



## AGENDA BILL

Agenda Item No. 7.B.

**Date:** July 19, 2022  
**To:** El Cerrito City Council  
**From:** Christina Leard, Management Analyst III; Will Provost, Operations and Environmental Services Manager; Yvetteh Ortiz, Public Works Director/City Engineer, Public Works Department  
**Subject:** Amended Foodware Ordinance Requiring Single-Use Foodware Accessories and Standard Condiments Packaged for Single-use to be Provided Only if Requested by a Consumer

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### **ACTION PROPOSED**

Conduct a public hearing, and upon conclusion, introduce by title and waive any further reading of an Ordinance amending Chapter 8.24 Foodware Regulations of the El Cerrito Municipal Code to align with recent State legislation.

### **BACKGROUND**

In 2013, the City of El Cerrito adopted a Foodware Ordinance prohibiting the distribution of expanded polystyrene foam (“styrofoam”) take-out containers, and requiring the use of reusable, recyclable, or compostable foodware (Ord. No. 2013-04). On November 16, 2021, the City of El Cerrito City Council approved amendments to the Foodware Ordinance that went further, requiring foodware to be packaged for takeout in reusable or compostable containers, and phasing out single-use plastic foodware items within the City of El Cerrito (Ord. No. 2021-04).

Simultaneously, the State of California has also been approving legislation to reduce the waste generated from single-use foodware. In 2018, California adopted Assembly Bill (AB) 1884 requiring that full-service restaurants only provide single-use plastic straws upon consumer request. The State expanded on this law by passing AB 1276 on October 5, 2021. Under AB 1276, food facilities must require consumers to request foodware accessories such as utensils, stirrers, splash sticks, and condiment packages, prior to providing those items. Additionally, cities are required to enforce the requirements of the bill starting June 1, 2022.

Staff in consultation with the City Attorney have analyzed the requirements under AB 1276 and are returning to City Council to amend the City’s Foodware Ordinance to include all required language as it relates to having food facilities provide single-use food accessories, and standard condiments packaged for single use, only upon request. Single-use foodware accessories include all utensils, forks, spoons, knives, sporks, chopsticks, straws, stirrers, splash sticks, cocktail sticks, condiment cups and packages and other items that are designed for one-time use and disposal. The El Cerrito Municipal Code currently requires only straws to be provided upon request and AB 1276 outlines a range of additional single-use food accessories that shall only be

provided after a customer asks for them. Additionally, AB 1276 requires cities to authorize enforcement of the law, and outlines specific enforcement procedures. For example, as written in the legislation, the first and second violations of these requirements “shall result in a notice of violation, and any subsequent violation shall constitute an infraction punishable by a fine of twenty-five dollars (\$25) for each day in violation, but not to exceed three hundred dollars (\$300) annually.” Staff is recommending changes to the 2021 Ordinance to be compliant with the new State law and to enable City of El Cerrito Staff to enforce the Ordinance, as required. The proposed Ordinance, as amended, would require single-use foodware accessories and condiment packages to be provided only upon request of the consumer within the City of El Cerrito and would additionally enable the City to enforce the new requirements.

Food facilities has the same meaning as in Section 113789 of the Health and Safety Code and is currently defined as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level.

## **ANALYSIS**

The proposed amendments to the Ordinance are summarized below:

- Requirement that Food Facilities only distribute Single-use Foodware Accessories and Standard Condiments packaged for Single Use upon request by the consumer;
- Prohibition of Food Facilities bundling/packaging Single-use Foodware Accessories for distribution;
- Requirement that Third-party Food Delivery platforms (e.g., Uber Eats, DoorDash, etc.) provide options for consumers to affirmatively ask for Single-use Foodware Accessories;
- Correctional Institutions, Health Care Facilities, Residential Care Facilities, and Public and Private School Cafeterias are exempt from the new requirements (included in Section 8.24.070); and,
- Enforcement: The first and second violations of the new requirements (included in Section 8.24.070) shall result in a notice of violation, and any subsequent violation of that section shall constitute an infraction punishable by a fine of twenty-five dollars (\$25) for each day in violation, but not to exceed three hundred dollars (\$300) annually.

The current Foodware Ordinance, as adopted in November 2021, became effective on July 1, 2022, with enforcement to begin on January 1, 2024, aligning with the timeline for Senate Bill 1383 (“Mandatory Organics Recycling”). However, AB 1276 requires cities to enforce the requirements of the bill starting June 1, 2022. As a result, the amended Ordinance was drafted in such a way that it shall take effect and be enforced thirty (30) days after the date of its adoption, with the exception that enforcement of the requirement for disposable foodware to be compostable still won’t begin until January 1, 2024.

Enforcement will largely be based on complaints received by the City and focused primarily on education, similar to enforcement practices under the current Ordinance. Should the proposed amendments be adopted, Staff will assist food providers and food facilities by providing training and technical support and building public awareness.

### **STRATEGIC PLAN CONSIDERATIONS**

Adoption of the proposed amendments to the Foodware Ordinance will help fulfill the following City of El Cerrito Strategic Plan goals and objectives:

- Goal A: Deliver Exemplary Government Services by staying in compliance with all mandates from the State of California.
- Goal F: Foster environmental sustainability citywide by reducing the amount of waste generated in El Cerrito as well as by being a leader in setting policies for environmental sustainability.
- Goal E: Ensuring the public's health and safety by supporting initiatives that decrease pollution and improve the health and prosperity of future generations.

### **ENVIRONMENTAL CONSIDERATIONS**

If adopted, the amended Foodware Ordinance would reduce single-use foodware litter on El Cerrito streets and public spaces, reduce the presence of foodware litter in storm drains and creeks (the City is required to eliminate trash in stormwater per the Municipal Regional Stormwater Permit), and reduce waste management inefficiencies attributed to single-use foodware.

Pursuant to Title 14 of the California Administrative Code, the City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons: (1) under Section 15061 (b)(3), it is not a project which has the potential for causing a significant effect on the environment; (2) under Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration, enhancement, or protection of the environment.

### **FINANCIAL CONSIDERATIONS**

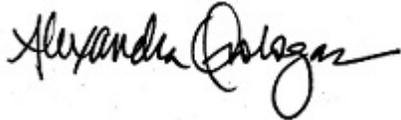
Financial impacts are expected to be minimal and in the form of Staff time as a result of adopting the proposed amended Ordinance, and there are no impacts to the City's General Fund. There is expected to be an initial spike in Staff time needed to develop resources including a comprehensive fact sheet for businesses and to respond to questions and concerns in the first few months after the Ordinance is effective. After such time, Staff time to respond to complaints will largely be absorbed into on-going outreach, education, and communications with businesses as part of other State mandates. Compliance with the Ordinance prohibiting expanded polystyrene foam has been high, however, should a large number of businesses not comply with this State Law and the City's amended Ordinance, additional Staff time will need to be spent to issue Notices of Violation and escalate businesses through the required enforcement

procedures. At this time, Staff anticipate being able to handle the additional mandated enforcement activities with current budgets and staffing in the Integrated Waste Management (IWM) fund.

**LEGAL CONSIDERATIONS**

The City Attorney has reviewed the proposed amended Ordinance and found that legal considerations have been addressed.

**Reviewed by:**

A handwritten signature in black ink, appearing to read "Alexandra Orologas". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alexandra Orologas, Assistant City Manager

**Attachments:**

1. Ordinance