



**CITY OF HAWAIIAN GARDENS
CITY COUNCIL
STAFF REPORT**

Agenda Item #{{section.number}}4

DATE: May 10, 2022

TO: Honorable Mayor and Members of the City Council

FROM: Ernesto Marquez, City Manager

BY: Megan Garibaldi, City Attorney

RECOMMENDATION:

RECOMMENDATION TO INTRODUCE FOR FIRST READING, PROCEED BY TITLE ONLY, AND WAIVE READING IN FULL OF ORDINANCE NO. 2022-601 "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS, CALIFORNIA ADDING CHAPTERS 6.48 OF TITLE 6 OF THE HAWAIIAN GARDENS MUNICIPAL CODE RELATING TO SINGLE-USE FOODWARE AND STANDARD CONDIMENTS;

DIRECT STAFF TO FILE A NOTICE OF EXEMPTION FOR THE PROPOSED ORDINANCE; AND

DIRECT STAFF WHETHER TO RETURN WITH ADDITIONAL PROPOSED SINGLE-USE FOODWARE REGULATIONS

SUMMARY

BACKGROUND AND ANALYSIS:

AB 1276 amended existing law regulating plastic straws and was signed by Governor Newsom in October 2021. The law now prohibits a food facility, such as a restaurant, from providing certain single-use foodware accessories or standard condiments to a consumer (unless requested by the consumer) and further requires every city in California to establish an enforcement agency on or before June 1, 2022 to ensure compliance with this prohibition. The proposed ordinance included as Attachment 1 is intended to satisfy State requirements for compliance with AB 1276.

AB 1276 Compliance

There are several requirements and exemptions imposed by AB 1276, which are reflected in the draft ordinance. Those requirements and exemptions are briefly summarized below:

- **Regulation of Single-Use Foodware Accessories** – AB 1276 prohibits a food facility from providing certain single-use foodware accessories (as that term is defined in the ordinance) or standard condiments to a consumer unless requested by the consumer. Single-use items cannot be bundled or packaged in a way that prohibits the consumer from taking only the item desired. These regulations apply to drive-through establishments and third-party delivery platforms. Several of these platforms (including GrubHub and DoorDash) have already changed their applications to default to no single-use items, allowing customers to add utensils, straws, and condiment if they want them.

- **Exemptions** – The state identifies several exemptions from these restrictions. AB 1276 shall not apply to refillable self-service dispensers to allow a food facility to provide single-use foodware accessories as requested by the consumer. Additionally, in accordance with AB 1276, this ordinance shall not apply to certain institutions or facilities, including health care facilities, residential care facilities, and public and private school cafeterias.

- **Enforcement and Penalties** – Pursuant to AB 1276, violations will be subject to enforcement and would be handled through the City's typical complaint-based administrative citation process. However, administrative citation penalties will be issued in accordance with AB 1276. The first and second violations of these provisions will result in a notice of violation, and any subsequent violation is an infraction punishable by a fine of \$25 for each day the full-service restaurant is in violation, but not to exceed an annual total of \$300.

AB 1276 requires localities to authorize an enforcement agency to enforce its provisions by June 1, 2022. Passing this ordinance is necessary for compliance with State law, and the ordinance is modeled after the provisions found in AB 1276.

Regulations Exceeding AB 1276 Requirements

In addition to the mandatory requirements under AB 1276, many jurisdictions have imposed additional regulations to minimize single-used foodware that exceed the State minimum. For example:

- West Hollywood has taken a phased approach to enforcement. First, the city enforces AB 1276 as written. After a year, the city will impose an additional requirement that the single-use foodware prohibited by AB 1276 (*i.e.*, mostly utensils) *and* additional types of single-use foodware (*e.g.*, takeout containers) must be compostable when the business

or franchisee employs greater than 500 employees in the US. The following year, all food facilities must provide compostable foodware, regardless of size.

- The City of Santa Monica provides an expansive definition of the types of single-use foodware to be prohibited, which includes not only utensils, but also lids, plates, and takeout containers made of Styrofoam or plastic. Compostable alternatives to those products are allowed. Businesses may apply for exceptions to the prohibition (*i.e.*, they can still be allowed to use plastics or Styrofoam for single use foodware not regulated by AB 1276) if they can establish an economic hardship in replacing those items without compostable foodwares.

- The City of Berkeley also expanded the kinds of single-use foodware to be prohibited, but provides an exception that food facilities can provide single-use foodware without a request when there is a safety reason for providing it (*e.g.*, lid for coffee). It also sets standards for disposable foodware, as West Hollywood above (*i.e.*, compostable). Further, it imposes a charge of \$0.25 cents for every disposable, compostable cup provided to customers, and allows that income to be retained by the food vendor. It requires food vendors to maintain written records of compliance with its ordinance.

To summarize, a non-exhaustive list of alternative regulations the City could impose on single-use foodware includes, but is not limited to,

1. Also prohibit food facilities from providing other types of non-compostable single-use foodware accessory items to consumers, such as takeout containers, lids, plates, cups, etc..
2. Take a phased approach to enforcement. First, enforce the requirements of AB 1276 that food facilities only provide single-use foodware upon request. Then, require that food facilities which employ more than 500 employees in the US provide compostable foodware only. Then, require all food facilities to provide compostable foodware, regardless of size. Coordinate with solid waste management services.
3. Require separate disposable foodware waste receptacles for compostable disposable foodware.
4. Require that food facilities report to the enforcement agency the number of single-use foodware accessory items provided to consumers for tracking.
5. Require that food facilities impose an additional fee on customers who request single-use foodware accessories.
6. Require that food facilities post signs to explain the unavailability of single-use

foodwares (or the availability only of compostable foodwares) to customers.

7. Impose greater penalties for non-compliance with the single-use foodware prohibitions that exceed State law.

Staff seeks direction as to whether Council would like staff to return with a second ordinance that would impose additional requirements regulating single-use foodwares, including plastics and Styrofoam, that exceed the State minimum.

ENVIRONMENTAL REVIEW:

Staff has assessed the environmental impact of the proposed ordinance and has determined that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000, et seq.), pursuant to State CEQA Regulation § 15061(b)(3) (14 Cal. Code Regs. § 15061(b)(3)) covering activities with no possibility of having a significant effect on the environment. The Ordinance is also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 of Title 14 of the California Code of Regulations as actions taken by regulatory agencies for protection of natural resources and the environment.

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, to reduce the volume of single-use foodware accessories in waste streams and throughout the natural environment. The California State Legislature has recognized that littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs. With the ordinance, the City would exercise its regulatory powers for the purpose of protecting natural resources and the environment.

FISCAL IMPACT

There is no fiscal impact associated with this item beyond those costs which the City will incur due to enforcement. Adoption of the ordinance satisfies state requirements for compliance with AB 1276

SUGGESTED ACTION

Approve Recommendation.

ATTACHMENTS

1. Ordinance No. 2022-601