

ORDINANCE NO. 2023-488

**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**

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:

Los Altos Municipal Code, Title 6, entitled HEALTH AND SAFETY, is amended by adding a new Chapter 6.45, Single-use Foodware Accessories and Condiments to read as follows:

“Chapter 6.45 SINGLE-USE FOODWARE ACCESSORIES AND CONDIMENTS

Section 6.45.010. Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the California Public Resources Code is herein adopted by reference and shall prohibit 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.

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 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 3. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.


SECTION 4. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on March 28, 2023, and was thereafter, at a regular meeting held on April 11, 2023 passed and adopted by the following vote:

AYES: Dailey, Fligor, Lee Eng, Meadows, Weinberg
NOES: None
ABSENT: None
ABSTAIN: None


Sally Meadows, Mayor

Attest:


Melissa Thurman, MMC
City Clerk

