

ORDINANCE NO. 3193-22

**AN ORDINANCE OF THE CITY OF SUNNYVALE
AMENDING CHAPTER 5.39 (ENVIRONMENTALLY
ACCEPTABLE FOOD CONTAINERS AND SERVICE
WARE) OF TITLE 5 (BUSINESS LICENSES AND
REGULATIONS) OF THE SUNNYVALE MUNICIPAL
CODE TO REDUCE SINGLE-USE FOODWARE
ACCESSORIES AND CONDIMENTS.**

WHEREAS, single-use foodware accessories including straws, stirrers, utensils, cup sleeves, tops, lids and spill plugs, prepackaged condiments and other similar accessory are a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions; and

WHEREAS, reducing litter on public streets, parks and in other public places is in the best interests of the health, safety and welfare of all who live, work and do business in the City; and

WHEREAS, the production and disposal of single-use foodware accessories has significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable polluting fossil fuels and associated greenhouse gas emissions, and the increased clean-up and end-of-life management costs; and

WHEREAS, foodware accessories made from plastic polymers may last for hundreds and even thousands of years, and have broad, long-lasting negative impacts. Single-use plastic and polystyrene foam food service ware breaks apart easily into small pieces, can end up as litter, and is often mistaken as food by birds, fish, and wildlife. Plastics in waterways and oceans break down into smaller pieces and are present in most of the world's oceans; and

WHEREAS, the City must eliminate solid waste at its source to achieve its Zero Waste Goal as specified in its Zero Waste Strategic Plan. Reduction of single-use food service ware accessories furthers this goal; and

WHEREAS, requiring food vendors to limit the distribution of single-use foodware accessories will reduce the risk of harm to wildlife. It is also aimed at improving water quality in local waterways by reducing trash and litter on the streets, as required by the City's Stormwater Municipal Regional Permit; and

WHEREAS, on November 18, 2021, the California Legislature enacted Assembly Bill 1276 which amended Chapter 5.2 of Part 3 of Division of the Public Resources Code, commencing with Public Resources Code Section 42270, to impose certain restrictions on the use of single-use foodware accessories by food facilities, as defined in Section 113789 of the Health and Safety Code; and

WHEREAS, Public Resources Code 42272 requires local public agencies to enforce the state law and makes violation of the state law a criminal infraction punishable by a fine of \$25 for each day in violation, not to exceed \$300 annually; and

WHEREAS, Public Resources Code 42271 provides that a local public agency may adopt and implement stricter restrictions on the use of single-use foodware accessories; and

WHEREAS, adoption of a local ordinance will authorize the City to enforce the state law restrictions on single-use foodware accessories through non-criminal administrative citations pursuant to Chapter 1.05 of the Municipal Code with higher associated fines;

The City Council does, accordingly, find and declare that it should restrict the use and distribution of single-use food service ware accessories by food vendors. The City has a substantial interest in protecting its residents and the environment from negative impacts from disposable food service ware. This Chapter is consistent with relevant CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 5.39.010 TITLE AMENDED. The title of Chapter 5.39 (Environmentally Acceptable Food Container and Service Ware) is hereby amended to read as follows:

Chapter 5.39. FOOD CONTAINERS, SERVICE WARE AND ACCESSORIES

SECTION 2. SECTION 5.39.010 AMENDED. Section 5.39.010 (Definitions) of Chapter 5.39 (Environmentally Acceptable Food Container and Service Ware) is hereby amended to read as follows:

5.39.010. Definitions.

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall have the meanings set forth below:

(a) – (f) [Text unchanged]

(g) “Single-use foodware accessory” has the meaning defined in Section 42270 of the Public Resources Code, to include forks, knives, spoons, sporks, chopsticks, standard condiment cups and packets, straws, stirrers, splash sticks, and cocktail sticks.

(h) “Standard condiment” means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes.

- (i) [Re-lettered, text unchanged]

SECTION 3. SECTION 5.39.025 ADDED. Section 5.39.025 (Single-use Foodware Accessories) is hereby added to read as follows.

5.39.025. Single-use foodware accessories and condiments.

It is unlawful for any food provider to violate California Public Resources Section 42270 through 42273 concerning single-use foodware accessories and standard condiment cups and packets.

SECTION 4. SECTION 5.39.050 AMENDED. Section 5.39.050 (Violations) is hereby amended to read as follows.

5.39.050. Violations.

- (a) - (c) [Text unchanged]

(d) If a vendor or food provider has subsequent violations of this chapter that are similar in kind to the violation addressed in a written warning notice, the following penalties will be imposed through issuance of an administrative citation and shall be payable by the operator:

- (1) A fine not exceeding one hundred dollars for the first violation after the written warning notice is given;
- (2) A fine not exceeding two hundred dollars for the second violation after the written warning notice is given; or
- (3) A fine not exceeding five hundred dollars for the third and any subsequent violations after the written warning notice is given.

- (e) - (g) [Text unchanged]

SECTION 5. CEQA. The adoption of these restrictions will reduce the use of single-use food service ware accessories in order to meet the City's obligation under state law to eliminate solid waste at its source. The action is exempt from environmental review under the California Environmental Quality Act (CEQA) because it is an action taken to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. (CEQA Guidelines, Section 15308.)

SECTION 6. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this

ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase, or word be declared invalid.

SECTION 7. EFFECTIVE DATE. This ordinance shall be in full force and effect on June 1, 2022.

SECTION 8. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this Ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sunnyvale Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on April 26, 2022, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on May 3, 2022, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

DAVID CARNAHAN
City Clerk

LARRY KLEIN
Mayor

(SEAL)

APPROVED AS TO FORM:

JOHN A. NAGEL
City Attorney