

Environmental Analysis for Disposable Foodware Accessories Ordinance Notice of Exemption

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SECTION 1 Project Description

The proposed project is a City of Los Angeles City Council ordinance amending Article 3 of Chapter XIX of the Los Angeles Municipal Code to regulate the use of disposable foodware accessories. The draft ordinance will be transmitted by the City Attorney under separate cover but is hereby incorporated by reference. The Disposable Foodware Accessories ordinance would prohibit all food or beverage facilities in the City of Los Angeles (the City) from providing or offering disposable foodware accessories to customers, except upon customer request. The Disposable Foodware Accessories ordinance gives consumers a choice to forego single-use, disposable food accessories if the consumer deems they are nonessential items, thus reducing litter.

The disposable foodware accessories covered by the ordinance include:

- Disposable or single-use items provided alongside prepared food or beverages that are served in single-use plates, container, or cups, including but not limited to utensils, condiment packets, disposable plastic drinking straws and all other single-use straws, stirrers, splash sticks, cocktail sticks, toothpicks, napkins, wet-wipes, cup lids, cup sleeves, and beverage trays.
- Condiments in packets, cups, or other containers for condiments that are sealed or resealable and intended for single-use for relishes, spices, sauces, confections or 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.

The ordinance applies to all facilities in the City that sell or provide prepared food for consumption on or off its premises including, but 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. Third-party food delivery platforms operating within the City limits are also covered by the ordinance. The ordinance exempts licensed health and medical facilities, as defined in California Health and Safety Code Section 1250, as well as food and beverage establishments within these facilities (e.g., hospital cafeterias), and residential care facilities for the elderly as defined in California Health and Safety Code Section 1569.2.

Food or beverage facilities that violate the ordinance would be given a written warning notice for the first and second violation, and monetary fines for third and subsequent violations. Fines collected pursuant to the ordinance shall be deposited into the Citywide Recycling Trust Fund (CRTF).

The draft ordinance would be implemented in two phases:

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

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

Assembly Bill 1276 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.

SECTION 2 Project Objectives

The City's objectives for the proposed project include the following:

- Reducing the millions of disposable foodware accessories handed out daily in the City of Los Angeles;
- Reducing the adverse environmental impacts associated with disposable foodware accessories, including impacts to air quality, biological resources (including marine environments), greenhouse gas emissions, water quality, and solid waste;
- Deterring the use of single-use disposable foodware accessories by customers in the City;
- Promoting a shift toward reusable foodware accessories;
- Educating City residents of the environmental impact of disposable foodware accessories;
- Reducing litter, pollution, and the associated adverse impacts to storm water systems, aesthetics, and the marine environment.

SECTION 3 Project Location

The proposed ordinance would apply throughout the City of Los Angeles, which encompasses approximately 469 square miles, stretching from the Angeles National Forest to the north to the Pacific Ocean to the south. Figure 1 shows a map of the project area.

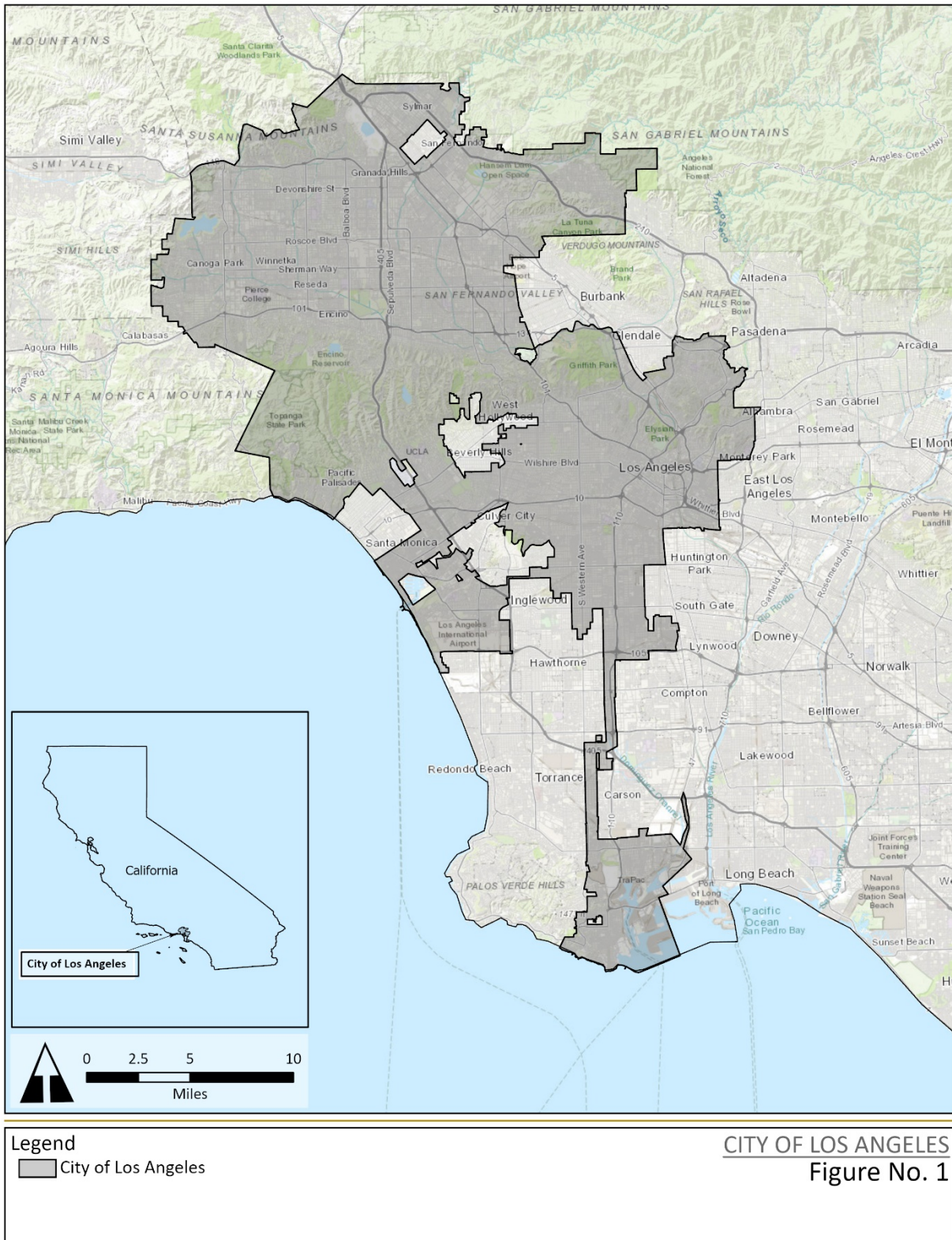


Figure 1. The Project Location: City of Los Angeles

SECTION 4 Basis for Categorical Exemption(s)

The California Environmental Quality Act (CEQA) Guidelines Section 15300, et seq. (California Code of Regulations, Title 14) provide a list of classes of projects that are exempt from CEQA. Two specific classes apply to this ordinance:

- CEQA Guidelines Section 15307 (i.e., Class 7) provides an exemption from environmental review for "actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption."
- CEQA Guidelines Section 15308 (i.e., Class 8) provides an exemption from environmental review for "actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption,"

Class 7 and Class 8 Categorical Exemptions apply to this project for the following reasons:

- By the proposed ordinance as authorized by the City Charter, the City is proposing to exercise its regulatory powers for the purpose of protecting natural resources and the environment, and therefore meets the definition of a "regulatory agency".
- As discussed below in the No Significant Impacts section, the ordinance would maintain, enhance, or protect a natural resource and the environment (e.g., beaches, biological resources, water resources, air quality).
- The ordinance involves procedures for protection of the environment by prohibiting all food or beverage facilities in the City from providing disposable foodware accessories except upon request.
- As discussed below in the No Significant Impacts section, there are no construction activities authorized by the ordinance either directly or indirectly, and the ordinance would not allow environmental degradation.
- As discussed below in the No Exceptions Apply section, none of the exceptions to the use of these classes of Categorical Exemptions apply to the project.

While the ordinance is categorically exempt under exemption Classes 7 and 8, it also qualifies for the general, common-sense exemption (CEQA Guidelines Section 15061(b)(3)). According to the State CEQA Guidelines, "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA" [State CEQA Guidelines Section 15061(b)(3)]. The factual basis provided below in the No Significant Impacts section demonstrates that it can be seen with certainty that there is no possibility of a significant impact from the project on the environment. Therefore, the common-sense exemption also applies to the ordinance.

SECTION 5 No Exceptions for Categorical Exemptions Apply

In applying the categorical exemptions, the City must consider if any exceptions apply, as defined in the CEQA Guidelines, Section 15300.2, and summarized in the following:

1. The project site is environmentally sensitive as defined by the project's location. A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant;
2. The project and successive projects of the same type in the same place will result in cumulative impacts;
3. There are "unusual circumstances" creating the reasonable possibility of significant effects;
4. The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock, outcroppings, or similar resources, within an officially designated scenic highway, except with respect to improvements required as mitigation for projects for which negative declarations or EIRs have been prepared;
5. The project is located on a site that the Department of Toxic Substances Control and the Secretary of the Environmental Protection have identified, pursuant to Government Code section 65962.5, as being affected by hazardous wastes or clean-up problems; or
6. The project may cause a substantial adverse change in the significance of an historical resource.

As described in the following, no exceptions apply to the ordinance, and therefore Class 7, Class 8, and common sense exemptions are appropriate.

5.1 No Unusual Circumstances

The ordinance would not lead to a significant impact due to unusual circumstances. None of the direct or indirect impacts of the ordinance described in Section 5.2 would result in an unusual scope or magnitude of impacts, nor would they occur in sensitive locations such that they would be considered unusual. In addition, there is no unusual circumstance related to this ordinance because it is the usual type of regulation that cities and counties adopt to protect the environment, which fits the Class 7 and 8 exemptions. As discussed below in Section 5.2, the City has passed prior ordinances regulating single use items to protect the environment. Also as discussed below, the anticipated outcome of the ordinance is that there will not be a "replacement behavior" to some other type of item that impacts the environment, because the ordinance is not an outright ban on the products, and food and beverage facilities are still allowed to provide the items at the request of the consumer. It is anticipated that many consumers would either simply forgo the use of disposable foodware accessories, or request them, but not replace them with other types of disposable foodware accessories. The ordinance would also result in decreased transport and disposal of disposable foodware accessories. The existing transportation and disposal operations would not change and would not occur in new locations.

The ordinance is in compliance with the proposed AB 1276, which would implement a statewide disposable foodware accessories on request law. The ordinance is also consistent with the US Environmental Protection Agency's waste management hierarchy, in which source reduction is the

environmentally preferred method of managing waste¹ (Figure 2). Therefore, there are no unusual circumstances that would lead to a significant impact due to the ordinance.



Figure 2. USEPA Waste Management Hierarchy

5.2 No Significant Impacts

The ordinance would not result in a significant impact, either direct, indirect, or cumulative. The ordinance would not result in damage to scenic resources; it would result in improvements by reducing litter. The location is not on a site that the Department of Toxic Substances Control as being affected by hazardous wastes or clean-up problems. The ordinance would not cause a substantial adverse change in the significance of an historical resource. This section provides the factual basis for these findings.

The City previously prepared an environmental impact report, which included a life cycle analysis, for an ordinance implementing a total ban of single-use plastic bags². In that analysis, the City found that any impacts, including indirect impacts resulting from a switch to other types of bags, would be less than significant. The City also previously prepared a Notice of Exemption for the Straws-on-Request Ordinance in 2019³. The City determined that because the Straws-on-Request ordinance was not a ban and would result in far less replacement behavior to other forms of straws, the impacts from the

¹ United States Environmental Protection Agency (USEPA). 2021a. National Overview: Facts and Figures on Materials, Wastes and Recycling. Available online at: <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/national-overview-facts-and-figures-materials>. Accessed March 23, 2021.

² City of Los Angeles. 2013. Final Environmental Impact Report. Single-Use Carryout Bag Ordinance. State Clearinghouse No. 201209053. May.

³ City of Los Angeles. 2019. CEQA Notice of Exemption for Straws-On-Request Ordinance (Council File #18-053). Available online at: https://clkrep.lacity.org/onlinedocs/2018/18-0053_rpt_BOS_02-22-2019.pdf

ordinance, including any life cycle impacts, would be less than significant. Similarly, the Disposable Foodware Accessories ordinance is not a ban, and would therefore not result in replacement behavior with other disposable accessories. For example, data show that 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 and disposable foodware accessories are not needed⁴. Therefore, it is anticipated that many consumers would forgo the use of disposable foodware accessories and instead use the reusable accessories that they already possess. In no cases is it foreseeable that a consumer would replace the disposable foodware accessories from a food or beverage facility with new types of disposable foodware accessories. The impacts from the ordinance, including life cycle impacts, would therefore be less than significant. The Disposable Foodware Accessories ordinance would have beneficial impacts on aesthetics, air quality, biological resources, greenhouse gases, and utilities and service systems in the City as described below.

5.2.1 Aesthetics

Litter has historically presented a challenge to environmental management. Trash and debris that are not properly disposed of are an unsightly presence. In California, disposable foodware accessories such as food wrappers, containers, cups, and plastic bags are among the most commonly littered. Even when disposable foodware accessories are properly disposed of, they can easily become litter because they are light-weight and can blow out of waste and recycling bins, transport containers, and landfills.

The categories of food wrappers/containers; bottle caps and lids; cups, plates, forks, knives, and spoons; and straws/stirrers were the second, third, fifth, and sixth most common items, respectively, found on beaches during the California Coastal Commission annual "Cleanup Day" between 1988 and 2017, comprising almost 30% of waste items collected over that period⁵. In 2019, food wrappers and straws/stirrers were the second and fourth most commonly collected items during beach clean ups conducted by the International Coastal Cleanup in California⁶. Litter found around our communities, especially in public recreation areas like the beach, is detrimental to the aesthetic value of the City's shared spaces.

Implementation of the Disposable Foodware Accessories ordinance would reduce the amount of disposable foodware accessories used, disposed of, and littered in the City. Therefore, the ordinance is expected to have a beneficial impact to aesthetics. The ordinance would not result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock, outcroppings, or similar resources, within an officially designated scenic highway. Because the ordinance would result in an aesthetic

⁴ McKinsey & Company. 2016. The Changing Market for Food Delivery. Available online at: <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/the-changing-market-for-food-delivery#>

⁵ California Coastal Commission. 2018. <https://www.coastal.ca.gov/publiced/ccd/stats/data.xls>. Accessed March 19, 2021.

⁶ Ocean Conservancy. 2020. Together, We are Team Ocean. 2020 Report. Available at: https://oceanconservancy.org/wp-content/uploads/2020/10/FINAL_2020ICC_Report.pdf. Accessed March 19, 2021.

improvement, due to reductions in litter, the ordinance would result in no impact or a beneficial impact to aesthetics.

5.2.2 Air Quality

The use of disposable foodware accessories can have indirect effects on air quality through emissions associated with their production and through emissions associated with their transport (both delivery for use and as part of disposal). Large-scale production of plastics for use in consumer goods produces emissions of air pollutants including sulfur oxides, nitrous oxides, methanol, ethylene oxide, and volatile organic compounds⁷. Additionally, transport and disposal of disposable foodware accessories produce air pollutant emissions, including volatile organic compounds, nitrous oxides, carbon monoxide, and particulate matter from fuel combustion⁸.

Implementation of the Disposable Foodware Accessories ordinance would result in decreased usage of disposable foodware accessories, which would lead to reductions in air pollutant emissions from reduced transport and disposal of disposable foodware accessories. Thus, the ordinance is expected to have no impact or a beneficial effect on air quality.

5.2.3 Biological Resources

Plastic waste generated from human activity has the potential to threaten biological resources, particularly when waste is improperly disposed of. While plastic litter can contaminate terrestrial, freshwater, and marine environments, most available data on plastic pollution comes from marine environments. Approximately eight million tons of plastic waste ends up in the ocean every year, either through intentional dumping or accidental reasons⁹. Plastics do not biodegrade, but instead present a threat to marine wildlife because they break down to microplastics (i.e., plastic pieces smaller than 5 millimeters), which marine wildlife, including special status turtles, marine mammals, birds, and fish, may confuse with food and ingest, either directly or through prey items. Exposure to plastics, and subsequently microplastics, can have harmful effects on wildlife, including increasing the spread of invasive species, transport of toxicants through the food chain, decreased reproduction, starvation, and death^{10 11 12}.

⁷ Ecology Center. N.d. PTF: Environmental Impacts. Available at: <https://ecologycenter.org/plastics/ptf/report3/>. Accessed March 22, 2021.

⁸ USEPA. 2021b. Criteria Air Pollutants. Available at: <https://www.epa.gov/criteria-air-pollutants#self>. Accessed March 22, 2021.

⁹ Ocean Protection Council. 2021. Plastic Pollution. Available at: <https://www.opc.ca.gov/programs-summary/marine-pollution/plastics/>. Accessed March 19, 2021.

¹⁰ USEPA. 2016. State of the Science White Paper A Summary of Literature on the Chemical Toxicity of Plastics Pollution to Aquatic Life and Aquatic-Dependent Wildlife. EPA-822-R-16-009. December.

¹¹ Sussarellu, R., et al., 2016. Oyster reproduction is affected by exposure to polystyrene microplastics. *Proc. Natl. Acad. Sci.* 113, 2430–2435.

Reducing the number of disposable foodware accessories used would have a beneficial impact on biological resources. Lower rates of usage would result in less waste entering marine, freshwater, and terrestrial ecosystems. Therefore, the ordinance would have a beneficial impact to biological resources.

5.2.4 Hydrology/ Water Quality

Disposable foodware accessories may impact water quality through improper disposal, urban run-off, or wastewater effluent (for microplastics). As noted above in Section 5.2.3, plastics in both marine and freshwater environments degrade into microplastics. These microplastics have been shown to contain various contaminants such as polychlorinated biphenyls, polycyclic aromatic hydrocarbons, metals, and pesticides¹³. Paper disposable foodware accessories also may contain per- and polyfluoroalkyl substances (PFAS), which can leach into ground and surface water. Reducing the number of disposable food accessories used would have a beneficial impact on water quality by resulting in lower rates of plastic waste and associated contaminants entering surface water, groundwater, and marine environments. Further, a reduction of disposable foodware accessories waste would help the City meet the Los Angeles River Trash TMDL, Echo Park Lake TMDL, and Santa Monica Bay Trash TMDL. Because the ordinance would result in reductions in litter (particularly plastic and coated paper litter), the impact to water quality is no impact or a beneficial impact.

5.2.5 Greenhouse Gases

The use of disposable foodware accessories can indirectly impact greenhouse gases (GHGs) through their production and transport. Many single use foodware accessories are made from polypropylene or polystyrene. Polypropylene emits 1.55 MT CO₂e for each ton of material produced and polystyrene emits 2.5 MT CO₂e for each ton produced¹⁴. Additionally, transport and disposal of disposable food accessories produce GHG emissions from fuel combustion. It is estimated that the global life-cycle GHG emissions of conventional plastics were 1.7 gigatons CO₂e in 2015¹⁵.

Implementation of the ordinance would result in decreased use of disposable food accessories and therefore a reduction in transport and disposal of any type of disposable foodware accessories. In turn, this would lead to reductions in GHG emissions from transport and disposal, and no GHG effect (or possible GHG reduction). Thus, the proposed ordinance would have a beneficial impact on GHGs.

¹² Thompson, R. et al. 2009. Plastics, the environment and human health: current consensus and future trends. *Phil. Trans. R. Soc. B*: 364, 2153–2166.

¹³ Teuten, Emma L et al. 2009. Transport and release of chemicals from plastics to the environment and to wildlife.” *Philosophical transactions of the Royal Society of London. Series B, Biological sciences* vol. 364,1526.

¹⁴ USEPA. 2015. WARM Version 13. Plastics. March.

¹⁵ Zheng, J., Suh, S. 2019. Strategies to reduce the global carbon footprint of plastics. *Nat. Clim. Chang.* 9, 374–378.

5.2.6 Utilities and Service Systems

It is estimated that in 2016, 561 billion food service disposable items were used in the US, becoming a total of 4.9 million tons of waste, which represented an estimated 1.9% of the overall municipal solid waste stream¹⁶.

Within Los Angeles, solid waste is managed by Los Angeles Sanitation and Environment and private waste management companies. These companies collect, dispose, and recycle the solid waste generated for single-family, multi-family, industrial, and commercial buildings throughout the city¹⁷. Disposable foodware accessories are not recyclable at the City contracted Material Recovery Facilities or compostable in any of the City's Green Material Processing Facilities. Therefore, all disposable foodware accessories become refuse, or solid waste. Los Angeles Sanitation and Environment currently collects over one million tons of refuse annually from its 750,000 customers¹⁸. The five landfills that the City owns are closed, and refuse is disposed of at private landfills and those outside of the City.

The ordinance would stop the automatic distribution of disposable foodware accessories, thereby decreasing the amount that ends up as refuse and in landfills. The ordinance would help the City achieve its goal of achieving 90 percent diversion of solid waste from landfill by 2025, 95 percent by 2035, and zero trash to landfills by 2050. The ordinance does not require any physical development or alteration to the current state of solid waste management in the city. Overall, the ordinance is expected to have a beneficial impact on the utility and service systems of Los Angeles.

5.2.7 Resource Areas with No Impact

There are multiple resource areas that would not be affected by the ordinance. These resource areas include the following:

- Agriculture and Forestry Resources
- Cultural Resources
- Energy
- Geology and Soils
- Hazards and Hazardous Materials
- Land Use and Planning
- Mineral Resources

¹⁶ Moss, E. and R. Grousset. 2020. The Dirty Truth About Disposable Foodware. The Mismatched Costs and Benefits of U.S. Foodservice Disposables and What to Do About Them. Prepared for The Overbrook Foundation. February.

¹⁷ Los Angeles City Planning Department. August 2001. The Citywide General Plan Framework An Element of the City of Los Angeles General Plan. Available at: https://planning.lacity.org/odocument/513c3139-81df-4c82-9787-78f677da1561/Framework_Element.pdf. Accessed March 23, 2021.

¹⁸ City of Los Angeles Sanitation and Environment. 2021. Collection. Available at: https://www.lacitysan.org/san/faces/wcnav_externalId/s-lsh-wwd-s-c?_adf.ctrl-state=127qhyp90y_5&_afLoop=5286601647667777#! Accessed March 24, 2021.

- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation
- Tribal Cultural Resources
- Wildfire

The ordinance would not have impacts on any of the listed areas.

5.2.8 Summary of Environmental Impacts

Disposable foodware accessories have known environmental impacts on aesthetics, air quality, biological resources, water quality, greenhouse gases, and utilities and service systems within the City. By reducing the use of disposable foodware accessories, the Disposable Foodware Accessories ordinance would reduce the air quality and greenhouse gas impacts associated with the transportation and disposal of these products in the City. The Disposable Foodware Accessories ordinance is not a ban and would therefore not result in replacement behavior with other disposable accessories. The impacts from the ordinance, including life cycle impacts, would therefore be less than significant. There would be a net reduction in disposable foodware accessories, which has additional benefits on water quality and biological resources, because of the plastic-specific environmental impacts described in the preceding sections. Because the ordinance would reduce the use of disposable foodware accessories in the City, the ordinance would not have a significant impact on the environment. The Disposable Foodware Accessories ordinance gives consumers a choice to forego disposable foodware accessories use if it is deemed a nonessential item, thus reducing plastic litter.

5.3 There is no cumulative impact.

The ordinance would not lead to significant impacts, and where there are impacts, they are beneficial. Therefore the exception to categorical exemptions under CEQA Guidelines Section 15300.2(b) of successive projects of the same type in the same place over time does not apply to the ordinance.

5.4 There is no impact on sensitive environments, scenic highways, hazardous waste sites, and historical resources.

The exception to categorical exemptions under CEQA Guidelines Section 15300.2(a) of projects in sensitive environments does not apply to the ordinance, because it does not apply to the Class 7 and Class 8 categorical exemptions

The exceptions to categorical exemptions under CEQA Guidelines Section 15300.2(d)-(f) of projects damaging scenic highways, impacting a listed hazardous waste site, and causing a substantial adverse change in a historical resource are not applicable because, as discussed, the project does not result in any significant or substantial impact to these areas.

SECTION 6 Conclusion

As set forth above, the ordinance is exempt under the above-cited classifications and can be appropriately determined to be categorically exempt from CEQA pursuant to CEQA Guidelines 15307 (Class 7), 15308 (Class 8), and 15061(b)(3) (common sense).