City of Sunnyvale

Agenda Item

22-0262 **Agenda Date:** 3/24/2022

REPORT TO SUSTAINABILITY COMMISSION

SUBJECT

Recommend That the City Council Introduce an Ordinance Amending Chapter 5.39 of Title 5 of the Sunnyvale Municipal Code to Reduce Single-use Foodware Accessories and Condiments

BACKGROUND

Single-use foodware accessories including straws, stirrers, utensils, cup sleeves, tops, lids and spill plugs, prepackaged condiments and other similar accessories are a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. At the March 7, 2019 City Council Budget and Study Issue workshop, Study Issue 19-01 on Single Use Plastics Strategy was ranked by City Council to proceed with an evaluation of the beneficial impacts of reducing plastic in Sunnyvale's waste stream and implement measures to reduce single-use plastic waste. On March 15, 2021 the Sustainability Commission considered Study Issue 19-01 and recommended that the City Council: 1) Develop an opt-in (only upon request) program for foodware and condiment containers for online delivery and take-out ordering from food service delivery vendors and restaurants by September 2021; 2) Require food service businesses to provide customers with single -use plastic foodware and condiment containers only upon request, for dine-in as well as take-out, by late 2022/early 2023, and; 3) Direct staff to return to Council in late 2022 with further recommendations to discourage the use of single-use plastic foodware. On April 6, 2021, the City Council approved these recommendations (RTC 21-0083), additionally specifying that Recommendation 2 would occur by June 2023 and Recommendation 3 would occur in late 2023.

Staff is recommending adoption of an "opt-in" / upon request only ordinance for foodware accessories and condiment containers. The City Council is scheduled to consider this item on April 26, 2022.

EXISTING POLICY

Zero Waste Policy 3.2.4
Provides guidance to businesses and residents on ways to reduce waste by buying reusable, recyclable or compostable products and encouraging manufacturers to produce and market more durable, repairable, reusable, recycled and recyclable products.

Climate Action Playbook (CAP) Outlines Sunnyvale's path to achieve bold greenhouse gas reductions and to a sustainable and healthy community that, among other things, uses waste prevention as a tool to consume and throw away less material to reach zero waste goals for solid waste.

Solid Waste Management-Goal EM-Recycling and Source Reduction Programs, Reduce solid waste through recycling, source reduction, education and special programs.

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Municipal Code Chapter 5.39
Prohibits the use of polystyrene foam foodware.

ENVIRONMENTAL REVIEW

The adoption of these restrictions will reduce the use of single-use food ware accessories and condiments 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.)

DISCUSSION

On November 18, 2021, the California Legislature enacted AB 1276 which accomplishes the goals of Recommendations 1 and 2 of the single-use foodware restrictions adopted by City Council on April 6, 2021. AB 1276 requires that 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 requested by the consumer. AB 1276 prohibits single-use foodware accessories from being bundled or packaged in a way that prohibits the consumer from taking only the item desired. AB 1276 excludes from these requirements correctional institutions, health care facilities, residential care facilities, and public and private school cafeterias.

The City is required to begin enforcing AB 1276 on June 1, 2022. The City may adopt and implement stricter restrictions on the use of single-use foodware accessories than those required by AB 1276. Staff recommends adopting the attached ordinance (Attachment 2) in order to enforce AB 1276 using administrative citations instead of infractions, increasing the penalty amounts and facilitating enforcement. AB 1276 requires a criminal infraction punishable by a fine of $25 for each day in violation, not to exceed $300 annually. Staff recommends administrative citations of up to $100 for the first offense after a written warning, up to $200 for the second offense, and up to $500 for each subsequent offense. Administrative citations are more efficiently administered than criminal infractions. This fee structure is typical for administrative citations used to enforce many Municipal Code sections, including the existing bans on plastic shopping bags and polystyrene foodware.

FISCAL IMPACT

There is no fiscal impact anticipated to result from the proposed staff recommendation. Administration of the ordinance and processing of any citations can be accomplished using existing ESD solid waste staff.

PUBLIC CONTACT

Public contact was made through posting of the Sustainability Commission agenda on the City's official-notice bulletin board, on the City's website, and the availability of the agenda and report in the Office of the City Clerk. In addition, staff created information on the City website and will mail a postcard regarding AB 1276 requirements to all affected Sunnyvale businesses in March 2022. City and Specialty staff will communicate with affected businesses about this ordinance and reusable alternatives to single-use foodware accessories when conducting on-going in-person outreach and monitoring regarding recycling, food scraps, and SB 1383 compliance.

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ALTERNATIVES

1. The City Council introduce an Ordinance amending Chapter 5.39 of Title 5 of the Sunnyvale Municipal Code to reduce single-use foodware accessories and condiments and find that the action is exempt from CEQA pursuant to CEQA Guidelines Section 15308.

2. The City Council introduce an Ordinance with modifications and find that the action is exempt from CEQA pursuant to CEQA Guidelines Section 15308.

3. Recommend to the City Council not introduce an Ordinance.

RECOMMENDATION

Alternative 1: Recommend that the City Council introduce an Ordinance amending Chapter 5.39 of Title 5 of the Sunnyvale Municipal Code to reduce single-use foodware accessories and condiments and find that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15308.

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Reviewed by: Teri Silva, Assistant City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Draft Ordinance