

Disposable Foodware Accessories on Request

Response to Council Motion # 21-0064



Presented to Energy, Climate Change, Environmental Justice and River
Committee
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By

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Agenda

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Proposed 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;

Proposed Recommendations for Council Action

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;

Proposed Recommendations for Council Action

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 as necessary.

Discussion of Foodware Accessories

- Plastic utensils were introduced in the 1940s, were mass-produced beginning in the 1950s and proliferated in the 1960s
- Paper napkins were considered a social faux pas until the 1950s, when they “won out:” American etiquette author Emily Post gave paper napkins a partial seal of approval: a fresh paper napkin was decreed as better than reusing a cloth napkin.
- Condiment packets were first introduced in the 1950s.
- Although some “fast food” restaurants now ask if Customers want condiments, and most no longer provide handfuls of condiments as was once common, many condiments, utensils and napkins are never used by recipients (sometimes referred to as “zero used”).

Environmental Impacts

- The small size of many accessories means few are recovered/recycled.
- In landfills, plastics have the potential to leach toxic pollutants into soil and groundwater.
- Plastics do not break down in the environment, but break into small pieces (“micro plastics”) which can accumulate toxins, can be mistaken for food and ingested by marine animals, poisoning/starving them.
- At current rates of use, the United Nations estimates that by weight, there will be more plastic than fish in the ocean by 2050
- Foodservice disposables such as cups, clamshells, and utensils are consistently in the top ten items found in litter clean-up efforts.
- The COVID-19 pandemic has increased reliance on food delivery and takeout and increased the use of foodware accessories. The amount of accessory items that are wasted has skyrocketed by approximately 250-300%, according to an estimate by the International Waste Association.
- The useful life of most foodware accessories can be measured in minutes, but their environmental and health impacts last for years.

Mayor & Council Zero Waste Goal to Reach 90% Landfill Diversion by 2025, 95% by 2035, and 100% by 2050.

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□ **Source reduction**

- Educational awareness campaigns
- Environmental Preferable Purchasing
- Polystyrene phase out
- Reduce per capita generation
- Food rescue

□ **Recycling**

- Minimum recycle content material
- Vendor take back
- Increase C&D recycling
- Diversify markets

□ **Composting/Anaerobic Digestion**

- Divert 100% organics from landfill by 2028
- Composting Master Plan / Local composting
- Residential Food scrap collection
- Food scrap drop off sites
- Healthy soils strategies
- Other Organics (carpets, textiles, etc.)

□ **GHG Reductions**

- Reduce municipal greenhouse gas emissions 55% by 2025; 65% by 2035; and reach carbon neutral by 2045.

Programs/Policies Implemented (via other ordinances) & Programs/Policies Under Investigation for Possible Future Legislation

Implemented

- Single-use plastics Bags
- Styrofoam banned on City property, at events
- Plastic Straws on demand.
- Zero Waste pLAn for City Hall & City Departments
- Donation bins for gently used clothes and shoes.

Possible Future Legislation

- Plastic Water Bottle Ban
- Single-use food ware, lids.
- Requirement for take-out foodware to be made with compostable material.
- Bring your reusable "To-Go" container
- Reusable utensils and plates at City Hall sponsored events.

Feasibility of the Ordinance

PROS

- State law AB 1267 (Members Carrillo and Lorena Gonzalez) is foundational;
- Foodware Accessories on Request is an extension of Plastic Straws on Request, which was supported by area restaurants;
- A majority (+/- 82%) of take-out/delivery meals are consumed at a home, and 16% at the workplace, where reusable cutlery is available, or could be.
- On request policies can reduce business costs;
- Some food delivery apps (i.e., Uber Eats and Postmates) have switched their default setting to make *plastic cutlery* an “OPT-IN” feature; since joining the “Cut the Cutlery” campaign in Oct. 2019, the apps report they have saved 122 million packs of plastic cutlery from being wasted, or about \$3.2 million dollars in savings for restaurants.
- The Los Angeles Ordinance will be phased in, with ample lead time.
- Scientists agree that COVID-19 is primarily transmitted from close person-to-person contact rather than via contaminated surfaces; originally disposables were thought to reduce risk of transmission.

CONCERNS (Expressed regarding Straws on Request)

- Customers will have to change their behavior (request accessories)
- Employees will need to be trained

Ordinance Definitions

A 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 (includes chopsticks, other implement used to serve a Person or eat food)
- 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.

Ordinance Definitions

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 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.

Condiment does NOT mean 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 or Delivery Customer.

Ex: Dressing intended specifically for a Chinese Chicken Salad.

Ordinance Definitions

Food or Beverage Facility includes, but is not limited to, a shop, sales outlet, restaurants, 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 or any organization, group or individual that regularly provides Prepared Food or Beverages as part of its service.

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

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 or Prepared Food or Beverages from no fewer than 20 Food or Beverage Facilities that are each owned and operated by different persons.

Ordinance Mandates: Sec. 196.02.

Beginning 11/15/21

A Large Food/Beverage Facility (26 or more employees) shall:

1. Display advisory notices informing Customers about Disposable Foodware Accessories on Request Ordinance and environmental impacts;
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 Disposable Foodware Accessories;
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.

Ordinance Mandates: Sec. 196.02

4. CONTINUED:

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 no more than one hot beverage, or a beverage tray if the Customer orders more than one beverage.

5. Sec. 196.02.: Beginning 11/15/21, a Large Food or Beverage Facility with an Online Ordering Platform or using a Third-party Delivery Service with an Online Ordering Platform, and a Third-party Delivery Service with an Online Ordering Platform shall:

- a. Identify the available Disposable Foodware Accessories from the Food or Beverage Facility that Customers may request in an Online Order;
- b. Include on an 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;
- c. 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 or Online Order; and

Ordinance Mandates

5. CONTINUED:

- d. Choose whether to provide specific Disposable Foodware Accessories to a Customer who placed an Online Order to prevent spills or for safe delivery or 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 of Third-party 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.
- g. Health Facilities and Residential Care Facilities, as defined in Section 1250 and Section 1569.2 of the California Health and Safety Code, respectively, shall be exempt from the requirements of this article.

Exclusions

- Food trays are not defined as Disposable Foodware Accessories. The Food or Beverage facility or Third-party Food Delivery Service is allowed to determine the need for a food tray.
- Food or Beverage Facilities or Third-party Food Delivery Services are not prohibited 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.
- Food or Beverage Facilities or Third-party Delivery Services may not provide Disposable Foodware Accessories without request where included in pre-packaged food, such as pre-packaged salads. Because ingredients or components that are integral parts of the menu are excluded from covered “Condiments,” then there would be no violation for including such items in pre-packaged meals; i.e. dressing intended specifically for Chinese Chicken salad could be included without request.

Enforcement

- LASAN enforcement under the Ordinance begins January 1, 2022 (for large food and beverage facilities, online platforms & delivery services).
- LASAN staff will conduct spot checks of Food and Beverage Facilities and Third-party Delivery Services;
- LASAN anticipates consumer complaints will equal or exceed those for the Straws on Request Ordinance; A written notice shall be issued for a first and second violation;
- An administrative fine of \$25 will be assessed for a third and each subsequent violation for each day the Food or Beverage Facility or Third-Party Food Delivery Service is in violation, not to exceed \$300/calendar year;
- Repeat violators will be called and/or visited.

Future Considerations

- LASAN will assess and report on the efficacy of the \$25 fine/violation/day for third and subsequent violations and the annual \$300 fine cap;
- LASAN will survey Food and Beverage Facilities and Third-party Delivery Services as to any decrease in the amount of disposable foodware accessories they have distributed since their applicable compliance date.
- Some cities have banned some disposable foodware accessories, others require a fee for some accessories.
- A basic finding of behavioral economics is that people will do more to avoid losses than they will to achieve gains of a similar amount, or “loss aversion.”
- This means that a fee/charge for disposable foodware accessories would be a more effective deterrent to their use than offering a discount to those who do not request these accessories.
- Given that the majority (about 84%) of take-out and delivery meals are consumed at homes and offices, more restrictive measures regarding disposable foodware accessories are feasible.

Disposable Foodware Accessories

Items	Brief Description	Dines In	Drive-Through /Take-Out Customers	Online Order / Delivery Service
Straws	All straws (plastic + all other single-use regardless of material)	All Straws Provided Upon Customer Request. No Self-Serve/ No Self-service Station Dispensers are allowed.	May ask a Drive-through Customer or Take out Customer if customer wants any straws.	include on Online Ordering Platform an “opt-in” option for a Customer placing an Online Order to Request Disposable Foodware Accessories
Affixed straws on pre-packaged juice & milk boxes	Disposable Plastic Drinking Straw or other Single-Use straw that is included as part of a product that is pre-packaged by a manufacturer outside the City.	Exempted	Exempted	Exempted
Beverages (Hot or Cold)	Cup lids, cup sleeves, spill stoppers, and beverage trays,	Upon Customer Request. No Self-Serve/ No Self-service Station Dispensers	Provided to prevent spills or for safe transport even without Customer Request. Customer may receive a beverage tray if the Customer orders more than one beverage. A cup sleeve provided for hot drinks if the Customer orders no more than one hot beverage, even without Customer Request.	Online Ordering Platform to include an “opt-in” option for a Customer placing an Online Order to Request Disposable Foodware Accessories. A Delivery Service may choose to provide specific Disposable Foodware Accessories to a Customer to prevent spills or for safe delivery of a Prepared Food and Beverage, such as cup lids, spill plugs, and trays, even without Customer Request. A Customer may receive a beverage tray if the Customer orders more than one beverage, even without Customer Request. A Customer may receive a cup sleeve if the Customer orders no more than one hot beverage, even without Customer Request.

Disposable Foodware Accessories continued

Items	Brief Description	Dines In	Drive-Through /Take-Out Customers	Online Order / Delivery Service
Condiment/ Condiment Packets	Condiment means but limited to, 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, pepper, chili pepper or cheese topping.	Provided Upon Customer Request. No Self-Serve/ No Self-service Station Dispensers are allowed	Customer may be asked if the customer wants any condiments.	Include on an Online Ordering Platform an option or method for a customer to identify and customize the Online Order.
Condiment exceptions	Condiment" does not include an ingredient or component of a menu item that is an integral part of the menu item, but that a food facility packages separately when preparing the item for take-out of delivery orders. Ex.: A dressing prepared for a specific salad.			
Prepackaged Foods	Pre-packaged salads or desserts with packaged utensils.	Pre-packaged salads or deserts cannot contain single-use plastic ware, condiments or napkins	Pre-packaged salads or deserts cannot contain single-use plastic ware, condiments or napkins.	Pre-packaged salads or deserts cannot contain single-use plastic ware condiments or napkins.
Napkins & Utensils	Napkin, fork, spoon, spork, knife, chopstick, or other implement used to serve a Person, or eat food.	Provided Upon Customer Request. No Self-Serve/ No Self-service Station Dispensers are allowed.	May ask a Drive-through Customer or Take-out Customer if customer wants any napkin or utensils.	Include on Online Ordering Platform an "opt-in" option for a Customer to customize which Single-Use disposable Food Service Ware Accessories to include with each order.

Disposable Foodware Accessories continued

Timing	<p>November 15, 2021 (America Recycles Day) – in which Large Food and Beverage Facilities and Third-party Food Delivery Services must comply.</p> <p>April 22, 2022 – date in which all other facilities must comply</p> <p>Enforcement beginning January 1, 2022 or six months after the effective date of this ordinance, whichever is later.</p>
Exemption	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, shall be exempt from the requirements of this article.
Penalties	<p>(1) Written notice for a first and second violation.</p> <p>(2) 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.</p>