

RESOLUTION NO. 5097-2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BARSTOW, CALIFORNIA, DESIGNATING THE CITY AS THE ENFORCEMENT AGENCY FOR STATE REGULATIONS ON SINGLE-USE FOODWARE ACCESSORIES AND STANDARD CONDIMENTS

WHEREAS, single-use foodware accessories including utensils, chopsticks, condiment cups and packets, straws, stirrers, splash sticks, standard 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, 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, designate an enforcement agency, 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

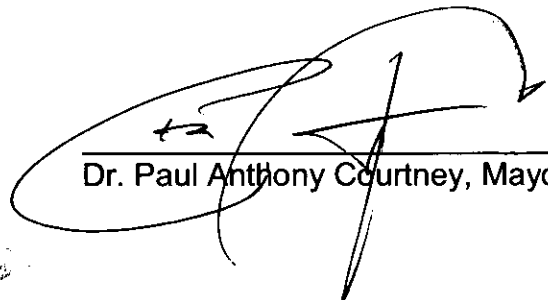
WHEREAS, the City seeks to implement AB 1276 by authorizing an enforcement agency to enforce the new law's requirements prohibiting distribution of single-use foodware accessories and standard condiments unless requested by the consumer effective immediately.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BARSTOW, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

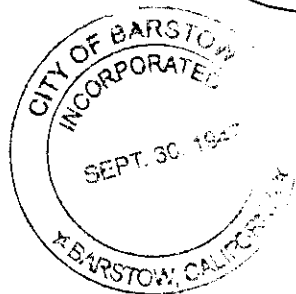
SECTION 1. The City designates itself as the enforcement agency for enforcing Assembly Bill 1276 and Chapter 5.2 of the Public Resources Code imposing regulations on single-use foodware accessories and standard condiments. The City Manager or designated representative shall have the authority to enforce Assembly Bill 1276 and Chapter 5.2 of the Public Resources Code and may designate other City departments or individuals with such enforcement authority.

SECTION 2. The City Clerk of the City of Barstow shall certify to the passage and adoption of this resolution and its approval by the City Council and shall cause the same to be listed in the records of the City.

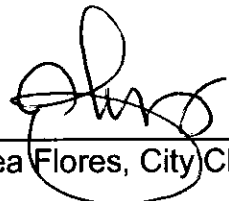
PASSED, APPROVED AND ADOPTED ON this 1st day of August 2022.

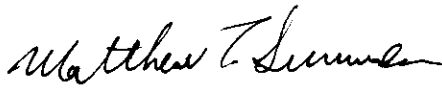

Dr. Paul Anthony Courtney, Mayor

ATTEST:



APPROVED AS TO FORM:


Andrea Flores, City Clerk


Matthew T. Summers, City Attorney

I, Andrea Flores, City Clerk of the City of Barstow and ex-officio Clerk of the City Council DO HEREBY CERTIFY UNDER PENALTY OF PERJURY that the foregoing is a true and correct copy of Resolution No. 5097-2022, which was adopted by said City Council at a regular meeting held on the 1st day of August 2022 by the following vote:

AYES: COUNCIL MEMBERS KRUSE, SILVA, ROSE, MAYOR PRO TEM NOBLE, AND MAYOR COURTNEY.

NOES: NONE

ABSENT: NONE

ABSTAINED: NONE



Andrea Flores, City Clerk

Assembly Bill No. 1276

CHAPTER 505

An act to amend Sections 42270 and 42271 of, to amend the heading of Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of, and to add Sections 42272 and 42273 to, the Public Resources Code, relating to solid waste.

[Approved by Governor October 5, 2021. Filed with Secretary of State October 5, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1276, Carrillo. Single-use foodware accessories and standard condiments.

Existing law prohibits a full-service restaurant, as specified, from providing single-use plastic straws, as defined, to consumers unless requested by the consumer, and places the duty to enforce this prohibition on specified state and local health and environmental health officers and their agents. Existing law specifies that the first and 2nd violations of these provisions 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.

This bill would instead prohibit a food facility from providing any single-use foodware accessory or standard condiment, as defined, to a consumer unless requested by the consumer, as provided. The bill would prohibit those items from being bundled or packaged in a way that prohibits the consumer from taking only the item desired. The bill would authorize a food facility to ask a drive-through consumer, or a food facility located within a public airport to ask a walk-through consumer, if the consumer wants a single-use foodware accessory in specified circumstances. The bill would require a food facility using a third-party food delivery platform to list on its menu the availability of single-use foodware accessories and standard condiments and only provide those items when requested, as provided. The bill would exclude from these requirements correctional institutions, health care facilities, residential care facilities, and public and private school cafeterias.

This bill would require a city, county, or city and county, on or before June 1, 2022, to authorize an enforcement agency to enforce these requirements. The bill would specify that the first and 2nd violations of these provisions result in a notice of violation, and any subsequent violation is an infraction punishable by a fine of \$25 for each day in violation, but not to exceed an annual total of \$300. By creating a new crime and imposing additional duties on local governing bodies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the Public Resources Code is amended to read:

CHAPTER 5.2. SINGLE-USE FOODWARE ACCESSORIES AND CONDIMENTS

SEC. 2. Section 42270 of the Public Resources Code is amended to read: 42270. For purposes of this chapter, the following definitions apply:

(a) "Consumer" has the same meaning as in Section 113757 of the Health and Safety Code.

(b) "Food facility" has the same meaning as in Section 113789 of the Health and Safety Code.

(c) "Ready-to-eat food" has the same meaning as in Section 113881 of the Health and Safety Code.

(d) "Single-use" means designed to be used once and then discarded, and not designed for repeated use and sanitizing.

(e) "Single-use foodware accessory" means all of the following single-use items provided alongside ready-to-eat food:

(1) Utensils, which is defined as forks, knives, spoons, and sporks.

(2) Chopsticks.

(3) Condiment cups and packets.

(4) Straws.

(5) Stirrers.

(6) Splash sticks.

(7) Cocktail sticks.

(f) "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.

(g) "Third-party food delivery platform" has the same meaning as in Section 113930.5 of the Health and Safety Code.

SEC. 3. Section 42271 of the Public Resources Code is amended to read:

42271. (a) Except as provided in subdivisions (c) and (d), a food facility, for on-premises dining or when using a third-party food delivery platform,

shall not provide any single-use foodware accessory or standard condiment packaged for single use to a consumer unless the single-use foodware accessory or standard condiment is requested by the consumer.

(b) Single-use foodware accessories and standard condiments packaged for single use provided by food facilities for use by consumers shall not be bundled or packaged in a manner that prohibits a consumer from taking only the type of single-use foodware accessory or standard condiment desired without also having to take a different type of single-use foodware accessory or standard condiment.

(c) A food facility may ask a drive-through consumer if the consumer wants a single-use foodware accessory if the single-use foodware accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

(d) A food facility that is located entirely within a public use airport, as defined in Section 77.3 of Title 14 of the Code of Federal Regulations, may ask a walk-through consumer if the consumer wants a single-use foodware accessory if the single-use foodware accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

(e) (1) A third-party food delivery platform shall provide consumers with the option to request single-use foodware accessories or standard condiments from a food facility serving ready-to-eat food.

(2) If a food facility uses any third-party delivery platform for ready-to-eat food, the food facility shall customize its menu with a list of available single-use foodware accessories and standard condiments, and only those single-use foodware accessories or standard condiments selected by the consumer shall be provided by the food facility. If a consumer does not select any single-use foodware accessories or standard condiments, no single-use foodware accessory or standard condiment shall be provided by the food facility for delivery of ready-to-eat food.

(f) Nothing in this section shall prohibit a food facility from making unwrapped single-use foodware accessories available to a consumer using refillable self-service dispensers that dispense one item at a time to allow for single-use foodware accessories to be obtained.

(g) Nothing in this section shall prohibit a food facility from making standard condiments available to a consumer using refillable self-service dispensers to allow for standard condiments to be obtained. A food facility that offers standard condiments is encouraged to use bulk dispensers for the condiments rather than condiments packaged for single use.

(h) Nothing in this section shall prevent a city, county, city and county, or other local public agency from adopting and implementing an ordinance or rule that would further restrict a food facility or a third-party food delivery platform from providing single-use foodware accessories or standard condiments to a consumer.

(i) A food facility is encouraged, but not required, to take actions in addition to the requirements of this section that support a goal of reducing the use of and waste generated by all single-use food service products.

SEC. 4. Section 42272 is added to the Public Resources Code, to read:
42272. (a) On or before June 1, 2022, a city, county, or city and county shall authorize an enforcement agency to enforce this chapter.

(b) The first and second violations of this chapter 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.

SEC. 5. Section 42273 is added to the Public Resources Code, to read:
42273. This chapter does not apply to any of the following:

(a) Correctional institutions, which has the same meaning as in Section 7502 of the Penal Code.

(b) Health care facilities licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or facilities that are owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(c) Residential care facilities licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(d) Public and private school cafeterias, as referenced in paragraph (1) of subdivision (b) of Section 113789 of the Health and Safety Code.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O



**City of Barstow
California**

Approved
Aug 1, 2022 6:00 PM

**Council Resolution
5088**

Resolution Designating the City as the Enforcement Agency for Single-Use Foodware Regulations

Information

Department: Environmental Services **Sponsors:**
Category: Resolution

Attachments

Printout
DRAFT corrected AB 1276 Reso 06-02-2022(283777.1) 7-19-2022
Copy of AB 1276 Chapter 505
(Upload New Attachment)

Fiscal Impact

None.

Executive Summary

The City Council is being asked to re-consider the adoption of a resolution authorizing the city to enforce Assembly Bill 1276, which is a state regulation requiring a significant reduction in single-use foodware accessories provided by food facilities.

Discussion

On November 18, 2021, the California Legislature enacted Assembly Bill (AB) 1276, which prohibits a food facility, for on-premises dining or when using a third-party food delivery platform, from providing any single-use foodware accessory or standard condiment packaged for single use to a consumer unless requested by the consumer. The bill, which went into effect on January 1, 2022, defines a "single-use foodware accessory" as utensils, chopsticks, condiment cups and packets, straws, and stirrers that are used once and then discarded.

AB 1276 also prohibits single-use foodware accessories from being bundled or packaged in a way that prohibits the customer from taking only the item they want. AB 1276 does not apply to health care facilities, residential care facilities, and public and private school cafeterias. A food facility may ask a drive-through consumer if the consumer wants a single-use foodware accessory if the single-use foodware accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

On May 31, 2022, the city received a memorandum from the City Attorney's Office providing notification about the requirement for cities to designate an enforcement agency to enforce these requirements on behalf of the state before June 1, 2022. Given the time constraints, the earliest staff could get this item on the agenda for Council consideration was July 18, 2022.

On July 18, 2022 the resolution was not passed due a 2-1-0-2 vote of the City Council. Because this item was brought forward at the recommendation of our attorney's for the city to be compliant with state law, staff is bringing the item forward again for re-consideration by all voting members, providing clarity on the questions raised at the July 18th meeting. Solid waste staff attended the meeting via zoom but was unable to address the questions live due to technical difficulties.

There were two main questions by the Council about the item:

1. Question as to why certain single-use foodware items such as lids, were listed in the Resolution and not in the Assembly Bill.

The answer is that the resolution provided by the City Attorney's Office listed examples of single-use foodware accessories and included items meeting the definition of "single-use" but not listed under the definition of "single-use food-

ware accessory". The resolution has since been updated to include only items listed in the bill as single-use foodware accessories.

2. Question as to whether the state would reimburse the city for costs associated with conducting enforcement.

The answer is no. The city proposes to incorporate the requirement into an existing process already conducted by current staff. The enforcement program would not create a significant increase in workload and would enable the city to achieve compliance with its responsibility under the law.

As explained in the previous staff report, annual reviews are already being conducted by Community Development staff on these types of businesses, so we would simply incorporate the requirement into the business license/fire permit process, adding a notice on the application and renewal forms so business owners and operators are made aware of the regulations and requiring they provide signed acknowledgement that their operation may be subject to enforcement action if not in compliance.

This approach makes the most sense as it meets the regulations by utilizing a mechanism already in place. This resolution does not preclude the city from later adopting more stringent enforcement measures if the Council desires, or transferring enforcement duties to the County via a separate agreement.

The state law specifies that the first and second violations of these provisions by a restaurant will result in a notice of violation, and any subsequent violation is an infraction punishable by a fine of \$25 per day in violation, but not to exceed an annual total of \$300.

If adopted, staff would create information on the city website and conduct general outreach to affected businesses. The city does not intend for the enforcement program to be extremely aggressive, but rather to focus on compliance assistance first, leaving the assessment of fines to serious offenders.

Recommended Action

That the City Council adopt Resolution No. 5097-2022 designating the city as the enforcement agency for state regulations on single-use foodware accessories and standard condiments, and waive the full reading.

Meeting History

Aug 1, 2022 6:00 PM Video **City Council** **Joint Special Council/BFPD**

 **Draft**

SPEAKERS

TED WEASMA, BARSTOW, CALIFORNIA

- Asked why the City was immediately enforcing single-use food ware regulations and discussed concerns with adding additional personnel to enforce.

MARSHA WEASMA, BARSTOW, CALIFORNIA

- Discussed concerns with lack of staffing to enforce single-use food ware regulations.

COUNCIL MEMBER SILVA

- Thanked staff for addressing concerns raised at the July 18, 2022 Council meeting.

ADMINISTRATIVE ANALYST JESSICA REED

- Clarified that the State was requiring cities to designate an enforcement agency.

- Addressed lack of staffing concerns and stated that enforcement would be consolidated with the City's business license process.

- Also noted that there were no plans to hire additional staff in order to enforce the regulations.

CITY ATTORNEY MATTHEW SUMMERS

- Stated that as the enforcement agency, the City could determine the level and type of enforcement.

- Also stated that enforcement would consist of educating businesses as opposed to top-down enforcement.

RESULT: **APPROVED [UNANIMOUS]**

MOVER: Timothy Silva, Council Member

SECONDER: James M. Noble, Mayor Pro Tem

AYES: James M. Noble, Marilyn Dyer Kruse, Barbara Mae Rose, Paul Anthony Courtney, Timothy Silva