

ORDINANCE NO. _____

An ordinance amending Article 3 of Chapter XIX of the Los Angeles Municipal Code to regulate the use of disposable foodware accessories.

WHEREAS, in the United States billions of unused single-use foodware accessories, including utensils, straws, stirrers, and condiment packets are tossed away annually;

WHEREAS, this trash clogs landfills, pollutes our streets and waterways, and adds to the global glut of non-recyclable plastic production;

WHEREAS, disposable, single-use foodware accessories and packaging are a major contributor to greenhouse gas emissions;

WHEREAS, the City of Los Angeles has a goal of achieving 90 percent diversion of solid waste from landfill by 2025, 95 percent by 2035, and zero trash to landfills by 2050;

WHEREAS, the City of Los Angeles Green New Deal sets targets of 50 percent reduction in greenhouse gas emissions by 2025;

WHEREAS, an on-request ordinance for foodware accessories will help restaurants and municipalities save money by using less resources and producing less waste;

WHEREAS, operators of food and beverage facilities such as restaurants have reported significant waste source reduction with on-request policies leading to as much as 90 percent waste reduction, which in turn also has an economic savings for food service providers;

WHEREAS, disposable, single-use foodware accessories, such as utensils, straws, stirrers, and condiment packets contribute to the eight million tons of plastic pollution that enter the ocean, while also contributing to the litter in our communities and in the waste stream that disproportionately burdens our environmental justice communities;

WHEREAS, pre-packaged foods that include disposable, single-use foodware accessories are a source of waste as well;

WHEREAS, single-use disposable foodware accessories are not recyclable at the City contracted Material Recovery Facilities or compostable in any of the City Green Material Processing Facilities;

WHEREAS, the City of Los Angeles seeks to address the environmental concerns by reducing the amount of plastic waste entering our oceans or impacting our communities; and

WHEREAS, reducing waste of single-use disposables fits well into 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 a more circular, equitable, and regenerative economy.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Sec. 1. Article 3 of Chapter XIX of the Los Angeles Municipal Code is retitled and amended in its entirety to read as follows:

ARTICLE 3

DISPOSABLE FOODWARE ACCESSORIES AND PLASTIC DRINKING STRAWS

SEC. 196.01. DEFINITIONS.

The following definitions apply to this article:

- A. **City** means the City of Los Angeles.
- B. **Condiment** means relishes, spices, sauces, confections, or a seasoning that requires no additional preparation and that is used on a Prepared Food or Beverage, including, but not limited to, ketchup, mustard, mayonnaise, barbecue sauce, dressings, sauerkraut, salsa, soy sauce, wasabi, ginger, hot sauce, grated cheese, syrup, jam, jelly, butter, salt, sugar, sugar substitutes, cream, creamer, pepper, or chile pepper. "Condiment" does not include an ingredient or component that is an integral part of the menu item, but that a Food or Beverage Facility packages separately when preparing the item for a Take-out Customer or Delivery Customer.
- C. **Condiment Packets** mean any packaged Condiments, including, but not limited to, Condiments in packets, cups, or other containers for Condiments that are sealed or resealable and intended for single-use.
- D. **Customer** means a Person, the Person's agent, or the Person's caregiver.
- E. **Delivery Customer** means a Customer who purchases a Prepared Food or Beverage from a Food or Beverage Facility or Third-party Food Delivery Service and

has the Prepared Food or Beverage delivered to them by a Food or Beverage Facility or Third-party Food Delivery Service.

F. **Designated Administrative Agency (DAA)** means the Department of Public Works, Bureau of Sanitation (LA Sanitation & Environment).

G. **Dine-in Customer** means a Customer who purchases Prepared Food or Beverages at a Food or Beverage Facility and consumes it on the premises of the Food or Beverage Facility.

H. **Disposable** means designed to be used once and then discarded, and not designed for repeated use and sanitizing.

I. **Disposable Foodware Accessory** means any type of Disposable item that accompanies a Prepared Food or Beverage served in Disposable plates, containers, or cups. A Disposable Item includes, but is not limited to, Utensils, Condiment Packets, Disposable Plastic Drinking Straws and all other Disposable straws, stirrers, splash sticks, cocktail sticks, toothpicks, napkins, wet-wipes, cup lids, cup sleeves, and beverage trays.

J. **Disposable Plastic Drinking Straw** means a thin, hollow tube for sucking a liquid or semi-liquid substance that constitutes Prepared Food or Beverages, which is designed for a single-use and made from fossil fuel based polymers, including, but not limited to, high-density polyethylene, low-density polyethylene, polyethylene terephthalate, polystyrene, polypropylene, polyvinyl chloride, polycarbonate that can be molded or blown into shape while soft and then set into a rigid or slightly elastic form, and any straw made from or labeled "bioplastic/compostable/poly-lactic acid (PLA)."

K. **Drive-through Customer** means a Customer who purchases Prepared Food or Beverages at a Food or Beverage Facility and is provided the Prepared Food and/or Beverages without leaving their vehicle.

L. **Food or Beverage Facility** means a facility located in the City that sells or otherwise provides Prepared Food or Beverages for consumption on or off its premises, and includes, but is not limited to, a shop, sales outlet, restaurant, bar, pub, coffee shop, coffee stand, juice and/or smoothie bar, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, farmers market, theater, mobile food truck, roadside stand, kiosks, carts, or a Vendor (as defined in Section 42.13 in the Los Angeles Municipal Code or any successor provision) or any organization, group, or individual that regularly provides Prepared Food or Beverages as part of its service.

M. **Large Food or Beverage Facility** means a Food or Beverage Facility with more than 26 employees. If the Food or Beverage Facility is part of a Statewide or National Food or Beverage Vendor, the employee count shall include all employees of that chain.

N. **Online Order** means an order placed by a Take-out Customer or Delivery Customer through an Online Ordering Platform through which the Customer can place an order for pick-up or delivery of a Prepared Food or Beverage. A platform includes one operated directly by the Food or Beverage Facility or Third-party Food Delivery Service, including a telephone order, for pick-up or delivery within the City.

O. **Online Ordering Platform** means the digital technology provided on a website or mobile application through which a Customer makes an Online Order.

P. **Operator** means any Person in control of, or having the responsibility for, the operation of a Food or Beverage Facility and/or Third-party Food Delivery Service, including, but not limited to, any owner of the Food or Beverage Facility and/or Third-party Food Delivery Service.

Q. **Person** means a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, or organization, or the manager, lessee, agent, servant, office, or employee of any of them.

R. **Prepared Food or Beverage** means foods or beverages which are prepared by cooking, chopping, slicing, mixing, freezing, squeezing, brewing, boiling, steeping, pouring, or other processing and that require no further preparation by the customer before consumption. "Prepared Food or Beverage" does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, or raw uncooked meat products.

S. **Request** means any reasonable affirmation of the Customer's intent to procure Disposable Foodware Accessories and is not limited to a verbal Request.

T. **Statewide or National Food or Beverage Vendor** means any Food or Beverage Facility located in the City that is part of a chain of franchised or corporate-owned Food or Beverage Facilities located in the City and in more than one other jurisdiction outside of the City.

U. **Take-out Customer** means a Customer who purchases Prepared Food or Beverages from a Food or Beverage Facility or Third-party Food Delivery Service and consumes it off the premises of the Food or Beverage Facility.

V. **Third-party Food Delivery Service** means any website, mobile application, or other internet service that offers or arranges for the sale of Prepared Food or Beverages prepared by, and the delivery or pick-up of Prepared Food or Beverages from no fewer than 20 Food or Beverage Facilities that are each owned and operated by different persons.

W. **Utensil** means a fork, spoon, spork, knife, chopstick, or other implement used to serve a Person, or to eat food.

SEC. 196.02. REGULATION OF DISTRIBUTION OF DISPOSABLE FOODWARE ACCESSORIES AND DISPOSABLE PLASTIC STRAWS IN THE CITY OF LOS ANGELES.

A. Beginning April 22, 2019, a Large Food or Beverage Facility shall display on their premises advisory notices informing Customers about the Disposable Plastic Drinking Straws Ordinance and the environmental impact of Disposable Plastic Drinking Straws. A Large Food or Beverage facility shall be prohibited from having self-serve/self-service Disposable Plastic Drinking Straw dispensers, and from providing or offering a Disposable Plastic Drinking Straw to a Dine-in Customer or Take-out Customer, except upon Customer Request. A Large Food or Beverage Facility shall be permitted to ask a Drive-through Customer or Delivery Customer if the Customer wants a Disposable Plastic Drinking Straw, but shall be prohibited from providing a Disposable Plastic Drinking Straw to a Drive-through Customer and Delivery Customer, except upon Customer Request.

B. Beginning October 1, 2019, all other Food or Beverage Facilities shall comply with the requirements of Section 196.02.A.

C. Beginning November 15, 2021, a Large Food or Beverage Facility shall:

1. Display on its premises advisory notices informing Customers about the Disposable Foodware Accessories Ordinance and the environmental impact of Disposable Foodware Accessories;

2. Not provide self-serve/self-service Disposable Foodware Accessories dispensers, or provide or offer Disposable Foodware Accessories to a Dine-in Customer or Take-out Customer, except upon Customer Request;

3. Not provide any Disposable Foodware Accessories to a Drive-through Customer, Take-out Customer, or Delivery Customer without a Customer Request, but may ask a Drive-through Customer or Delivery Customer if the Customer wants any Disposal Foodware Accessories; and

4. Choose whether to provide specific Disposable Foodware Accessories to a Drive-Through, Take-out, or Delivery Customer to prevent spills or for safe transport or delivery of a Prepared Food or Beverage, such as cup lids, cup sleeves, and beverage trays, even without a Customer Request. A Customer Request shall not be necessary for a Drive-through Customer, Take-out Customer, or Delivery Customer to receive without a Request a cup sleeve if the Customer orders no more than one hot beverage, or a beverage tray if the Customer orders more than one beverage.

D. Beginning November 15, 2021, a Large Food or Beverage Facility with an Online Ordering Platform or using a Third-party Food Delivery Service with an Online

Ordering Platform, and a Third-party Food Delivery Service with an Online Ordering Platform shall:

1. Identify the available Disposable Foodware Accessories from the Food or Beverage Facility that Customers may Request in an Online Order;
2. Include on any Online Ordering Platform an “opt-in” option for a Customer placing an Online Order to Request Disposable Foodware Accessories from available Disposable Foodware Accessories as part of the Customer’s Online Order;
3. Not provide Disposable Foodware Accessories to any Customer who does not affirmatively “opt-in” to Request Disposable Foodware Accessories as part of a pick-up or delivery of Online Order; and
4. Choose whether to provide specific Disposable Foodware Accessories to a Customer who placed an Online Order to prevent spills or for safe delivery of a Prepared Food or Beverage, such as cup lids, cup sleeves, and beverage trays, even without Customer Request. A Drive-through Customer, Take-out Customer, or Delivery Customer may receive without a Request a cup sleeve if the Customer orders no more than one hot beverage, or a beverage tray if the Customer orders more than one beverage.

E. Beginning April 22, 2022, all other Food or Beverage Facilities shall comply with the requirements of Section 196.02.C and 196.02.D.

F. Nothing in this article shall prohibit a Food or Beverage Facility or Third-party Food Delivery Service from providing a Disposable Plastic Drinking Straw or other Disposable straw that is included as part of a product that is pre-packaged by a manufacturer outside the City, such as a juice box.

SEC. 196.03. EXEMPTIONS.

A. Health Facilities, as defined in Section 1250 of the California Health and Safety Code, shall be exempt from the requirements of this article.

B. Residential Care Facilities for the Elderly, as defined in Section 1569.2 of the California Health and Safety Code, shall be exempt from the requirements of this article.

SEC. 196.04. ENFORCEMENT.

A. The DAA is authorized to promulgate rules and regulations for the implementation and enforcement of this article, consistent with the provisions herein. The DAA is authorized to take actions reasonable and necessary to enforce this article, including, but not limited to, receiving and responding to complaints, investigating

violations, issuing fines, and entering the premises of any Food or Beverage Facility during business hours.

B. Enforcement of the requirements of Section 196.02.A and 196.02.B of this article shall commence on October 1, 2019. Enforcement of all other requirements of this article shall commence on January 1, 2022, or six months after the effective date of this ordinance, whichever is later.

C. Written notice of a violation of this article shall be served, by First Class mail, on the Operator of the Food or Beverage Facility or Third-party Food Delivery Service.

D. A Food or Beverage Facility and Third-party Food Delivery Service shall be subject to the following:

1. A written notice for a first and second violation.

2. 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.

E. An administrative fine shall be due and payable to the City within 30 calendar days from the date the written notice of violation is served. Failure to timely pay a fine will result in the assessment of a late fee, assessed daily at a rate of 7 percent per annum of the outstanding amount of the fine and late fees, if any. The City may collect any unpaid fine, including the late fee, by means of a civil action, injunctive relief, specific performance and the recordation of a lien against real property in accordance with applicable law. All fines collected pursuant to this article shall be deposited into the Citywide Recycling Trust Fund (CRTF) of the Department of Public Works to assist the department with its costs of implementing and enforcing the requirements of this article.

F. An Operator who receives a written notice of violation pursuant to this article may request an administrative review of the accuracy of the violation determination by filing a signed, written notice of appeal with the Director of the Bureau of Sanitation, or his/her designee, no later than 30 days from the date the notice of violation was served. The appeal must include all facts supporting the appeal and any supporting documentation, including copies of all photos, statements and other documents that the appellant wishes to be considered in connection with the appeal. The Director of the Bureau of Sanitation, or his/her designee, may sustain, rescind, or modify the notice of violation and/or administrative fine, as applicable. The Director of the Bureau of Sanitation, or his/her designee, may waive any portion of the administrative fine in a manner consistent with its decision. The accrual of fines and fees shall be stayed until the decision of the Director of the Bureau of Sanitation, or his/her designee, is final. The decision of the Director of the Bureau of Sanitation, or

his/her designee, is final and effective on the date when the decision is served, by First Class mail, on the Operator.

SEC. 196.05. SEVERABILITY.

If any provision of this article is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this article which can be implemented without the invalid provisions, and to this end, the provisions of this article are declared to be severable. The City Council hereby declares that it would have adopted this article and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.


SEC. 196.06. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this article is intended to create any requirement, power, or duty that is in conflict with any federal or state law.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
ADENA M. HOPENSTAND
Deputy City Attorney

Date 4/8/21

File No. 21-0064

M:\GENERAL COUNSEL DIVISION\ORDINANCES AND REPORTS\ORDINANCES - FINAL YELLOW\LAMC Article 3 Amendments Re Food Accessories on Request.docx

The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____