

ANALYSIS

This ordinance amends Chapter 12.86 of Title 12 – Environmental Protection – of the Los Angeles County Code, entitled "Plastic Straws and Stirrers Upon Request," and renames it "Single-Use Foodware Accessories Upon Request."

This ordinance will expand Chapter 12.86 to apply to all single-use foodware accessories, including all single-use plastic straws and stirrers, as well as other types of accessories such as single-use cutlery, napkins, chopsticks, condiment packets, beverage sleeves and lids, and non-plastic straws and stirrers. This ordinance prohibits a food facility from providing single-use foodware accessories to customers unless the customers request them. It permits a food facility to provide customers single-use food accessories at the customer's request and permits them to ask customers whether they would like to receive any single-use foodware accessories. It permits food facilities to make single-use foodware accessories available in a self-serve dispenser or station, with the exception of single-use plastic straws and stirrers. This ordinance also requires third-party, online food-ordering businesses to include options on their platforms for customers to affirmatively request single-use foodware accessories.

Enforcement of the new requirements of the ordinance will commence on November 15, 2021. The Directors of the Department of Public Works and the Department of Public Health will share the responsibility for enforcing this ordinance. For violations by food facilities, this ordinance authorizes fines of up to \$100 per day, up to a maximum of \$1,000 per year. For violations by third-party, online food-ordering businesses, this ordinance authorizes fines of up to \$100 for the first day of violation and \$200 for each additional day of violation.

RODRIGO A. CASTRO-SILVA
County Counsel



By

JULIA C. WEISSMAN
Senior Deputy County Counsel
Public Works Division

JCW:mv

Requested: 2/18/2021
Revised: 5/10/2021

ORDINANCE NO. _____

An ordinance amending Chapter 12.86 of Title 12 – Environmental Protection – of the Los Angeles County Code, to prohibit food facilities from providing single-use foodware accessories to customers unless requested by the customer, and to require third-party, online food-ordering businesses to include options on their platforms for customers to select only those single-use foodware accessories that they want.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 12.86 entitled "Single-Use Plastic Straws and Stirrers Upon Request" is hereby renamed "Single-Use Foodware Accessories Upon Request."

SECTION 2. Section 12.86.005 is hereby added as follows:

12.86.005 Findings.

A. Single-use foodware accessories, including straws, cutlery, chopsticks, condiment packets, cup lids, stirrers, spill plugs, napkins, and hot beverage sleeves are rarely recycled for a variety of reasons, including because of their small size, lack of content-labeling, and concerns with potential food contamination. As a result, they significantly contribute to waste in landfills and often end up as litter.

B. Single-use foodware accessories made of plastic are especially bad for the environment. They do not biodegrade, and they have a lifespan that likely lasts centuries. Plastics create an intractable waste-management problem as plastic accumulates in perpetuity in landfills and as litter on streets, infiltrating public drainage systems and accumulating in waterways.

C. Food facilities often automatically provide single-use foodware accessories to customers who may not want or need them, particularly when customers purchase food for take-out or delivery to be consumed in their homes.

D. Limiting the distribution of unwanted single-use foodware accessories by requiring food facilities to provide them only upon the request of a customer, and by requiring third-party, online food-ordering businesses to provide options for customers to select only those items they want, is a straightforward solution to reduce waste consisting of unused single-use foodware accessories, and will also result in cost savings to businesses.

SECTION 3. Section 12.86.010 is hereby amended to read as follows:

12.86.010 Definitions.

The following definitions apply to this Chapter:

A. "Condiment" has the meaning set forth in California Health and Safety Code section 113756; it includes such foods as ketchup, mustard, mayonnaise, sauerkraut, soy sauce, salsa, syrup, jam, jelly, salt, sugar, sugar substitute, cream, coffee creamer, pepper, chili-pepper or cheese topping. "Condiment" does not include an ingredient or component of a ready-to-eat food item that constitutes an integral part of that item even if such integral ingredient or component is packaged separately from the ready-to-eat food item.

B. "County" means the County of Los Angeles.

C. "County facility" means any building, structure, property, park or open space, that is owned, operated, managed or leased by the County for the purpose of providing County services or conducting County business.

AD. "Customer" means any natural person patronizing, a food-serving business as defined by this Chapter or such person's agent or caregiver.

~~B. "Food-serving business" shall mean any business located in the unincorporated area of the County of Los Angeles in a permanent or mobile location that sells food and/or beverages, including, but not limited to, bars, coffee shops, convenience stores, fast food restaurants, food carts, food trucks, juice bars, restaurants, and temporary food facilities such as those participating in fairs or events.~~

E. "Food facility" has the meaning set forth in California Health and Safety Code section 113789; it includes restaurants, bars, coffee shops, fast food restaurants, food carts, grocery stores, supermarkets, convenience stores, school cafeterias, hospitals and nursing facilities, snack bars, food trucks, juice bars, farmers markets, and temporary food facilities such as those participating in fairs or events. "Food facility" does not include a third-party, online food-ordering business.

F. "Grocery store" has the meaning set forth in California Health and Safety Code section 113948(c)(3); it means a store primarily engaged in the retail sale of canned foods, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry, and any area within the store, that is not separately owned or operated, where food is prepared or sold, including a bakery, deli, and meat and seafood counter.

G. "Online food-ordering platform" means the digital technology provided on a website or mobile application through which a customer can place an order for pick-up or delivery of ready-to-eat food. Online food-ordering platforms include such platforms operated directly by food facilities; operated by third-parties that place take-out orders with food facilities on behalf of customers and then deliver the food; and operated by third-parties that place orders with food facilities on behalf of customers without providing delivery service.

H. "Person" means any natural person, firm, corporation, partnership, limited liability company, or other organization or group, however organized.

I. "Ready-to-eat-food" has the meaning set forth in California Health and Safety Code section 113881; it includes food, including beverages, that may be consumed without additional preparation to achieve food safety.

J. "Self-serve dispenser or station" means any type of dispenser, container, counter, shelf, or other location that is accessible to customers of a food-serving business facility from at which such customers can independently access single-use plastic straws and single-use plastic stirrers, single-use foodware accessories.

K. "Single-use," in referring to a foodware accessory item, means that the item has been designed and constructed for one-time, one-person use, after which the item is meant to be discarded.

L. "Single-use foodware accessory" means a single-use foodware item that is provided alongside or with ready-to-eat food, including straws, stirrers, knives, forks, spoons, chopsticks, condiment packets, condiment containers, napkins, cup lids, spill

plugs, and hot beverage sleeves. "Single-use foodware accessory" does not include plates, cups, bowls, containers, wrappers, bags or other single-use foodware that is used for holding or containing ready-to-eat food while it is being delivered, transported, or consumed.

~~EM.~~ "Single-use plastic stirrer" means a ~~device~~foodware accessory item that is used to mix beverages, that is intended only for single-use, and that is made predominantly of plastic derived from either petroleum or a biologically-based polymer, such as corn or other plant sources. "Single-use plastic stirrer" includes compostable and biodegradable petroleum or biologically-based polymer stirrers, but does not include stirrers that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.

~~FN.~~ "Single-use plastic straw" means a tube that allows ~~an person~~an individual, through suction, to transfer a beverage, liquid, or semi-frozen liquid from its container into the ~~person~~individual's mouth, that is intended only for single-use, and that is made predominantly of plastic derived from either petroleum or a biologically-based polymer, such as corn or other plant sources. "Single-use plastic straw" includes compostable and biodegradable petroleum or biologically-based polymer straws, but does not include straws that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.

~~GO.~~ "Temporary food facility" means a temporary food facility, as defined in California Health and Safety Code section 113930, which is approved by the County Health Officer, ~~which~~and operates at an approved community event.

~~HP. Utensil" means a single-use plastic straw and/or a single-use plastic stirrer.~~ "Third-party, online food-ordering business" means a person that is not a food facility and that operates an online food-ordering platform for customers to order, for take-out or delivery, ready-to-eat food that is prepared or sold by food facilities.

SECTION 4. Section 12.86.020 is hereby amended to read as follows:

12.86.020 ~~Single-Use Plastic Straws and Single-Use Plastic Stirrers~~
Only Foodware Accessories Provided Only Upon Request by Customer.

The following requirements apply to food facilities that are located in the unincorporated area of the County or that are operated within a County facility:

A. No food facility ~~shall~~may automatically provide ~~a single-use plastic straw or single-use plastic stirrer~~single-use foodware accessories to any customers with their order of ready-to-eat food. ~~Nor shall any food-serving business make single-use plastic straws or single-use plastic stirrers available to customers from a self-serve dispenser. Food-serving businesses facilities may provide single-use plastic straws and/or single-use plastic stirrers~~foodware accessories to customers with their order of ready-to-eat food only if ~~so requested by the customers~~ request that they be provided such accessories.

~~B. With respect to food-serving businesses that, before the effective date of this Chapter, automatically provided single-use plastic straws or single-use plastic stirrers to customers with a beverage order and, after the effective date of this Chapter, elect to make these utensils available to customers upon request, such food-serving businesses must ask customers if they would like a single-use plastic straw or single-~~

~~use plastic stirrer, and then may provide the utensils only to customers who respond affirmatively.~~

~~CB.~~ Nothing in this Chapter ~~shall prohibits~~ a food-serving business facility that is providing ready-to-eat food to customers from providing asking the customers if they would like to be provided any single-use foodware accessories that the food facility makes available for customers. This Chapter does not prohibit a food facility from making available to customers single-use foodware accessories from a self-serve dispenser or station, with the exception of single-use plastic straws and single-use plastic stirrers. ~~to customers a single-use plastic straw or single-use plastic stirrer that is~~ Food facilities are prohibited from making single-use plastic straws and single-use plastic stirrers available to customers from a self-serve dispenser or station. Nothing in this Chapter prohibits a food facility from providing to customers single-use foodware accessories that are included as part of a product that is pre-packaged by the manufacturer, such as a juice box or pre-packaged salad.

C. A food facility that operates an online food-ordering platform for its customers to order ready-to-eat food for delivery or take-out may provide options on such platform to enable customers to select which single-use foodware accessories, if any, the customers may choose to have included with their order. Food facilities shall not provide any single-use foodware accessories to customers that order ready-to-eat food through their own online food-ordering platform unless those customers have requested such accessories, either through the online food-ordering platform or in person when picking up their order.

D. A food facility that prepares orders of ready-to-eat food for customers who have placed those orders through third-party, online food-ordering businesses shall not provide any single-use foodware accessories with the orders unless the customers have selected such single-use foodware accessories through options provided on the online food-ordering platform, in accordance with Section 12.86.025, or the customers have requested such accessories in person when picking up their order.

~~D.E.~~ Nothing in this Chapter shall be construed to require food facilities to provide single-use plastic straws or single-use plastic stirrers to customers foodware accessories to customers ordering ready-to-eat food. ~~Nor shall anything in this Chapter be construed to limit food-serving businesses in providing their customers with non-plastic utensils made from materials such as paper, sugar cane, bamboo, etc. Nor shall anything in this Chapter be construed to prohibit food-serving businesses from offering customers a choice between a single-use plastic straw or a single-use plastic stirrer and non-plastic alternatives made from materials such as paper, sugar cane, bamboo, etc.~~

F. Notwithstanding any other provision of this Chapter, food facilities may include single-use cup lids, spill plugs, and hot beverage sleeves with drive-thru and delivery orders of ready-to-eat food orders that include beverages, without a customer request, for safety reasons, including to avoid spillage.

G. If a food facility is operated within a County facility that is located in a city that has adopted an ordinance prohibiting food facilities from providing single-use foodware accessories except upon request, the city's ordinance shall apply, and this Chapter shall not apply, to the extent that the city's ordinance conflicts with this Chapter.

SECTION 5. Section 12.86.023 is hereby added as follows:

12.86.023 Exemption.

"Health facilities," as defined in section 1250 of the California Health and Safety Code, are exempt from the requirements of this Chapter with respect to food and beverages that the health facilities serve to their patients and residents. However, food facilities that are located within health facilities and that provide ready-to-eat food to employees or the general public, such as cafeterias and snack bars, are not exempt from the requirements of this Chapter.

SECTION 6. Section 12.86.025 is hereby added as follows:

12.86.025 Availability of Single-Use Accessories Through Third-Party, Online Food-Ordering Platforms.

A. Except as provided in subsection B, any third-party, online food-ordering business that conducts business in the unincorporated area of the County, either by picking up ready-to-eat food from a food facility located within the unincorporated area of the County for delivery to a customer, or by delivering ready-to-eat food to a customer at a location within the unincorporated area of the County, shall comply with the following requirements to enable customers to select which single-use foodware accessories, if any, the customers may choose to have included with their order:

1. Third-party, online food-ordering businesses must provide food facilities with the opportunity to specify which single-use foodware accessories, if any, the food facilities choose for customers to be offered on their menus appearing on the

food-ordering platforms, so that customers may select which accessories, if any, they choose to have included with their orders.

2. If a food facility chooses not to specify any single-use foodware accessories to be offered to customers on its menu appearing on the food-ordering platform, then the third-party, online food-ordering business shall post the following statement with such food facility's menu: "This restaurant has chosen not to include single-use foodware accessories on its online menu."

B. Third-party, online food-ordering businesses may, but are not required to, provide grocery stores with the opportunity to customize the menus appearing on the businesses' online food-ordering platforms in accordance with subsection A.1. However, neither a grocery store nor a third-party, online food-ordering business is permitted to provide a single-use foodware accessory to a customer unless the customer has requested it. If an online food-ordering platform does not include options for customers purchasing online from a grocery store to request single-use foodware accessories, then no single-use foodware accessories may be provided to such online customers.

SECTION 7. Section 12.86.030 is hereby amended to read as follows:

12.86.030 Enforcement and Penalty.

~~A. The Director of Public Health has responsibility for enforcement of this Chapter. The Director of Public Health is authorized to promulgate regulations and establish guidelines for implementing and enforcing the ordinance consistent with this Chapter.~~
Enforcement Authority: The Director of Public Works and the Director of Public

Health will enforce this Chapter. Both the Director of Public Works and the Director of Public Health, or their designees, are authorized to take any appropriate actions in the enforcement of this Chapter, including investigating and monitoring food facilities and third-party, online food-ordering businesses for compliance with this Chapter and taking administrative action in accordance with subsection C of this Section.

~~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 the food serving business is in violation, but not to exceed three hundred dollars (\$300) annually.~~Rules and Guidelines: The Director of Public Works, in conjunction with the Director of Public Health, may promulgate rules and establish guidelines for implementing and enforcing this Chapter. Any such rules or guidelines shall become effective when the Director of Public Works submits them to the Executive Office of the Los Angeles County Board of Supervisors. The Director of Public Works and the Director of Public Health shall post any such rules and guidelines in an easily accessible location on their websites and shall also provide copies to any person upon request.

~~C. Any person who is fined for violating this Chapter may, within thirty (30) days of receiving notice of such fine, appeal in writing to the Director of Public Health. The appeal shall include a statement as to why the person believes the fine should not be imposed, along with evidence in support of such statement. The Director of Public Health shall affirm, revise or revoke the fine, and this decision shall be final.~~Administrative Action: Administrative fines may be imposed as follows, subject to

the requirements of Sections 1.25.030 (Notice of violation), 1.25.040 (Administrative fines) and 1.25.050 (Imposition of administrative fines) of the Los Angeles County Code:

1. Before November 15, 2021, the Director of Public Works, in conjunction with the Director of Public Health, shall enforce only the requirements of Section 12.86.020.A that prohibit a food facility from providing a single-use plastic straw or single-use plastic stirrer to a customer without the customer's request and from providing a single-use plastic straw or single-use plastic stirrer to a customer in a self-serve dispenser or station. Before November 15, 2021, the first and second violations of the specific provisions of this Chapter that are referenced in this subsection, exclusively, shall result in a written warning notice regarding the violation, and any subsequent violation occurring before November 15, 2021, is considered an infraction punishable by a fine of twenty-five dollars (\$25) for each day that the food facility is in violation, but not to exceed a total of three hundred dollars (\$300).

2. Commencing on November 15, 2021, any violation of this Chapter is considered an infraction. The Director of Public Works and the Director of Public Health each is authorized to designate enforcement officers who, upon determining that a violation of this Chapter has occurred, may issue a notice of violation in accordance with Section 1.25.030 of this Code and a notice of administrative fine in accordance with Section 1.25.050 of this Code. Violations are punishable by fines as follows:

a. A violation by a food facility shall be punishable by a fine of up to one-hundred dollars (\$100) for each day of violation, up to a maximum fine of one-thousand dollars (\$1,000) per year.

b. A violation by third-party, online food-ordering business shall be punishable by a fine of up to one-hundred dollars (\$100) for the first day of violation and up to two-hundred dollars (\$200) for each additional day of violation.

D. Administrative Appeals: Any person served with a notice of administrative fine in accordance with subsection C of this Chapter and Section 1.25.050.A of this Code may, within thirty (30) days of receiving such notice, appeal the notice of administrative fine and/or the notice of violation upon which the notice of administrative fine is based, by submitting an appeal. In the absence of a submitted appeal, the notice of administrative fine shall be final. Any submitted appeal must include a statement as to why the fine should not be imposed or why the amount of the fine should be reduced, along with evidence in support of such statement. The Director of Public Works or the Director of Public Health, as the case may be, will, in their discretion, either affirm, revise, or revoke the administrative fine, and that decision will be final.

[CHP1286JWCC]