



AGENDA REPORT SUMMARY

Meeting Date: March 28, 2023

Subject Single-use Foodware Accessories and Condiments Ordinance in Compliance with AB 1276: Introduce and waive further reading of a Single-use Foodware Accessories and Condiments Ordinance, in compliance with AB 1276, 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 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, and set a Public Hearing on April 11, 2023 for adoption of the Ordinance.

Prepared by: Tania Katbi, Sustainability Coordinator

Reviewed by: Aida Fairman, Director – Environmental Services and Utilities Dept.

Approved by: Gabriel Engeland, City Manager

Attachment:

1. Draft Ordinance 2023-XX

Initiated by:

City Staff

Previous Council Consideration:

N/A

Fiscal Impact:

AB 1276 imposes a state-mandated local program by creating a new infraction and imposing additional duties on local governing bodies. The City may incur costs for outreach, education, and enforcement of the law, as amended. By adopting an ordinance to enforce Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the Public Resources Code, the City will be authorized to collect fines allowed under the legislation. Fines begin after the second notice of violation and include a fine of \$25 for each day in violation, but not to exceed an annual total of \$300.

Reviewed By:

City Attorney

JH

Finance Director

JD



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Except for any collected fines following the second notice of violation there should be no fiscal impact to food facilities. There is a potential for cost savings to food facilities from not providing single-use foodware or condiments to all customers.

Environmental Review:

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.

Summary:

- On October 5, 2021, Governor Newsom signed Assembly Bill (“AB”) 1276 (Carillo) into law to prohibit a food facility from providing any single-use foodware accessory or standard condiment, as defined, to a consumer unless requested by the consumer.
- AB 1276, which amends Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the Public Resources Code, requires a city, county, or city and county, to authorize an enforcement agency to enforce the new requirements.
- Santa Clara County does not have plans at this time to enforce AB 1276 requirements in cities within the County, except for mobile food facilities.
- In order to enforce the new law, staff recommend adopting the state law by reference to ensure that the language in the City’s Municipal Code remains consistent with the state law as it is currently written, and as it may be amended in the future. This approach will reduce the number of times that the City must revisit and readopt amended state law language. There are additional procedural steps that the City must follow to adopt a state law by reference, as further described below.



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AB 1276 Summary

- AB 1276 is designed to reduce excess packaging and undesired condiments and utensils from being given to a customer when eating on premises or taking food to go.
- The law, as amended, is intended to give consumers more choices about single-use foodware accessories and condiments in order to reduce waste.
- The law prohibits single-use foodware accessories from being bundled or packaged in a way that prohibits the customer from taking only the item desired.
- It authorizes a food facility to ask a drive-through customer if the customer wants a single-use foodware accessory in specified circumstances.
- The law 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 to 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.

The main provisions of AB 1276 are summarized below:

1. A food facility is required to only provide single-use accessories to consumers upon request;
2. A food facility is required to avoid bundling of single-use accessories or condiments;
3. A food facility is required to only offer those single-use items needed to eat or prevent spillage of the ready-to-eat food at a drive-through as well as in a public use airport.
4. A third-party food delivery platform shall provide consumers with the option to request single-use accessories for ready-to-eat food;
5. A food facility that uses a third-party platform shall customize their menu with a list of available single-use accessories or condiments. Only those items chosen by the consumer



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will be delivered. If no single-use accessories or condiments are requested none will be provided;

6. Unwrapped, single-use foodware accessories that are self-serve, standard condiments that are self-serve, and/or bulk dispensed condiments may still be used; and
7. 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.

Ordinance Adopting State Law by Reference

In order to comply with AB 1276, the City must authorize an enforcement agency to enforce the provisions of this law. Staff propose that this be accomplished through adopting the entire state law (Attachment 1) by reference in the City's Municipal Code. In order to adopt the state law by reference the City must follow the specific procedures required under Government Code Section 50022.1, et. seq.

Government Code Section 50022.4 requires any penalties to be set out in full. The proposed ordinance adopts the entire law by reference, authorizes the City and County to enforce the ordinance, and sets forth in full the penalties for violating the ordinance, establishing 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.

Staff Recommendation:

1. Move to read the Ordinance by title only and waive the first reading beyond the title.
2. Introduce an Ordinance adding Chapter 6.45 (Single-Use Foodware Accessories and Condiments) to Title 6 (Health and Safety) of the Los Altos Municipal Code to adopt by reference 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 and penalties.



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3. Set a Public hearing on April 11, 2023, for the adoption of the Ordinance pursuant to Government Code Section 50022.3.