



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: ORD 23-016, **Version:** 1

Introduce, waive first reading, set October 10, 2023 at 10:30 a.m. as the date and time to consider adoption of an ordinance to add Chapter 10.44 of the Monterey County Code to set restrictions on food providers' use of single-use plastics food accessories in unincorporated Monterey County.

Proposed California Environmental Quality Act (CEQA) Action: Consider finding that the adoption of this ordinance is categorically exempt per Section 15307 of the CEQA Guidelines because the action consists of creating regulations for the protection of the environment.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Find the adoption of this ordinance is categorically exempt per Section 15307 of the CEQA Guidelines because the action consists of creating regulations for the protection of the environment; and
- b. Introduce, waive first reading, set October 10, 2023 at 10:30 a.m. as the date and time to consider adoption of an ordinance to add Chapter 10.44 of the Monterey County Code to set restrictions on food providers' use of single-use plastics food accessories in unincorporated Monterey County.

SUMMARY/DISCUSSION:

Pursuant to Article XI, Section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations to protect the natural resources of the County and promote the public health, safety, and welfare of its citizens. The Integrated Waste Management Act of 1989 (Public Resources Code section 41750 *et seq.*) requires the County to divert its solid waste from landfills through source reduction, recycling, and composting activities. The State of California may levy fines if compliance with this statute is not met. This is consistent with the Source Reduction and Recycling Element (SRRE) of the Countywide Integrated Waste Management Plan (1995) for Monterey County as adopted under the Integrated Waste Management Act of 1989. The SRRE identifies regulatory program options, including product bans, based upon "excessive packaging, non-recyclability, litter potential, etc." Monterey County Board Policy (Board Policy G-237), "Waste Reduction Policy for County Facilities and Operations," notes that "The County seeks to reduce solid waste, to minimize unneeded materials being disposed of in landfills and to maximize the highest use of products and materials that are no longer needed." In addition, the County shall conduct "zero waste" events and comply with the Climate Friendly Purchasing Policy (Board Policy A-20).

AB 1276 (Single-use foodware accessories and standard condiments), was adopted by the State in 2021 and prohibits a food facility from providing any single-use foodware accessory or standard condiment, as defined, to a consumer unless requested by the consumer. It also prohibits those items from being bundled or packaged in a way that disallows the consumer from taking only the item desired. Authorizing a food facility to ask a drive-through consumer, or a food facility located within a public airport to ask a walk-through consumer, if the consumer wants a single-use foodware accessory in specified circumstances. It requires a food facility using a third-party food delivery platform to list on its menu the availability of single-use foodware accessories and standard condiments and only provide those items when requested. Excluded from these requirements are correctional institutions, health care facilities, residential care facilities, and public and private school

cafeterias.

SB 54 (The California Container Recycling and Litter Reduction Act) and AB 1080 (Solid Waste: packing and products) were also adopted by the State, and address plastic on a large scale and not just the food industry. These pieces of legislation would require all single-use plastic packaging and products in California to be reduced or recycled by 75% by 2030. In addition, all single use plastics and products would have to be recyclable or compostable on or after 2030. Assembly Bill 1162 (AB 1162: Lodging establishments: personal care products: small plastic bottles) establishes a timeline for lodging establishments to phase out small plastic bottles for personal care products. Further, AB 1884 (Food Facilities: single use plastic straws) provides that a full-service restaurant shall not provide plastic straws unless requested by a consumer. This is limited to establishments that provide food on premises and where consumers are escorted to an eating area.

In addition to the above State legislation affecting plastics, the State retail food regulations addressing single-use articles notes that “temporary” food facilities must provide single use articles (Health & Safety Code section 114353).

Several jurisdictions, including the City of Monterey, City of Pacific Grove, the City of Salinas, and the City of Carmel-by-the-Sea have passed single use plastic ordinances addressing single use food containers and food service ware in the food industry.

As of September 15, 2023, unincorporated Monterey County has approximately 600 food operators including 332 facilities with food preparation 129 mobile food vendors with food preparation, and 139 temporary annual food vendors with food preparation. It is anticipated that adoption of this ordinance will impact the food industry similar to the County Polystyrene Restriction Ordinance (Monterey County Code 10.42 “Restrictions on the Use of Polystyrene Foam Food Packaging by Food Providers.”)

Monterey County’s Action Steps

The Environmental Health Bureau (EHB) and the Office of the County Counsel have drafted a proposed ordinance addressing single use plastics (Attachment A). This ordinance restricts food providers located and/or providing prepared food in the unincorporated area of Monterey County from providing single-use plastic food accessories and standard condiments packaged for single-use.

Before developing the actual ordinance, EHB engaged the food industry through stakeholder meetings to obtain feedback and to inform them as to the intent of the ordinance. EHB also conducted surveys and engaged the hotel industry to determine the number of hotels affected in conjunction with inspections by the Bureau’s Consumer Health Protection Services program.

EHB launched an outreach campaign starting with a survey of food vendors in unincorporated Monterey County to ascertain the number of food vendors using materials that would be affected by a single use plastic ordinance. In addition, through its Consumer Health Protection Services program, EHB distributed a general information flyer on the topic. As with the polystyrene ordinance, EHB will also continue dissemination of information and monitor feedback through to ensure an industry wide sharing of information. The industry, through the Food Safety Advisory Council (FSAC) and the Monterey County Hospitality Association, was invited to meet to provide input regarding the intent of the proposed ordinance.

It is anticipated that establishing a single-use plastics ordinance may affect the food service and hotel industries in various ways. Some of these potential impacts include:

- Businesses likely have current contracts in place to supply their single use items and these contracts will be affected.
- Businesses may have large inventories of single-use items in stock, which if not used, could cause undue financial burden on food vendors.
- Some facilities may be a “carry-out” only facility that as a rule use only single-use containers and food ware.
- There may be price differences in the current single-use ware versus what would be required under a new ordinance.
- Smaller and locally owned businesses may be financially affected in larger proportion than large corporate businesses.

There are some mechanisms to help mitigate the issues noted above. These mechanisms may include one or all of the following:

- Allow a buffer of time from the enactment of the ordinance to its effect to allow for compliance.
- Allow for the current use of supplies to be used before a facility must switch to required materials.
- Allow for the current contracts in place to end before the required materials are used.
- Allow for exemptions if mandated by state food code and on a case-by-case basis.

Since the concept of reducing single-use plastics is a phenomenon driven by consumers up through the industry, it is expected that this topic will be received more positively than from legislation down to the industry to be enforced by regulators. The movement toward all things “green” and environmentally friendly helps the concept of using appropriate materials as inevitable.

While this work is not directly in support of a Health Department strategic goal, it is in support of one or more of the ten essential public health services, specifically: 2. Diagnose and investigate health problems and health hazards in the community, 3. Inform, educate, and empower people about health issues and 5. Develop policies and plans that support individual and community health efforts.

OTHER AGENCY INVOLVEMENT:

Stakeholders include participants from the Food Safety Advisory Council (FSAC) and the Monterey County Hospitality Association. The Office of the County Counsel has approved this ordinance as to form.

FINANCING:

Adoption of the ordinance itself will not have direct financial impacts. Nominal costs for implementation, enforcement, public outreach, and education will be covered through existing department budgets.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The proposed ordinance supports the related Board of Supervisors Strategic Initiatives:

Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.

Health & Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by: Robin Kimball, Management Analyst III, 796-1297

Approved by:

Date

Elsa Mendoza Jimenez, Director of Health Services, 755-4526

Attachment(s):

Attachment A - Draft ordinance adding Chapter 10.44 to the Monterey County Code