

ORDINANCE NO. 1438

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ ADDING CHAPTER 8.27 (SINGLE-USE FOODWARE ACCESSORIES AND CONDIMENTS) TO TITLE 8 (HEALTH AND SAFETY) OF THE MARTINEZ MUNICIPAL CODE PROHIBITING A FOOD FACILITY FROM PROVIDING ANY SINGLE-USE FOODWARE ACCESSORY OR STANDARD CONDIMENT UNLESS REQUESTED BY CONSUMER AND AUTHORIZING CITY ENFORCEMENT AND PENALTIES

WHEREAS, in 2018, AB 1884 prohibited a full-service restaurant from providing single-use plastic straws to consumers unless requested by the consumer. The Bill directed local health and environmental health officers and their agents to enforce the plastic straw regulation;

WHEREAS, on October 5, 2021, Governor Newsom signed Assembly Bill (AB) 1276 into law prohibiting 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 consumer unless requested by the consumer;

WHEREAS, AB 1276 revised the state law by expanding the scope of AB 1884 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 to allow cities and counties to enforce the provisions;

WHEREAS, AB 1276 is designed to reduce excess packaging and undesired condiments and prohibits single-use foodware accessories from being bundled or packaged in a way that prohibits the consumer from taking only the item desired; and

WHEREAS, in order to comply with AB 1276, the City Council of the City of Martinez now wishes to adopt an ordinance adding Chapter 8.27 (Single-Use Foodware Accessories and Condiments) to Title 8 (Health and Safety) of the Martinez Municipal 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.

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

1. **SECTION 1. RECITALS.** The Recitals set forth above are true and correct and are incorporated into this Ordinance by this reference.
2. **SECTION 2. CEQA FINDING.** This proposed ordinance adding Chapter 8.27 (Single-Use Foodware Accessories and Condiments) to Title 8 (Health and Safety) of the Martinez Municipal Code, is not subject to CEQA because it does not involve exercise of a discretionary power under 14 CCR section 15060, subdivision (c)(1) as the ordinance is being adopted in response to a state mandate.

3. **SECTION 3. CODE ADDITION.** Chapter 8.27 of Title 8 of the Martinez Municipal Code is hereby added to read as follows:

Chapter 8.27 - SINGLE-USE FOODWARE ACCESSORIES AND CONDIMENTS

8.27.010 – Definitions.

For the purposes of this Chapter only, the following words and phrases shall have the meanings defined in this section unless the context clearly requires otherwise:

- A. **“Consumer”** means a person is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food facility, and does not offer the food for resale.
- B. **“Correctional Institution”** means any state prison, county jail, city jail, Division of Juvenile Justice facility, county- or city-operated juvenile facility, including juvenile halls, camps, or schools, or any other state or local correctional institution, including a court facility.
- C. **“Food Facility”** means any operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, regardless of whether the food is consumed on or off the premises or whether there is a charge for the food.
- D. **“Ready-to-eat food”** means food that is in a form that is edible without additional preparation to achieve food safety, is raw or partially cooked food of animal origin and the consumer is advised as such, or may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.
- E. **“Single-use”** means designed to be used once and then discarded, and not designed for repeated use and sanitizing.
- F. **“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.

- G. **“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, but not limited to, ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes.
- H. **“Third-party food delivery platform”** has the same meaning as in section 113930.5 of the Health and Safety Code.

8.27.020 – Food Facilities Shall Not Provide Single-Use Foodware Accessory or Condiment Package Unless Requested.

- A. Except as provided in (C) and (D), below, 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. 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.
- (1) 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.

8.27.030 – Exceptions.

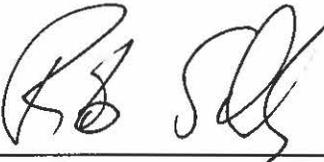
This chapter does not apply to any of the following:

- A. Correctional Institutions.
- B. Health care facilities licensed pursuant to Article 1 of Chapter 2 of Division 2 of the Health and Safety Code (commencing with section 1250), or facilities that are owned or operated by a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (commencing with Health & Safety Code section 1340).
- C. Residential care facilities licensed pursuant to Division 2 of the Health and Safety Code (commencing with section 1200).
- D. Public and private school cafeterias.

8.27.040 – Enforcement.

- A. The City Manager or the City Manager's designee has the primary responsibility for the enforcement of this chapter. The City Manager or the City Manager's designed 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. If any of those individuals specified in (A) above determine that a violation of this Chapter has occurred, he/she will issue a written warning notice to the operator of the food facility that a violation has occurred and the potential penalties that will apply for future violations
- C. The first and second violations of this Chapter shall result in a notice of violation. 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.
- 4. **SECTION 4. SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrase, or clauses be declared unconstitutional on their face or as applied.
- 5. **SECTION 5. EFFECTIVE DATE.** This ordinance shall become effective 30 days after the date of adoption.
- 6. **SECTION 6. POSTING.** The City Clerk shall cause this ordinance to be published and/or posted in accordance with Government Code section 36933.

APPROVED:


Rob Schroder, Mayor

ATTEST:



Kat Galileo, Assistant City Clerk

This ordinance was introduced on the 20th day of July, 2022, and adopted on the 14th day of September, 2022, by the following vote:

AYES: Councilmembers Mark Ross, Brianne Zorn, Debbie McKillop;
Vice Mayor Lara DeLaney, Mayor Rob Schroder

NOES: None

ABSTAIN: None

ABSENT: None



RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ