

ORDINANCE NO. 2023-

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
ADDING CHAPTER 6.45 (SINGLE-USE FOODWARE ACCESSORIES AND
CONDIMENTS) TO TITLE 6 (HEALTH AND SAFETY) OF THE LOS ALTOS
MUNICIPAL CODE ADOPTING BY REFERENCE CHAPTER 5.2 (COMMENCING
WITH SECTION 42270) OF PART 3 OF DIVISION 30 OF THE CALIFORNIA
PUBLIC RESOURCES CODE PROHIBITING A FOOD FACILITY FROM
PROVIDING ANY SINGLE-USE FOODWARE ACCESSORY OR STANDARD
CONDIMENT UNLESS REQUESTED BY CONSUMER AND AUTHORIZING CITY
AND COUNTY ENFORCEMENT AND PENALTIES**

ADOPTION BY REFERENCE OF STATE PROHIBITION ON PROVIDING SINGLE-
USE FOODWARE ACCESSORIES OR STANDARD CONDIMENTS

CHAPTER 5.2 (Commencing with Section 42270) of Part 3 of Division 30 of the Public Resources Code, as written and amended, is adopted by reference in its entirety and incorporated herein. The provisions of this chapter shall be enforced by the City of Los Altos, and may be enforced by the County of Santa Clara.

**TOGETHER WITH CERTAIN AMENDMENTS, ADDITIONS, INSERTIONS,
DELETIONS AND CHANGES THERETO.**

WHEREAS, Governor Gavin Newsom signed Assembly Bill (“AB”) 1276 into law on October 5, 2021, which prohibits a food facility or a third-party food delivery platform from providing single-use food accessories, such as cutlery, straws and condiment packets, to a customer unless requested by the customer.

WHEREAS, prior to adoption of AB 1276, state law (AB 1884 (adopted 2018)) prohibited a full- service restaurant from providing single-use plastic straws to customers unless requested by the customer. The state law required the plastic straw regulation to be enforced by the local health and environmental health officers and their agents.

WHEREAS, AB 1276 revised the state law by expanding the scope from full-service restaurants to food facilities, which generally includes all retail food operations; expanded the scope from single-use plastic straws to single-use foodware accessories, which includes utensils, condiments, and straws (but does not include napkins); and revised the enforcement obligation from the local health and environmental health officers (as applicable to the City of Los Altos, this would be the Santa Clara County health official) to whichever entity cities and counties deem appropriate.

WHEREAS, AB 1276 is designed to reduce excess packaging and undesired condiments and implements from being given to a customer when eating on premises or taking food to go, and prohibits single-use foodware accessories from being bundled or packaged in a way that prohibits the customer from taking only the item desired. AB 1276 does, however, authorize a food facility to ask a drive-through customer, if the customer wants a

single-use foodware accessory in specified circumstances.

WHEREAS, a food facility using a third-party food delivery platform is required to list on its menu the availability of single-use foodware accessories and standard condiments and only provide those items when requested. The law excludes from these requirements correctional institutions, health care facilities, residential care facilities, and public and private school cafeterias.

WHEREAS, AB 1276 specifies that the first and second violations of the provisions result in a notice of violation, and any subsequent violation is an infraction punishable by a fine of \$25 for each day in violation, but not to exceed an annual total of \$300.

WHEREAS, a city, county, or city and county, on or before June 1, 2022, is required to authorize an enforcement agency to enforce the requirements established under AB 1276.

WHEREAS, Santa Clara County Recycling and Waste Reduction Commission informed the City that they do not currently anticipate that they will be in a position to assume enforcement responsibilities for AB 1276 on behalf of cities in the county.

WHEREAS, in order to comply with the enforcement requirements of AB 1276, the City Council of the City of Los Altos now wishes to adopt an ordinance adding Chapter 6.45 (Single-use Foodware Accessories and Condiments) to Title 6 (Health and Safety) of the Los Altos Municipal Code adopting by reference of Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the Public Resources Code prohibiting a food facility from providing any single-use foodware accessory or standard condiment unless requested by consumer, and authorizing City and County enforcement.

WHEREAS, Government Code Section 50022.1, et. seq., sets forth the procedures by which a city may adopt a state law by reference.

WHEREAS, the City will comply with the procedures set forth in Government Code Section 50022.1, et. seq., including holding a public hearing at the second reading, following notice requirements under Government Code Section 6066, and making available the entire language of the state law to be adopted by reference.

WHEREAS, The adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15308 (Actions by Regulatory Agencies for the Protection of the Environment) in that this Ordinance sets forth regulatory procedures for the protection of the environment including, more particularly, regulations prohibiting or limiting the use of foodware accessories and condiments that pose a substantial environmental threat for reasons set forth in this staff report. The adoption of this Ordinance does not involve construction activity or the relaxation of existing environmental standards, and none of the circumstances set forth in CEQA Guidelines Section 15300.2 applies.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE:

TITLE 6. HEALTH AND SAFETY

Chapter 6.45 SINGLE-USE FOODWARE ACCESSORIES AND CONDIMENTS

Section 6.45.010 Adding Chapter 6.45 (Single-Use Foodware Accessories and Condiments) to Title 6 (Health and Safety) of the Los Altos Municipal Code adopting by reference Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the California Public Resources Code prohibiting a food facility from providing any single-use foodware accessory or standard condiment unless requested by consumer and authorizing City and County enforcement and penalties as follows:

Section 6.45.020 Enforcement

A. The City Manager or the City Manager's designee has primary responsibility for the enforcement of this chapter. The City Manager or the City Manager's designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, investigating violations, issuing fines, and entering the premises of any food facility during business hours. Other City staff may assist with this enforcement responsibility by entering the premises of a food facility as part of their regular inspection functions and reporting any alleged violations to the City Manager or the City Manager's designee.

B. The County of Santa Clara and its agents are authorized to take any and all actions reasonable and necessary to enforce this chapter, including, but not limited to, investigating violations, issuing fines, and entering the premises of any food facility during business hours.

Section 6.45.030 Penalties

Pursuant to Public Resources Code Section 42272(b) as adopted by reference and incorporated herein, the first and second violations of Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the Public Resources Code shall result in a notice of violation, and any subsequent violation shall constitute an infraction punishable by a fine of twenty-five dollars (\$25) for each day in violation, but not to exceed three hundred dollars (\$300) annually.

Section 6.45.040 Severability

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

Section 6.45.050 Effective Date

Pursuant to Government Code Section 50022.3, notice of the Council meeting at which this Ordinance is scheduled to be adopted shall be published pursuant to Government Code Section 6066 in a newspaper of general circulation in or nearest to the City. Prior to the public hearing, the City Clerk shall publish notice of the hearing once a week for two successive weeks, with at least five days intervening between the publication dates, not counting such publication dates. The notice shall state the time and place of the hearing, and include a description of the purpose and subject matter of the ordinance. The period of notice commences upon the first day of publication and terminates at the end of the fourteenth day. A copy of this Ordinance and a copy of Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the Public Resources Code, being considered for adoption by reference, are on file with the City Clerk, and are open to public inspection, and the public notice shall state the same. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish a summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance, and Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the Public Resources Code, along with the names of those City Council members voting for and against this Ordinance or otherwise voting. This Ordinance shall become effective 30 days after its adoption.