



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: May 2, 2022

Approved:

Date

05/05/22

SUBJECT: ORDINANCE AMENDING CHAPTER 9.10 OF THE SAN JOSE MUNICIPAL CODE (SOLID WASTE MANAGEMENT) RELATED TO LOCAL ENFORCEMENT OF STATEWIDE LIMITS ON SINGLE-USE FOODWARE ACCESSORIES AND CONDIMENTS

RECOMMENDATION

Approve an ordinance amending Chapter 9.10 of Title 9 of the San José Municipal Code to implement the requirements of Assembly Bill (AB) 1276 related to local enforcement of Statewide limits on single-use foodware accessories and condiments.

OUTCOME

Approval of this recommendation will amend the San José Municipal Code to implement the requirements of AB 1276 related to statewide limits on single-use foodware accessories and condiments and allow the City to enforce these requirements or authorize another agency to enforce them.

BACKGROUND

Chapter 9.10 of the San José Municipal Code allows the Environmental Services Department to implement solid waste collection programs to protect public health for residents and businesses. These programs include residential (Single Family Dwelling and Multi-Family Dwelling) and commercial solid waste collection and processing, construction and demolition debris, and solid waste enforcement.

AB 1276 (Carillo, Chapter 505, Statutes of 2021), expanded and revised an existing statute that limits the distribution of single-use plastic straws to upon-request by a consumer to apply to all single-use condiments and food service ware distributed by food facilities or third-party delivery platforms. AB 1276 also requires cities and counties, on or before June 1, 2022, to authorize an enforcement agency to enforce these requirements. Finally, the bill specified that the first and second violations of these provisions will 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.

ANALYSIS

Chapter 9.10 of the San José Municipal Code regulates the commercial and residential solid waste systems, which includes the collection of garbage, rubbish, and recyclable material, including the regulation of certain material types such as the City's ban on polystyrene foam disposable food service ware.

AB 1276 builds on the straws-upon-request law, AB 1884 (Calderon, Chapter 576, Statutes of 2018), to include more upon-request single-use food accessories (utensils, condiment cups/packets, straws, stirrers, splash sticks, etc.) and prohibits a food facility or a third-party food delivery platform from providing these accessories to consumers unless requested by the consumer. The bill 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. Finally, the bill specified that the first and second violations of these provisions will 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.

The County of Santa Clara Department of Environmental Health currently enforces the straws-upon-request law at full-service sit-down restaurants by taking in complaints. The typical response to these complaints includes having staff contact the restaurant via phone for education. If inspectors see violations during their normal duties, or they need to conduct a site visit because of the complaint, they document the violation on their existing inspection report. AB 1884 specified that the provisions of the statute would be enforced by the same officers authorized to enforce the California Retail Food Code, however, AB 1276 left it up to local governments to authorize an enforcement agency on or by June 1, 2022, to enforce the bill's requirements.

San José has been in discussion with the County of Santa Clara and other local jurisdictions regarding future enforcement of AB 1276. The County of Santa Clara is enforcing AB 1884, and it seemed a reasonable transition to expand into enforcing these requirements as well. The County of Santa Clara has not confirmed their ongoing plan regarding this enforcement. In the meantime, San José and other cities are taking responsibility for authorizing the enforcement agency effective June 1, 2022 and responding to complaints regarding entities within each jurisdiction. The volume of complaints is expected to be low. San José will enforce these requirements starting January 1, 2023, leading with education and outreach and focusing fines on repeat violators. Enforcement would be considered a routine complaint and not a proactive program. An increase in routine complaints may result in service-level and response time impacts. As the impact of these changes to Title 9 are understood, further consideration will be required to evaluate staffing and resources, and ongoing impacts to current service delivery.

Staff are conducting outreach with residents, food facilities, and third-party food delivery platforms to ensure they have knowledge of this state requirement.

Implementation of AB 1276 will further support the City's environmental initiatives to address source reduction, and more specifically, reduce single-use plastics and packaging. Staff plans to build on existing messaging related to the City's expanded polystyrene ban, provide additional information regarding the regulation on the City's website, and utilize existing resources through the exclusive commercial garbage and recycling hauler to assist with outreach to businesses by including information regarding this regulation in their newsletters and postcards.

Upon approval of the recommended action, the following updates will be reflected in the San José Municipal Code:

1. Authorize the City to enforce provisions of Assembly Bill 1276
2. In the alternative, allow the City to authorize another agency to enforce the requirements

Staff recommends adopting the proposed San José Municipal Code amendments to ensure compliance with state law. AB 1276 did not provide funding to local governments for local enforcement of the prohibition and requirements; therefore, staff recommends conducting enforcement through a complaint-based system. The schedule of fines will be updated in May 2022 to include the recommended fines in the statute.

CONCLUSION

Staff recommends that City Council approve the proposed amendments to the San José Municipal Code Chapter 9.10 to comply with AB 1276, which requires cities and counties to authorize an enforcement agency to enforce its requirements by June 1, 2022. Approval of proposed amendments will authorize the City to enforce AB 1276 or, in the alternative, authorize another jurisdiction or agency to enforce it at a later date. Finally, the proposed amendments provide Environmental Services Department's environmental inspectors with more resources to provide outreach and appropriately assess administrative citations, as needed.

EVALUATION AND FOLLOW-UP

As these requirements are implemented in 2022, further amendments may be needed. Therefore, staff may return to City Council to make further amendments as lessons are learned from the implementation of these requirements.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals.

HONORABLE MAYOR AND CITY COUNCIL

May 2, 2022

Subject: Ordinance Amending Chapter 9.10 of the San José Municipal Code (Solid Waste Management) related to Local Enforcement of Statewide Limits on Single-use Foodware Accessories and Condiments

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PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the May 17, 2022 City Council meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the Department of Planning, Building and Code Enforcement.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

Addition of fines in the San José Municipal Code could result in a minor increase in the number of administrative citations issued (an increase of less than ten citations annually) and associated revenue collected. Revenues collected as a result of this San José Municipal Code change will have no significant impact on the General Fund or Integrated Waste Management fund.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/
KERRIE ROMANOW
Director, Environmental Services

For questions, please contact Valerie Osmond, Deputy Director, Environmental Services Department, at (408) 535-8557.

Attachment A: Assembly Bill 1276 Legislative text

Assembly Bill No. 1276

CHAPTER 505

An act to amend Sections 42270 and 42271 of, to amend the heading of Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of, and to add Sections 42272 and 42273 to, the Public Resources Code, relating to solid waste.

[Approved by Governor October 5, 2021. Filed with Secretary of State October 5, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1276, Carrillo. Single-use foodware accessories and standard condiments.

Existing law prohibits a full-service restaurant, as specified, from providing single-use plastic straws, as defined, to consumers unless requested by the consumer, and places the duty to enforce this prohibition on specified state and local health and environmental health officers and their agents. Existing law specifies that the first and 2nd violations of these provisions result in a notice of violation, and any subsequent violation is an infraction punishable by a fine of \$25 for each day the full-service restaurant is in violation, but not to exceed an annual total of \$300.

This bill would instead prohibit a food facility from providing any single-use foodware accessory or standard condiment, as defined, to a consumer unless requested by the consumer, as provided. The bill would prohibit those items from being bundled or packaged in a way that prohibits the consumer from taking only the item desired. The bill would authorize 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. The bill would require 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, as provided. The bill would exclude from these requirements correctional institutions, health care facilities, residential care facilities, and public and private school cafeterias.

This bill would require a city, county, or city and county, on or before June 1, 2022, to authorize an enforcement agency to enforce these requirements. The bill would specify that the first and 2nd violations of these 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. By creating a new crime and imposing additional duties on local governing bodies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the Public Resources Code is amended to read:

CHAPTER 5.2. SINGLE-USE FOODWARE ACCESSORIES AND CONDIMENTS

SEC. 2. Section 42270 of the Public Resources Code is amended to read: 42270. For purposes of this chapter, the following definitions apply:

(a) "Consumer" has the same meaning as in Section 113757 of the Health and Safety Code.

(b) "Food facility" has the same meaning as in Section 113789 of the Health and Safety Code.

(c) "Ready-to-eat food" has the same meaning as in Section 113881 of the Health and Safety Code.

(d) "Single-use" means designed to be used once and then discarded, and not designed for repeated use and sanitizing.

(e) "Single-use foodware accessory" means all of the following single-use items provided alongside ready-to-eat food:

(1) Utensils, which is defined as forks, knives, spoons, and sporks.

(2) Chopsticks.

(3) Condiment cups and packets.

(4) Straws.

(5) Stirrers.

(6) Splash sticks.

(7) Cocktail sticks.

(f) "Standard condiment" means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes.

(g) "Third-party food delivery platform" has the same meaning as in Section 113930.5 of the Health and Safety Code.

SEC. 3. Section 42271 of the Public Resources Code is amended to read:

42271. (a) Except as provided in subdivisions (c) and (d), a food facility, for on-premises dining or when using a third-party food delivery platform,

shall not provide any single-use foodware accessory or standard condiment packaged for single use to a consumer unless the single-use foodware accessory or standard condiment is requested by the consumer.

(b) Single-use foodware accessories and standard condiments packaged for single use provided by food facilities for use by consumers shall not be bundled or packaged in a manner that prohibits a consumer from taking only the type of single-use foodware accessory or standard condiment desired without also having to take a different type of single-use foodware accessory or standard condiment.

(c) A food facility may ask a drive-through consumer if the consumer wants a single-use foodware accessory if the single-use foodware accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

(d) A food facility that is located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, may ask a walk-through consumer if the consumer wants a single-use foodware accessory if the single-use foodware accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

(e) (1) A third-party food delivery platform shall provide consumers with the option to request single-use foodware accessories or standard condiments from a food facility serving ready-to-eat food.

(2) If a food facility uses any third-party delivery platform for ready-to-eat food, the food facility shall customize its menu with a list of available single-use foodware accessories and standard condiments, and only those single-use foodware accessories or standard condiments selected by the consumer shall be provided by the food facility. If a consumer does not select any single-use foodware accessories or standard condiments, no single-use foodware accessory or standard condiment shall be provided by the food facility for delivery of ready-to-eat food.

(f) Nothing in this section shall prohibit a food facility from making unwrapped single-use foodware accessories available to a consumer using refillable self-service dispensers that dispense one item at a time to allow for single-use foodware accessories to be obtained.

(g) Nothing in this section shall prohibit a food facility from making standard condiments available to a consumer using refillable self-service dispensers to allow for standard condiments to be obtained. A food facility that offers standard condiments is encouraged to use bulk dispensers for the condiments rather than condiments packaged for single use.

(h) Nothing in this section shall prevent a city, county, city and county, or other local public agency from adopting and implementing an ordinance or rule that would further restrict a food facility or a third-party food delivery platform from providing single-use foodware accessories or standard condiments to a consumer.

(i) A food facility is encouraged, but not required, to take actions in addition to the requirements of this section that support a goal of reducing the use of and waste generated by all single-use food service products.

SEC. 4. Section 42272 is added to the Public Resources Code, to read: 42272. (a) On or before June 1, 2022, a city, county, or city and county shall authorize an enforcement agency to enforce this chapter.

(b) The first and second violations of this chapter 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.

SEC. 5. Section 42273 is added to the Public Resources Code, to read: 42273. This chapter does not apply to any of the following:

(a) Correctional institutions, which has the same meaning as in Section 7502 of the Penal Code.

(b) Health care facilities licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or facilities that are owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(c) Residential care facilities licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(d) Public and private school cafeterias, as referenced in paragraph (1) of subdivision (b) of Section 113789 of the Health and Safety Code.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.