

DATE: April 9, 2021

TO: The Honorable Mitch O’Farrell, Chair
The Honorable Mark Ridley-Thomas, Member
The Honorable Paul Koretz, Member
The Honorable Kevin De Leon, Member
The Honorable Paul Krekorian, Member
Energy, Climate Change, Environmental Justice, and River Committee

FROM: Enrique C. Zaldivar, Director and General Manager
LA Sanitation and the Environment

Traci J. Minamide

**SUBJECT: RESPONSE TO COUNCIL MOTION 21-0064: DISPOSABLE
FOODWARE ACCESSORIES UPON REQUEST**

Recommendations for Council Action:

In response to the Los Angeles City Council Motion 21-0064 (Motion), LA Sanitation and Environment (LASAN) prepared a Notice of Exemption and a Draft Environmental Analysis, both of which are attached. LASAN hereby recommending the Los Angeles City Council to:

1. The City Council determines that this project is exempt from CEQA under Sections 15061(b)(3), 15307 and 15308 of the CEQA guidelines, and that no exceptions to the exemptions under CEQA Guidelines Section 15300.2 exist, as more fully described in the Notice of Exemption (NOE) and accompanying Environmental Analysis report submitted by LASAN in the Council File for this action;
2. Approve the Disposable Foodware Accessories on Request Ordinance provided by the City Attorney. The Disposable Foodware Accessories Ordinance will not cause any significant environmental impact;
3. Direct LASAN to prepare an outreach program to educate consumers and businesses about the Disposable Foodware Accessories on Request Ordinance;
4. Direct LASAN to develop and mail written information about the Foodware Accessories on Request Ordinance to food and beverage facilities operating in Los Angeles;
5. Direct LASAN to develop a “Frequently Asked Questions” document about the Disposable Foodware Accessories on Request Ordinance and provide this to LASAN’s Customer Care Center and City of Los Angeles 311 operators;
6. Direct LASAN to host meetings for all City Departments that have on-site food and beverage facilities and/or host events on City property at which vendors provide food and beverages, so that these City Departments can revise their leases and event agreements/guidelines/policies as necessary to conform with the Disposable Foodware Accessories Upon Request Ordinance;

7. Direct LASAN to begin complaint-driven enforcement of this ordinance effective January 01, 2022. Written notices will be issued for first and second violations. An administrative fine of \$25 for a third violation and each subsequent violation. The Administrative fine of \$25 shall be imposed for each day the Food or Beverage Facility or Third-party Food Delivery Service is in violation, but shall not exceed \$300 per calendar year;
8. Direct LASAN to report back in 6-months regarding compliance with the Ordinance, the efficacy of fines and determine if fines should be increased, and if the annual cap on fines should be removed;
9. Request the City Attorney to develop standard on-request language for incorporation into City leases and event agreements/guidelines/policies.

Background:

The usage of single-use disposable plates, cups and cutlery soared during the COVID-19 pandemic due in part to guidelines provided by the Centers for Disease Control and Prevention (CDC) and State public health officials. The CDC and Public health experts believed that the SARS CoV-2, the virus that causes COVID-19, spread from one individual to another through contaminated surfaces. The CDC and California officials recommended that restaurants and bars use disposable single-use utensils and cups for dine-in and take-out to minimize the risk of transmission of COVID-19. Unfortunately, this recommendation drove an increase in plastic pollution. Today with more data, scientists agree that COVID-19 is primarily transmitted from close person-to-person contact through large respiratory droplets expelled when people breathe, talk or cough.

Furthermore, there is no evidence to prove that single use disposable utensils are superior to reusable utensils in preventing the transmission of COVID-19. To the contrary it has been shown that the virus remained infectious the longest amount of time on plastics versus other surfaces.

Discussion:

Foodware Accessories

For purposes of this discussion and Ordinance, “foodware accessories” includes utensils, condiment packets/containers, disposable plastic drinking straws and all other single-use straws, stirrers, splash sticks, cocktail sticks, napkins, wet-wipes, cup lids, cup sleeves, and beverage trays designed for single-use prepared foods and beverages.

These accessories are in ubiquitous use in modern society. Research indicates that in 2016, 561 billion food service disposable items were used in the US; these items became a total of 4.9 million tons of waste, which represented an estimated 1.9% of the overall municipal solid waste stream.

The COVID-19 pandemic has increased reliance on food delivery and takeout and thereby increased the use of foodware accessories. The amount of accessory items that are wasted has skyrocketed by an estimated 250-300% since the beginning of the pandemic, per the International Waste Association.

Research indicates that a majority - approximately 82% - of take-out or delivery meals are consumed at a home and 16% are consumed at the workplace, where reusable cutlery is typically available, or could be. Many restaurants routinely provide accessories, whether or not customers have requested them, and few query customers as to actual need.

Environmental Impacts of Disposable Foodware Accessories

Single-use foodware accessories have a negative effect on the environment, whether they are disposed of as trash or littered.

A majority of these items are disposed in a landfill. There, some can potentially leach chemicals that can contaminate soil and ground water. According to Columbia University, the United States generated 33.6 million tons of plastic “waste” in 2014, with only nine and half percent (9.5%) of it being recycled.

When littered, accessories enter the environment where they become visual blight on our streets and waterways, and can harm ecosystems and the wildlife that inhabit them. Through littering, plastic is transported from land by wind or runoff to waterways or storm drain systems, and eventually to the ocean. An estimated 165 million tons of plastic litter is in the ocean, with 8.8 million more tons entering the ocean annually; an estimated 80 - 90% of all ocean plastic originated on land. If current plastic usage trends continue, the United Nations estimates that by weight, there will be more plastic litter than fish in the world’s oceans by 2050.

Coastal Cleanup Month data shows that in September 2020 in Los Angeles County, volunteers collected over 40,000 pieces of trash totaling 4,320 pounds. The data showed an increase in food delivery and take-out items, with foodware accessories the fourth most commonly found item and takeout containers the fifth.

In the environment, plastics (even “bio-plastics” or “compostable plastics”) do not break down, but instead break into smaller pieces called “micro-plastics,” which are often mistaken for food by marine life. This marine life often become poisoned or starved from ingesting these micro-plastics, or become entangled in plastic debris. These plastics also pose a threat to marine life by leaching chemicals into the water.

Recyclability of Disposable Foodware Accessories

Some single-use foodware accessories such as plastic utensils, straws, lids, stirrers, cocktail sticks, and splash sticks, are often made from polypropylene (#5- PP) or polystyrene (#6- PS) plastics. They are theoretically recyclable, but in practice are not. Due to their small size, these items fall through or off processing equipment at automated Materials Recovery Facilities (MRFS), which Los Angeles uses.

Accessories may also be made from “bio plastics” or “compostable plastics.” These plastics are not accepted by the MRFs used by Los Angeles. Additionally, though theoretically compostable, the commercial composting facilities queried by LASAN consider bio plastics to be contaminants, because they do not break down as quickly as other materials, and must be

separated or screened. Due to the economics, bio plastic items delivered to these facilities are discarded as trash. Fillable sauce cups are too small for MRF equipment.

Most cup sleeves and cup/beverage trays are made of paper. These are theoretically recyclable, but due to their small size (i.e., sleeves) will likely not be captured at MRFs. Beverage trays that are made pulped paper are less valuable/desirable than paper products that are made of longer fibers (including beverage trays).

Packets for wet/perishable condiments such as ketchup, mustard, coffee creamer, or soy sauce may consist of multiple layers of materials (such as plastic and [aluminum] foil), which are difficult to separate – as they may be fused together. Their small size means they typically would not be captured at a MRF. Even those made of one type of material are not desirable or valuable and would cost more to process than could be earned from their sale as a commodity.

Paper packets are often used for salt, pepper, and sugar; this paper is recyclable but the small packet size generally precludes this from happening. Cheese and peppers are often provided in foil or plastic packets.

Paper napkins are made of a specific fiber type and are typically soiled with food and therefore are not processed at MRFs. The napkins could be composted; however, the composting infrastructure is currently not available and needs to be developed.

Wet wipes are typically packaged in foil wrappers. The wipes, whether used or new, cannot be recycled through the curbside program; the wrappers are too small to guarantee they will be recycled. Many of these items are likely never used (“zero-used”) and are immediately disposed as trash.

Third-Party Delivery Services / Online Platforms / Virtual Restaurants

LASAN has conducted an Internet search to identify third-party meal delivery services, which are also online meal ordering platforms that are operating in Los Angeles. These include well-known businesses such as Caviar, ChowNow, DoorDash, Grubhub, Postmates, Seamless, and Uber Eats. Instacart is a grocery store pickup/delivery service; the Ordinance is applicable to this business because grocery stores sell prepared food, including prepackaged food items that may include utensils, condiments and napkins. LASAN has also contacted the Office of Finance to identify all third-party delivery services.

In addition, LASAN has contacted Los Angeles County Department of Public Health, which licenses and inspects food/beverage facilities, including virtual restaurants, to ensure that it has the most up-to-date list of such facilities. An informational flyer will be mailed to all such facilities.

Disabled Community

On April 7 of this year, LASAN staff conferred with the Los Angeles Department on Disability regarding the Motion and Ordinance. LASAN plans to continue engaging the local community leaders/organizations through the Department of Disability. It is worth noting that in 2018, San Francisco passed the Single-Use FoodWare Plastics, Toxics, and Litter Reduction Ordinance.

The Ordinance includes the requirement that any foodware accessories, which include utensils, straws, stirrers, lids, napkins etc., can only be distributed upon “a consumer's specific request for such items, or in a self-service area or dispenser” and this applies not only to restaurants and other food establishments but also to food service delivery. Its staff informed LASAN that their Ordinance had no impact on their disabled community.

Small Business Commission

The City Attorney’s Office has consulted with members of the City’s Small Business Commission.

Exemptions

Licensed Health Facilities, as defined in Section 1250 of the California Health and Safety Code, and Residential Care Facilities for the Elderly, as defined in Section 1569.2 of the California Health and Safety Code, are exempt from the requirements of the Ordinance.

Phased Approach

As with the Straws-on-Request Ordinance (No. 186028: https://clkrep.lacity.org/online/docs/2018/18-0053_ORD_186028_04-21-2019.pdf), the Disposable Foodware Accessories Ordinance will be phased in, as follows:

Phase 1: Applicable to food and beverage facilities with more than 26 employees and third-party food delivery services with an online ordering platform.
Effective beginning on November 15, 2021.

Phase 2: Applicable to all food and beverage facilities.
Effective beginning on April 22, 2022.

A phase approach will provide sufficient time for food and beverage facilities to train their employees.

The City will undertake enforcement activities starting January 01, 2022.

Statewide Legislation

Assembly Bill 1276 (Carrillo and Lorena Gonzalez) has been introduced in the California legislature to prohibit full-service restaurants from providing single-use food accessories and service ware, except on customer request, throughout the State of California. The proposed Project would be in compliance with AB 1276. Link: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1276

Education and Outreach

LASAN will launch an education and outreach campaign similar in nature to that for the Straws-on-Request Ordinance. The campaign will include, but not be limited to, one or more press events; contact with all major “fast food” restaurants; contact with all third-party delivery/online ordering platform services and virtual kitchens operating in Los Angeles; contact with restaurant industry associations representing Los Angeles food and beverage facilities; development and mailing of an informational document to all food/beverage facilities operating in Los Angeles,

with the document designed to also serve as a customer advisory. LASAN plans to engage the local community leaders/organizations through the Department of Disability and participate in the 2021 Abilities Expo in Los Angeles in October.

Since the ordinance applies to the entire City of Los Angeles, LASAN plans to send informational emails to all City employees; conferring/meeting with City Departments that lease space to food/beverage facilities and/or permit/host/organize/coordinate events on City property at which vendors provide food and beverages, so that these City Departments can revise their leases and event agreements/guidelines/policies, as necessary or applicable, to conform with the Disposable Foodware Accessories On Request Ordinance. The City Attorney will be asked to assist by developing standardized language for leases and event agreements.

Benefits of an On-Request Policy for Businesses

Moving to an on-request model will reduce waste and costs to food and beverage businesses. Additionally, decreased use of these accessories will reduce the amount that is littered and be of direct benefit to Environmental Justice communities, which disproportionately bear the burden of litter – including that portion derived from disposable items/foodware accessories. Restaurants in cities with equivalent on-request ordinances have reported as much as 90% waste reduction, which in turn can represent potential savings through reduced waste (trash) services.

Benefits of an On-Request Policy for Environmental Justice Communities

Adoption of a policy that will help reduce the pointless waste of disposable accessories comports with the City's goals to reduce waste, increase energy efficiency, promote equity and environmental justice, address the impacts of climate change and advance a just transition toward more circular, equitable and regenerative economy.

Specifics of Council Motion:

I THEREFORE MOVE that the City Council request the City Attorney, in consultation with the Small Business Commission, to draft a Foodware Accessories Upon Request ordinance that would require restaurants and other food service providers, including virtual restaurants (also known as cloud or ghost kitchens) to provide all disposable foodware accessories, including but not limited to straws, utensils, condiments, napkins etc., only upon the request of the customer, and to require third party food delivery companies and other online platforms for ordering prepared meals to enact an "opt-in" model for foodware accessories across all digital platforms and applications, using the City's current Disposable Plastic Drinking Straws ordinance as an enforcement model.

Conclusion:

In summary, the proliferation of foodware accessories is the result of our convenience-driven society and Americans' predilection for eating meals away from home; but fundamentally, disposable accessories are a bad habit. They are offered by food and beverage facilities as a service to their customers, regardless of need. Per available research, few customers actually use the accessories, few customers remember to advise restaurants/meal ordering services that they do not need accessories, and restaurants fail to ask.

Consumers and businesses adapted to the ban on single-use/disposable plastic bags and will provide equally adept with an on-request Ordinance pertaining to disposable foodware accessories. This is nothing more than a new habit – that will be reinforced by this Ordinance. New habits such as this are critical to achieving zero waste.