

BOARD of SUPERVISORS



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MEMORANDUM

TO: Greg Wagner, Acting Director, Department of Public Health
Deborah Raphael, Director, Department of the Environment
Harlan Kelly, Jr., General Manager, Public Utilities Commission
Vicki Hennessy, Sheriff
Phil Ginsburg, General Manager, Recreation and Parks Department
Margaret McArthur, Recreation and Parks Commission Liaison

FROM: Erica Major, Assistant Clerk
Land Use and Transportation Committee

DATE: October 22, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Tang on October 16, 2018:

File No. 181004

Ordinance amending the Environment Code to require food vendors to supply single-use plastic straws only upon request; provide for sale of plastic straws; clarify that nothing in Chapter 16 shall be construed to conflict with laws concerning the rights of individuals with disabilities; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

c: Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Peter Gallota, Department of the Environment
Charles Sheehan, Department of the Environment
Anthony Valdez, Department of the Environment
Juliet Ellis, Public Utilities Commission
Donna Hood, Public Utilities Commission
John Scarpulla, Public Utilities Commission
Christopher Whitmore, Public Utilities Commission
Sarah Madland, Recreation and Parks Department

1 [Environment Code - Single-Use Food Ware Plastics, Toxics, and Litter Reduction]

2
3 **Ordinance amending the Environment Code to require food vendors to supply single-**
4 **use plastic straws only upon request; provide for sale of plastic straws; clarify that**
5 **nothing in Chapter 16 shall be construed to conflict with laws concerning the rights of**
6 **individuals with disabilities; and affirming the Planning Department’s determination**
7 **under the California Environmental Quality Act.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. The Planning Department has determined that the actions contemplated in
17 this ordinance comply with the California Environmental Quality Act (California Public
18 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
19 Board of Supervisors in File No. ____ and is incorporated herein by reference. The Board
20 affirms this determination.

21 Section 2. Findings.

22 (a) The production and management associated with single-use food and beverage
23 service ware, typically used for only a few minutes before being discarded, has significant
24 environmental impacts, including environmental contamination; consumption of energy, water,
25 and non-renewable polluting fossil fuels; emissions of greenhouse gases; air and water

1 pollutants; depletion of natural resources; litter on streets and in waterways; plastic pollution;
2 and increased litter clean-up and discard management costs.

3 (b) Single-use service ware may threaten public health because many types contain
4 many additives that are known or suspected carcinogens or endocrine disruptors, such as
5 phthalates, perchlorate, and fluorinated chemicals. These additives are known to leach from
6 food service ware into the food and beverages they contain.

7 (c) Fluorinated chemicals, also known as per- and polyfluorinated alkyl substances
8 (“PFAS”), are synthetic chemicals commonly used in and on single-use service ware products
9 to repel water and grease. A 2018 Center for Environmental Health study found that 57% of
10 tested food service ware contained significant levels of fluorinated chemicals. Fluorinated
11 chemicals are extremely persistent in the environment, leach into food, and can be taken up
12 from soil into food. In 2016, the FDA rescinded its approval for use of three such fluorinated
13 chemicals from food contact materials due to associated heightened risks of cancer, toxicity,
14 and other health effects. Other PFAS chemicals have similar chemical structures, and may
15 pose similar risks.

16 (d) Plastic straws were among the top 10 items collected during the California
17 Coastal Cleanup Day from 1989 to 2014, and seven of the 10 were single-use food and
18 beverage service ware items. These items accounted for 34% of total trash collected.

19 (e) In a 2011 Bay Area study of street litter in areas impacting urban runoff to the
20 San Francisco Bay, 67% of all 12,000 litter items counted were single-use food or beverage
21 packaging. Fifty percent of the items came from fast food service.

22 (f) Eighty percent of marine debris originates on land, primarily as litter in urban
23 runoff. Marine plastic degrades into pieces and particles of all sizes, and is present in the
24 world’s oceans at all levels (surface, water column, and bottom). It attracts ambient
25 pollutants, particularly persistent organic pollutants, which collect on the surface of plastic

1 particles. Marine plastic also causes animal disease and mortality, as ocean species ingest
2 the plastic or become entangled in it. Furthermore, plastic has been detected in seafood sold
3 for human consumption.

4 (g) Researchers have also detected plastics in bottled water, sea salt, honey, and
5 indoor and outdoor air.

6 (h) As of 2012, 120 billion single-use cups are used per year in the United States,
7 equal to 370 per person per year. By this measure, San Franciscans use more than 300
8 million cups per year, with a total estimated weight of 10 million pounds. Since the average
9 CO2 footprint of a paper cup is 0.033 pounds of carbon dioxide emissions, San Francisco
10 single-use cup use equals to nearly 5000 tons of greenhouse gas emissions.

11 (i) An estimated 500 million straws are used each day in the U.S., equal to 1.5 per
12 person per day. This adds up to more than a million straws per day in San Francisco.

13 (j) The San Francisco Public Utilities Commission (SFPUC) operates the City's
14 combined sewer system, which serves over 90% of the City. The system collects, treats, and
15 safely manages both sanitary sewage and stormwater runoff in the same pipes and facilities.
16 To maintain the system's function, it is critical to keep key infrastructure like catch basins free
17 of litter and debris. When filled with litter, these catch basins must be cleaned by staff –
18 increasing operations and maintenance costs. The SFPUC removes over 4,700 cubic yards
19 of litter per year (approximately 14,000 bags of litter) from the three wastewater treatment
20 plants located within the City. On an annual basis, litter removal from wastewater is costly
21 and time consuming for the SFPUC. The SFPUC Wastewater Enterprise spends roughly
22 \$230,000 a year on waste (trash and recycling) removal at its three in-city wastewater
23 treatment plants. Approximately 50% of the trash at the largest treatment plant in the city, the
24 Southeast Treatment Plant, is plastic items. There has been a noticeable decline in single-use
25

1 plastic bags received by the Southeast Treatment Plant since San Francisco's ban and
2 charges on single-use plastic checkout bags in 2007 and 2012.

3 (k) In certain areas of the city, the SFPUC operates a municipal separate storm
4 sewer system (MS4) where stormwater is released directly into waterways, while sanitary
5 sewage is directed to SFPUC treatment plants. In MS4 areas, the SFPUC is required to
6 capture litter conveyed by stormwater runoff. Banning single-use plastic items, such as
7 straws, will reduce the amount of litter discharged into waterways and support MS4 permit
8 compliance with state regulations.

9 (l) Policies that promote reusable food service ware encourage both reuse of
10 materials, and reduction of pollutants. These twin strategies are crucial for conserving
11 resources and protecting the environment. They are thus integral to San Francisco's goal of
12 zero waste.

13 (m) The Clean Water Fund Rethink Disposable program, in partnership with San
14 Francisco and other Bay Area cities, found over the last four years that reusable food and
15 beverage service ware offers environmental and economic advantages over single-use
16 products, and that the benefits multiply with each use. Switching to reusables was found to
17 save food service businesses costs, even with dishwashing, energy, and labor expenses
18 factored in. Food establishments that have participated in the ReThink Disposable program to
19 reduce the use of single-use food service ware and beverage cups have demonstrated that
20 businesses can save thousands of dollars per year while providing their customers with a
21 more enjoyable dining experience.

22 (n) The practice of freely giving customers single-use food service ware encourages
23 customers and food vendors to pay little attention to the quantity of disposable packaging
24 products they consume and the associated environmental impact.
25

1 (o) The City and County of San Francisco has adopted a citywide goal of zero
2 waste. Single-use food service ware poses difficulties for composting and recycling, because
3 these items are often too small to sort, or are made from a combination of materials, such as
4 plastic-coated paper. Such combinations risk contamination problems, and increase discard
5 management costs, hampering San Francisco from achieving zero waste.

6 (p) San Francisco is a recognized leader in developing model zero waste policies
7 and programs. It was the first American city to ban single-use plastic checkout bags in 2007,
8 a step that triggered a widespread movement to ban such plastic bags and to charge for other
9 checkout bags. Similar policies have since been enacted across California and beyond. In
10 continuing to strive for zero waste, San Francisco must now take the lead to reduce use of
11 single-use food and beverage service ware.

12
13 Section 3. The Environment Code is hereby amended by revising Sections 1602, 1603
14 and 1604, to read as follows:

15 **SEC. 1602. DEFINITIONS.**

16 The following definitions of terms are either amended or added to Section 1602, and
17 placed therein among the defined terms in correct alphabetical position:

18 "Event" means any indoor event at a ~~City-owned or City-leased facility~~ City Facility, or
19 any outdoor event subject to a City permit, where more than 100 people attend or participate.

20 "Event Producer" means a person or entity who contracts with or obtains a permit from
21 the City, or an agent acting on the City's behalf, to hold ~~an~~ its own Event, or a City entity or
22 department holding ~~an~~ its own Event.

23 "Single-use" means designed to be used once and discarded, and not designed for repeated
24 use and sanitizing.

1 **SEC. 1603. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE**
2 **WARE PROHIBITED.**

3 (a) No person may sell, offer for sale, or otherwise Distribute within the City (1) any
4 Food Service Ware that is not either Compostable or Recyclable, (2) any Food Service Ware
5 made, in whole or in part, from Polystyrene Foam, (3) any single-use straws, stirrers, splash
6 sticks, cocktail sticks, or toothpicks made with plastic, including compostable, bio- or plant-
7 based plastic, or (4) beginning January 1, 2020, any Food Service Ware that is Compostable
8 and not Fluorinated Chemical Free.

9 (b) The Director may adopt a list of suitable alternative Compostable or Recyclable
10 Food Service Ware products. "Suitable alternative Compostable or Recyclable Food Service
11 Ware products" means Food Service Ware products that the Director determines serve the
12 same intended purpose as non-compliant products, meet the standards for what is
13 Compostable and/or Recyclable set under this Chapter 16, and are reasonably affordable.
14 The Director shall regularly update the list.

15 (c) Beginning January 1, 2020, no person may sell, offer for sale, or otherwise
16 Distribute within the City Food Service Ware that does not contain a minimum post-consumer
17 recycled content that may be specified by the Director in regulations according to the
18 Director's assessment of market availability and costs.

19 **SEC. 1604. USE OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED.**

20 (a) Food Vendors may not sell, offer for sale, or otherwise Distribute Prepared Food
21 (1) in Food Service Ware made, in whole or in part, from Polystyrene Foam, (2) in Food
22 Service Ware that is not Compostable or Recyclable, or (3) beginning January 1, 2020, in
23 Food Service Ware that is Compostable and not Fluorinated Chemical Free.

24 (b) City Facility Food Providers may not provide Prepared Food to City Facilities (1)
25 in Food Service Ware made, in whole or in part, from Polystyrene Foam, (2) in Food Service

1 Ware that is not Compostable or Recyclable, or (3) beginning January 1, 2020, in Food
2 Service Ware that is Compostable and not Fluorinated Chemical Free.

3 (c) City Departments may not purchase, acquire, or use Food Service Ware for
4 Prepared Food (1) where the Food Service Ware is made, in whole or in part, from
5 Polystyrene Foam, (2) where the Food Service Ware is not Compostable or Recyclable, or (3)
6 beginning January 1, 2020, where the Food Service Ware is Compostable and not Fluorinated
7 Chemical Free.

8 (d) City contractors and lessees may not use Food Service Ware for Prepared Food
9 in City Facilities and while performing under a City contract or lease (1) where the Food
10 Service Ware is made, in whole or in part, from Polystyrene Foam, (2) where the Food
11 Service Ware is not Compostable or Recyclable, or (3) beginning January 1, 2020, where the
12 Food Service Ware is Compostable and not Fluorinated Chemical Free. All new leases and
13 permits authorizing the sale of food and beverages at the San Francisco International Airport
14 must incorporate terms requiring the lessee or permittee to comply with the terms of this
15 Chapter 16. This requirement shall also apply to any such lease or permit renewed,
16 extended, or materially amended after July 1, 2019.

17 (e) The Director may adopt a list of suitable alternative Compostable or Recyclable
18 Food Service Ware products. "Suitable alternative Compostable or Recyclable Food Service
19 Ware products" means Food Service Ware products that the Director determines serve the
20 same intended purpose as non-compliant products, meet the standards for what is
21 Compostable and/or Recyclable set under this Chapter 16, and are reasonably affordable.
22 The Director shall regularly update the list.

23 If a product is included on the Director's list, it will be deemed to comply with this
24 Section 1604. If a product is not included on the Director's list, the person using the product
25

1 as Food Service Ware will have the burden of establishing to the Director's satisfaction that
2 the product complies with this Section.

3 (f) It shall not be a violation of this Section 1604 to sell, provide, or purchase
4 Prepared Food packaged in Food Service Ware otherwise prohibited by subsections (a)
5 through (c), or to use Food Service Ware otherwise prohibited by subsection (d), if the
6 Prepared Food is packaged outside the City and is sold or otherwise provided to the
7 consumer in the same Food Service Ware in which it originally was packaged. Businesses
8 packaging Prepared Food outside the City are encouraged to use Food Service Ware that is
9 Compostable or Recyclable, is Compostable and Fluorinated Chemical Free, and is not made,
10 in whole or in part, from Polystyrene Foam.

11 (g) Food Vendors, City Facility Food Providers, and City contractors and lessees
12 acting pursuant to a City contract or lease at a City Facility shall not provide, sell, use, or
13 otherwise Distribute, and City Departments shall not purchase or acquire, any single-use
14 straws, stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic, including
15 compostable, bio- or plant-based plastic, except as expressly provided in this Chapter 16 and/or as
16 required by applicable State or Federal laws, regulations, or guidelines.

17 (h) Food Vendors, City Facility Food Providers, City Departments, and City contractors
18 and lessees acting pursuant to a City contract or lease at a City Facility shall only provide,
19 sell, use, or otherwise Distribute only those Food Service Ware Accessories that comply with
20 this Chapter 16, and only upon a consumer's specific request for such items, or in a self-service area
21 or dispenser either (1) upon a consumer's specific request for such items, or (2) in a self-service area
22 or dispenser, except for single-use plastic straws, which shall be made available by request only.

23 (i) Beginning January 1, 2020, Food Vendors, City Facility Food Providers, and City
24 contractors and lessees acting pursuant to a City contract or lease at a City Facility shall not
25 provide, sell, use, or otherwise Distribute, and City Departments shall not purchase or acquire,

1 Food Service Ware that does not contain a minimum post-consumer recycled content, that
2 may be specified by the Director in regulations according to the Director's assessment of
3 market availability and costs.

4
5 Section 4. The Environment Code is hereby amended by revising Sections 1606 and
6 1607, to read as follows:

7 **SEC. 1606. IMPLEMENTATION.**

8 (a) The Director ~~shall~~may create, maintain, and regularly update the product lists
9 referenced in Sections 1603(b) and 1604(e).

10 (b) The Director is authorized to promulgate regulations, guidelines and forms and
11 to take any and all other actions reasonable and necessary to implement and enforce this
12 Chapter.

13 (c) ~~Strict compliance with this Chapter 16 is not required in instances where it would~~
14 ~~interfere with accommodating for any person's medical needs. Nothing in this Chapter 16 shall conflict,~~
15 ~~or be construed to conflict, with the Americans with Disabilities Act, the Unruh Act, the Disabled~~
16 ~~Persons Act, or other applicable laws concerning the rights of individuals with disabilities. In~~
17 ~~particular, nothing in this Chapter shall restrict, or be construed to restrict, the availability of single-~~
18 ~~use plastic straws to individuals who may require and request the use of single-use plastic straws.~~

19 (i) It shall not be a violation of this Chapter for any place of public accommodation
20 to provide single-use plastic straws to individuals who request such plastic straws.

21 (ii) Nothing in this Chapter shall restrict, or be construed to restrict, the ability of
22 places of public accommodation to purchase or otherwise acquire single-use plastic straws in
23 sufficient numbers to meet the needs of individuals who request such plastic straws.

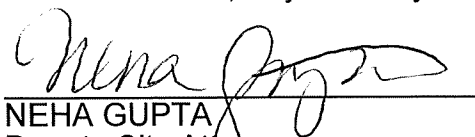
1 (d) In addition, nothing in this Chapter 16 shall restrict, or be construed to restrict, the
2 availability of single-use plastic straws to individuals who may require use of plastic straws in relation
3 to medical circumstances.

4 (e) The Department shall conduct multi-lingual public outreach and education, including
5 providing information to educate affected Food Vendors, businesses, and customers, about the
6 provisions of this Chapter 16.

7
8 Section 4. Effective and Operative Dates. This ordinance shall become effective 30
9 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
10 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
11 or the Board of Supervisors overrides the Mayor's veto of the ordinance. Unless otherwise
12 specifically noted, this ordinance shall become operative on July 1, 2019.

13
14 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the "Note" that appears under
19 the official title of the ordinance.

20
21 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

22
23 By: 
NEHA GUPTA
24 Deputy City Attorney

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LEGISLATIVE DIGEST

[Charter Amendment - Free City College Fund]

Describing and setting forth a proposal to the voters at an election to be held on November 5, 2019, to amend the Charter of the City and County of San Francisco to establish the Free City College Fund to defray certain costs of City College students, and to require annual appropriations in designated amounts to the Fund.

Existing Law

In 2016, by ordinance, the City established the San Francisco City College Financial Assistance Fund as a category four fund to provide financial assistance to students at City College of San Francisco (“City College”). The ordinance further provided that the Department of Children, Youth, and Their Families (“DCYF”) would administer the fund and use monies in the fund to make grants to reimburse City College for enrollment fees and other education-related financial support for students.

Amendments to Current Law

The proposal is a Charter amendment that establishes the Free City College (“Fund”), to be administered by DCYF. The proposal would require that the Controller maintain the Fund separate and apart from all other City funds and carry forward to the next fiscal year any amount in the Fund unspent or uncommitted at the end of the fiscal year. The proposal would require that monies in the Fund be used by the City to benefit San Francisco residents enrolled in City College by providing funds for student stipends to cover education costs, subject to certain defined conditions, and to cover the City’s costs related to administering the Fund.

The proposal would require that beginning in fiscal year 2020-2021 the City annually appropriate a “baseline amount” to the Fund as follows:

For fiscal year 2020-2021 - \$15 million.

For fiscal year 2021-2022 - \$15.7 million.

For fiscal year 2022-2023 - \$16.4 million.

The proposal would require that for fiscal years 2023-2024 through 2030-2031, the Controller would adjust the baseline contribution by the percentage increase or decrease in aggregate City discretionary revenues.

The proposal would allow the City to suspend growth in the baseline for any year in which the Controller, projected a budget deficit of \$200 million or more. The proposal would allow the City to contribute more to the Fund than the annual baseline amounts required, without affecting the City's required baseline contribution.

The proposal would require that any amount in the Fund over what is spent in any fiscal year be kept in the Free City College Reserve ("Reserve"). But the total amount in the Reserve would not be allowed to exceed 20% of the next year's annual baseline contribution. Any amount over the 20% limit would be returned to the General Fund.

The proposal would allow the Board to adjust the student stipend amounts by a majority vote and would allow the Board, by a two-thirds majority vote, to expand the eligible uses of the Fund to benefit any or all students enrolled at City College by defraying any costs related to their enrollment in City College.

Finally, the proposal would require the Controller to produce and file with the Board a report on the Fund, in fiscal year 2027-28.

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