

CUPERTINO PROJECT FOODWARE FREQUENTLY ASKED QUESTIONS

Updated May 18, 2023

Who is affected by the ordinance?

If you are a food facility that prepares food on-site for distribution to the public (i.e., you have a valid health permit with the County) and you operate within the limits of the City of Cupertino, then you will need to comply with the Ordinance. This includes restaurants, caterers, cafeterias, coffee shops, grocery stores, delicatessens, mobile or temporary food providers, vehicles or carts, or roadside stands.

How is dine-in defined for the reusable requirement?

A dine-in food facility means a food business where the patron consumes foods and beverages while seated at tables or counters located on the premises.

Are dine-in food providers allowed to offer take-out containers?

Yes, while dine-in food facilities must serve food and beverage in reusable containers, they may offer take-out containers for to-go orders and leftovers as long as the foodware items meet the Ordinance requirements.

What are compostable plastics? Why are they prohibited?

While traditional plastics are made from petroleum, a fossil fuel, “compostable plastics” are plastic-like polymers made from a variety of non-petroleum materials like plant starch. PLA (Polylactic acid), is one of the more common compostable plastic materials found in foodware. Although considered a “greener” alternative to traditional plastics and designed to break down into useful compost within industrial composting facilities, this material poses many challenges. For instance, compostable plastic looks so much like traditional plastic that it is often mistakenly placed in the recycling bin where it can contaminate the recycling stream as this material can not be recycled. Even when compostable plastics are sent to the proper facility, they don’t always break down fast enough into usable compost and must be screened out and sent to the landfill. Reputable national standards for compostability are usually based on a 180-day composting time, but California facilities often operate on closer to a 90-day cycle. Furthermore, compostable plastics do not break down when littered and pose the same threats to wildlife and the health of the environment as their petroleum-based plastic counterparts.

Are plastic lids on beverage cups / food containers allowed?

Yes. Under the current Ordinance, beverage and food container lids used by food facilities are not required to be made from natural fiber (e.g., paper, sugarcane, wheat stalk, etc.). The City understands that for those food facilities that provide grab-and-go food options, the lids will need to be transparent to allow customers to view the food that they are considering for purchase. Additionally, many plastic lids (both traditional and compostable plastic) seem to provide a more secure lock on the food container/cup than the natural fiber counterparts that are currently on the market. However, plastic lids made from #6 plastic (a.k.a. polystyrene) are still prohibited.

Are there any exempted items? If so, what are they?

Some products do not yet have non-plastic alternatives and as a result are temporarily exempt from the Ordinance. A list of these products may be found at [Cupertino.org/foodwareguide](https://www.cupertino.org/foodwareguide). It is important to check this list often as items will be removed from this list as compliant solutions become available.

Can a food facility be granted an exemption?

Yes, a temporary exemption to the Ordinance requirements may be requested when a suitable compliant product is not available or compliance presents a significant economic hardship. To request an exemption, please contact the Project Foodware Hotline at (408) 777-1356 or email environmental@cupertino.org.

Who will enforce the ordinance?

The Ordinance will be enforced by staff of the Environmental Programs Division of Public Works or other Code Enforcement personnel. Citations and fines may be issued for non-compliance (per CMC 9.15.130).

How long do affected businesses have to comply?

As of the Sept 6th, 2023 Enforcement Date, all covered food facilities will need to be in compliance with the Ordinance. If additional time is needed to either use existing inventory or because of supply chain shortages, please contact us at (408)777-1356 or environmental@cupertino.org.

Are there resources available to help my facility comply?

The City of Cupertino has hired a consulting team to assist food facilities in making the transition to compliant foodware items. A variety of helpful tools and information is available on the Project Foodware website. Additionally, there are a limited number of mini-grants available to help businesses offset the cost of purchasing compliant items. For assistance, please contact the Project Foodware Hotline at (408) 777-1356 or email environmental@cupertino.org.

How can I find compliant food service ware products?

Ask your distributor, vendor, restaurant supply shop, or on-line store what BPI fiber-based compostable foodware products (or aluminum alternatives) are available. The City of Cupertino has made available a product purchasing guide with a selection of compliant items and list of specific vendors. Please note that this is not a comprehensive list and new compostable products are emerging in the marketplace at a rapid pace. The product guide could be found at [Cupertino.org/foodwareguide](https://www.cupertino.org/foodwareguide)

How do new state laws AB 1200, AB 1276, AB 619, SB 54 relate to the Foodware Ordinance?

AB 1200 prohibits PFAS chemicals in foodware, and those are also prohibited in Cupertino's ordinance, and the same for AB 1276 which requires foodware accessories to be provided only upon request. AB 619 allows consumers to bring reusable containers to a food facility to be filled, provided certain safety conditions are met. While not included in Cupertino's ordinance, allowing customers to bring their own containers supports reduction of waste and reuse and can be done safely.

SB 54:

SB54 is the Plastic Pollution Prevention and Packaging Producer Responsibility Act. This law is an extended producer responsibility law that will require the producers and manufacturers of certain plastic packaging and foodware to achieve specific recyclability and reduction targets by January 1, 2032. It includes goals for shifting to reusable or refillable packaging and food ware systems which are consistent with Cupertino's ordinance.

How does this relate to what I have to do for SB1383?

Cupertino's ordinance is helpful for meeting the requirements of SB 1383 because the natural fiber-based foodware required by the ordinance can also go into the green carts and bins in Cupertino to be composted. If there is leftover food in the containers, that can go with the containers into the green cart or bin, along with the fiber-based utensils and napkins. Per SB 1383, compostable materials (food, food-soiled paper, fiber foodware) should be kept out of the garbage.

What are PFAS? Why are they prohibited in the ordinance?

PFAS (per- and polyfluoroalkyl substances) are synthetic chemicals commonly used in disposable foodware made from paper/fiber, including compostable paperboard containers, to repel water and grease. These chemicals pose a public health risk as they have been linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty, and obesity. In keeping with State Assembly Bill 1200, which prohibits the sale or distribution of fiber/paper-based foodware containing PFAS beginning January 1, 2023, the Cupertino Foodware Ordinance requires that foodware products be made from fiber materials free of added PFAS. To verify this requirement, foodware items need to be certified/approved by the Biodegradable Products Institute (BPI) or other party approved by the City in the future.

Are there health concerns issues with letting customers bring their own containers?

As long as businesses employ systems in which there is no contact between the reusable item and retail surface areas or employees, Bring-Your-Own (BYO) containers pose no health or safety threat to consumers. Allowing customers to bring their own containers is allowed under state law AB 619.

Is foamed polystyrene (i.e., "styrofoam," #6 plastics) still banned?

Yes, expanded polystyrene (EPS) is not permitted for use by food facilities within the City of Cupertino.

