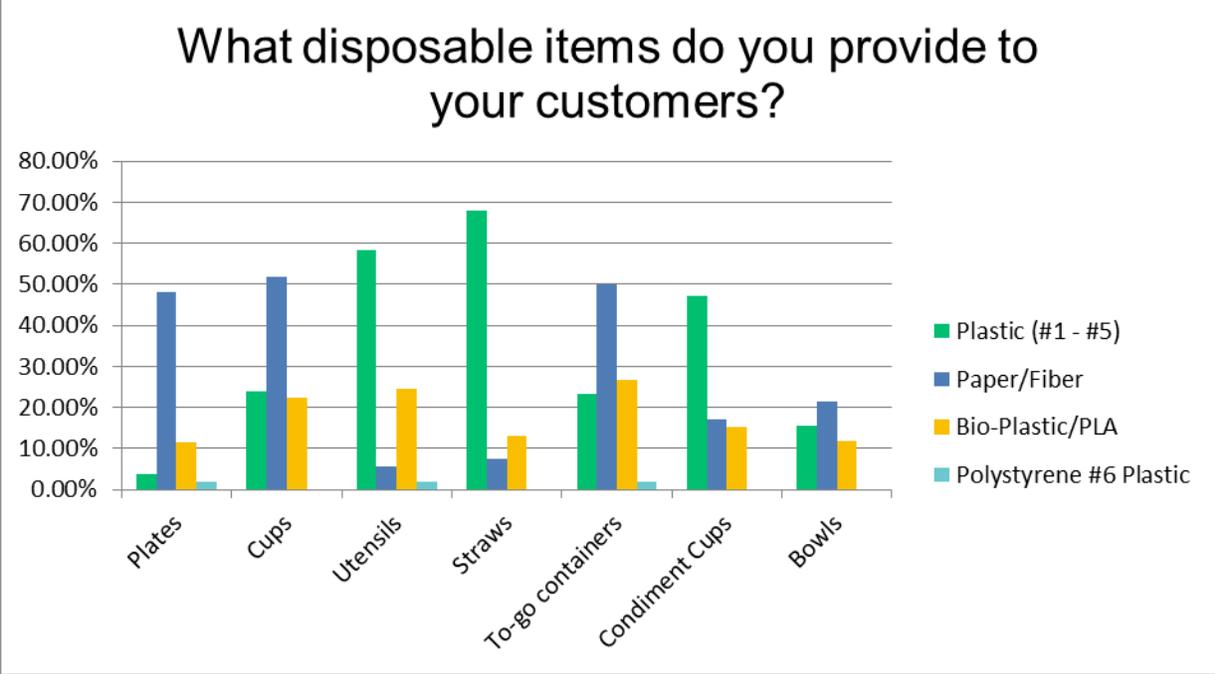


Figure 3: Disposable Items Santa Monica Businesses Are Distributing  
 Businesses were also asked if they are in support of a “Straw Upon Request” policy. Of the businesses that responded to the survey (56), over 85% indicated that they are in support of such a policy. Several businesses also indicated that they are already dispensing straws only when requested.

Several Santa Monica businesses have already transitioned to non-plastic straws. Currently, there are 13 food or beverage providers in Santa Monica distributing non-plastic straws. Santa Monica College recently removed plastic straws on campus.

The Santa Monica Chamber of Commerce works with the City to recognize businesses’ efforts in sustainability. The City will coordinate its outreach efforts with the Chamber in regard to the requirements of the proposed ordinance.

Additionally, Surfrider Foundation’s West Los Angeles Chapter certifies restaurants as Ocean Friendly Restaurants. This certification program encourages restaurants to reduce plastic use in their food or beverage service by implementing policies such as a Straw Upon Request policy and switching to non-plastic straws. Currently, there are 17 Ocean Friendly certified businesses in Santa Monica.

## Focus Group

The City of Santa Monica worked with contracted partner Sustainable Works to conduct a focus group of local food and beverage providers. The intent of the focus group was to gather feedback about the businesses' current practices and impressions of straw alternatives and policies. Sustainable Works provided staff with a report detailing their findings (Attachment F).

Twelve businesses participated in the focus group. They provided details about the type of straws distributed, the number of straws distributed per month and the amount of money spent on straws per unit and per month. Based on the survey responses mentioned in Figure 3, the questions were primarily focused on straws. Additionally, the cost comparison between plastic and non-plastic straws was much greater than the cost comparison between other plastic and non-plastic disposable food service items (Figure 4).

	Straws	Forks	Stirrers	Plates (9")	Bowls (16 oz.)	Trays	Containers	Cups (12 oz.)
Styrofoam	-	-	-	\$51.12	\$54.58	\$33.56	\$117.40	\$45.80
Plastic	\$7.16	\$16.02	\$6.58	\$63.42	\$87.38	-	\$159.96	\$67.80
Paper/Fiber/Wood	\$38.40	\$33.45	\$7.18	\$55.22	\$57.64	\$30.26	\$138.25	\$51.45
Bio-Plastic	\$22.48	\$45.68	-	-	-	-	-	\$107.80

*Figure 4: Cost Comparison Chart of Different Disposable Food Service Ware and Materials. Dollar amount based on the purchase of a thousand units. Prices reflect an average taken from multiple sources.*

When businesses were asked whether they had considered switching from a plastic straw to an alternative, eight businesses considered switching or had already switched (Figure 5).

## Exemption

The ordinance would allow for a one-year renewable hardship exemption if it can be demonstrated that compliance with the ordinance would cause undue economic hardship to a food and beverage provider. An undue hardship would include any situation where no reasonably feasible available alternatives exist for a specific and necessary marine degradable disposable food service ware. The decision to provide an exemption would be made by the Director of Public Works or her/his designee and would be based on review of an exemption request that includes documentation showing the factual support for the claimed exemption.

The Director of Public Works may authorize food and beverage providers as well as City facilities, City-managed concessions, City-sponsored events, and City-permitted events to retain and dispense upon request a limited number of disposable plastic drinking straws to customers with medical conditions for whom flexible marine degradable straws are unsuitable or to the caretakers of such customers.

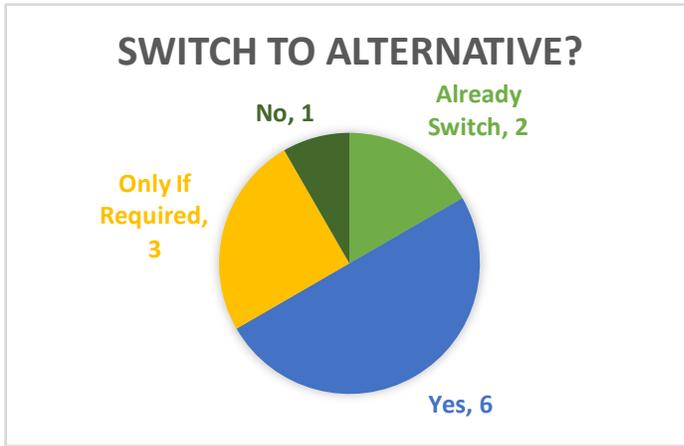


Figure 5: Summary of Focus Group Response

Other Cities and Corporations

Currently, over 100 California cities have adopted polystyrene disposable food service ware ordinances. Of these cities, more than 28 cities also prohibit the distribution of polystyrene straws, utensils, and lids in their ordinance.

For example, the City of Culver City adopted an ordinance to regulate the sale and distribution of polystyrene disposable food service ware on May 8, 2017. This ordinance also prohibits the distribution and sale of polystyrene straws, utensils, and lids, as well as a “Cutlery Upon Request” policy.

Other cities have recently taken additional measures to reduce the environmental impact of plastic straws and utensils. In 2017, both the City of Davis and the City of San Luis Obispo adopted a “Straw Upon Request” ordinance impacting only dine-in customers. On February 26, 2018, the City of Malibu adopted an ordinance to prohibit the sale and distribution of plastic straws, utensils, and stirrers within its City limits.

On April 24, 2018, the City of Berkeley proposed an ordinance to prohibit dine-in restaurants from serving food in disposable food ware. Berkeley proposes that businesses charge customers \$0.25 for each take-out container and to-go cup distributed. The proposed ordinance is still pending.

On June 5, 2018, the City of Manhattan Beach adopted a revision to their existing ordinance to prohibit the sale and distribution of plastic straws, utensils, and stirrers within its City limits.

On July 1, 2010, the City of Seattle authorized its General Manager/CEO of Public Utilities to promulgate rules in accordance with the Chapter on Disposable Food Service Ware. Effective July 1, 2018, the City of Seattle adopted Director Rule SW-500.1 prohibiting the distribution of non-compostable straws and utensils.

Corporations have recently adopted or pledged to adopt similar policies in their food service and operations. Alaska Airlines began serving paper straws upon request July 16, 2018. Starbucks plans to remove plastic straws by 2020. The Walt Disney Company plans to eliminate plastic straws and stirrers from their parks by the middle of 2019, as did the hotel chain, Marriott.

### Alternatives

There are several alternatives to the recommended ordinance changes, most of which involve adoption of some of the recommendations, but not others. These are presented below.

1. Moderation: Council could approve portions of the modifications reducing the specific types of food service ware prohibited, reducing the types of plastics prohibited, or modifying the types of businesses the “Upon Request” policy would apply to. These options would be less stringent on businesses and there would be less financial impact on businesses.
2. Prohibition of Sale: Council could approve prohibition of the sale and distribution of non-marine degradable disposable food service ware items. Currently, the ordinance only prohibits the distribution of specified disposable food service ware at establishments distributing prepared food. By prohibiting the sale of non-marine degradable disposable items, the ordinance would prohibit grocers, markets and retail businesses from selling the disposable food service ware item itself. While this alternative would have the largest environmental benefit, it would also impact a larger segment of businesses in Santa Monica. This alternative would also impact people with disabilities. People with disabilities who require a straw to drink would have to purchase disposable plastic straws outside of Santa

Monica. Food and beverage providers wouldn't be able to purchase disposable plastic straws in Santa Monica for their customers with disabilities.

3. Provision for a Charge: Council could direct staff to return with a provision that approves a \$0.25 charge to customers for compliant take-out containers or to-go cups in conjunction with a requirement for dine-in restaurants to provide reusable food service ware to customers. This alternative would encourage customers to bring reusable cups and containers, which is the best food ware option for the environment. However, this alternative would require additional staff time to plan implementation and assess any possible consequences as a result of this ordinance. Additional staff time would be required to enforce this measure. Additional legal issues may also arise from an ordinance mandating a charge, and these must be carefully evaluated. Currently, no other city has adopted a similar ordinance for disposable food service ware.
4. Required Receptacles: Council could approve the requirement for food and beverage providers to provide specific bins for the specific food ware items they are distributing. For example, if a food and beverage provider sold glass soda bottles, they would be required to have recycling bins for customers. However, this option would require additional staff time for implementation, education, and enforcement. Additional equipment and resources may also be required for businesses to implement, adding to their financial impact. If approved, staff recommends starting enforcement at a later date for this specific measure.
5. No Approval: Council could not approve any of the modifications to the current ordinance and move to not make any revisions to the ordinance at this time. This alternative would not reduce the environmental impacts of disposable food service ware. If current trends continue, plastic pollution on Santa Monica beaches would continue to increase.

#### Enforcement and Outreach

The Code Enforcement Division would have primary responsibility for enforcement of the ordinance. Violations are subject to administrative citations and are punishable as infractions. Any violation of this Ordinance would be subject to the default administrative citation fine amount of \$75 per violation. If Council wishes to raise this amount, it may do so by resolution at a future date.

If approved, the requirements of the ordinance would go into effect January 1, 2019 for all food and beverage providers. The proposed modifications would be implemented for City facilities, City-managed concessions, City-sponsored events and City-permitted events beginning January 1, 2019. The Office of Sustainability and the Environment staff would conduct workshops and other outreach activities during the interim to provide information and assistance to food and beverage providers in identifying disposable food service ware that is marine degradable and locating suppliers of alternative products. The outreach program would strongly encourage the use of the most sustainable packaging types from a resource use and marine debris perspective.

Staff will continue outreach to members of the public about reducing and refusing use of disposable food service ware through a marketing campaign.

### Environmental Analysis

The City's action to adopt an ordinance that prohibits food and beverage providers from dispensing prepared food in non-marine degradable disposable food service ware is exempt from provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15061(b)(3) [project is exempt when it can be determined with certainty that there is no potential for causing a significant effect on the environment] and Section 15308 (Class 8) [action is taken by regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment where regulatory process involves procedures for the protection of the environment.]

### **Financial Impacts and Budget Actions**

Some City departments may experience a minimal fiscal impact if they are purchasing disposable food service ware for staff and internal events. Departments should look for

alternative reusable options. The Office of Sustainability and the Environment loans reusable food ware to other departments.

City facilities, City-sponsored events, and City-permitted events would also comply with this ordinance once adopted. This may impact the cost of those events and programs. City staff should look to reduce disposable food ware items distributed or use a reusable alternative.

The Citywide Administrative Instruction would be updated, and the purchasing guide would be available to departments.

**Prepared By:** Amanda Grossman, Sustainability Analyst

**Approved**

**Forwarded to Council**



Susan Cline, Director

8/2/2018



Rick Cole, City Manager

8/9/2018

**Attachments:**

- A. September 20, 1994 Staff Report - Sustainable City Plan
- B. January 14, 2014 Staff Report - Zero Waste Strategic Plan
- C. January 9, 2007 Ordinance - Non-Recyclable Plastic Food Service Container Ordinance
- D. World Economics Forum Report - The New Plastics Economy
- E. 2018 Ocean Conservancy Report
- F. Sustainable Works Focus Group Report
- G. Ordinance - Sustainability - Marine Degradable Disposable Food Service Ware - 08142018
- H. Written Comments