



OFFICE OF THE CITY ATTORNEY  
Long Beach, California

ORD-28

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February 4, 2020

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by amending Sections 8.63.020 and 8.63.030; all relating to prohibiting the use and sale of single-use food and beverage containers, packaging and food service ware made of expanded polystyrene (EPS) foam, rigid polystyrene #6, and non-recyclable and non-compostable material for prepared food distribution, and the distribution of plastic for bio-plastic straws, read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION

Pursuant to your request on October 15, 2019, this ordinance has been prepared and is submitted for your consideration.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By

AMY R. WEBBER  
Deputy City Attorney

ARW:bg A19-03097  
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REDLINE

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- 1 8.63.020 Definitions.
- 2 A. "Applicant" means any individual, firm, limited liability
- 3 company, association, partnership, political subdivision, government
- 4 agency, municipality, industry, public or private corporation, or any other
- 5 entity whatsoever who applies for a City of Long Beach special events
- 6 permit or an exemption to the requirements of this Chapter.
- 7 B. "City facility" means any building, structure, property, park or
- 8 open space owned, managed or leased by the City, its agents, agencies, or
- 9 departments. This includes, but is not limited to, the Queen Mary, the
- 10 Convention Center, the Aquarium, and the Long Beach Airport.
- 11 C. "City contractor" means any person who enters into an
- 12 agreement with the City to furnish products or services to or for the City.
- 13 D. "City-permitted event" means any event, activity or meeting
- 14 occurring under the auspices of a City-issued permit.
- 15 E. "City-sponsored event" means any event, activity or meeting
- 16 organized or sponsored, in whole or in part, by the City or any department
- 17 of the City.
- 18 F. "Compostable" means all the material in the product or
- 19 package will break down, or otherwise become part of, usable compost
- 20 (e.g., soil-conditioning material, mulch) in a safe and timely manner.
- 21 Compostable material must be made of paper, certified compostable
- 22 plastics that meet ASTM D6400 or ASTM D6868 for compostability or
- 23 cellulose-based packaging capable of being decomposed through
- 24 composting or anaerobic digestion.
- 25 G. "Department" means the department of Public Works.
- 26 H. "Director" means the Director of the department of Public
- 27 Works, or his/her designee, who is hereby designated to issue a
- 28 compliance order or an administrative citation to enforce this Chapter

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1 pursuant to Chapters 1.25 or 1.26, respectively, of the Long Beach  
2 Municipal Code or to grant an exemption to compliance with this Chapter  
3 pursuant to Section 8.63.050.

4 I. "Disposable food service ware" or "disposables" means  
5 single-use, disposable products used for serving or transporting prepared  
6 food, including but not limited to plates, bowls, trays, wrappers or wrapping,  
7 platters, cartons, clamshells, condiment containers, cups or drink ware, cup  
8 lids, or any other container in or on which prepared foods are placed or  
9 packaged for consumption. This does not include straws, cup lids, or  
10 utensils, nor does it include packaging for unprepared foods.

11 J. "Food Provider" means any person or place, other than a  
12 "Small Food Provider," that provides or sells prepared food within the City to  
13 the general public to be consumed on the premises or for take-away  
14 consumption. "Food Provider" includes but is not limited to: (1) a grocery  
15 store, supermarket, restaurant, drive-thru, cafe, coffee shop, snack shop,  
16 public food market, farmers market, convenience store, or similar fixed  
17 place where prepared food is available for sale on the premises or for take-  
18 away consumption, and (2) any mobile store, food vendor, caterer, food  
19 truck, vending machine or similar mobile outlet. "Food Provider" also  
20 includes any Franchise restaurant, drive-thru, café, coffee-shop or the like.  
21 "Food Provider" also includes any organization, group or individual that  
22 regularly provides prepared food to its members or the general public as a  
23 part of its activities or services.

24 K. "Franchise" means a food facility in the City that operates  
25 under common ownership or control with at least 15 other food facilities with  
26 the same name that offer for sale substantially the same menu items, or  
27 operates as a franchised outlet of a parent company with at least 15 other  
28 franchised outlets with the same name in the state that offer for sale

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1 substantially the same menu items.

2 L. "Small Food Provider" means a person or place that provides  
3 or sells prepared food within the City to the general public to be consumed  
4 on the premises or for take-away consumption, seating one hundred (100)  
5 or fewer persons.

6 M. "Person" means any person, business, corporation, or event  
7 organizer or promoter; public, nonprofit or private entity, agency or  
8 institution; or partnership, association or other organization or group,  
9 however organized.

10 M-N. "Plastic or Bio-Plastic straw" means a tube made  
11 predominantly of plastic derived from either petroleum or biologically based  
12 polymer, such as corn or plant sources, for transferring a beverage from its  
13 container to the mouth of the drinker. This includes compostable and  
14 biodegradable petroleum or biologically based polymer straws, but does not  
15 include straws that are made from non-plastic materials, such as paper,  
16 sugarcane, bamboo, etc.

17 N-O. "Polystyrene" means a thermoplastic petrochemical material  
18 utilizing the styrene monomer, including but not limited to polystyrene foam  
19 or expanded polystyrene, processed by any number of techniques,  
20 including but not limited to fusion of polymer spheres (expandable bead  
21 polystyrene), injection molding, foam molding, or extrusion-blow molding  
22 (extruded foam polystyrene), and clear or solid polystyrene (oriented  
23 polystyrene). The recycle code for polystyrene is "6" or "PS," either alone or  
24 in combination with other letters. This definition applies to all polystyrene  
25 food service ware, regardless of whether it exhibits a recycle code.

26 O-P. "Polystyrene Beads" means expanded polystyrene foam  
27 beads used as filler for toys and beanbags and in crafts.

28 P-Q. "Polystyrene Cooler" means any cooler or ice chest made of

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1 polystyrene foam, where such foam is not fully encased in a durable  
2 material.

3 Q.R. "Polystyrene food service ware" means disposable food  
4 service ware that contains or utilizes polystyrene. This includes but is not  
5 limited to cups, cup lids, condiment cups, food trays, plates, bowls,  
6 clamshells and any other product made primarily for food service use.

7 R.S. "Prepared food" means any food or beverage that is: (1) ready  
8 to consume without any further food preparation, alteration or repackaging;  
9 and (2) prepared, provided, sold or served by a food provider using any  
10 cooking, packaging or food preparation technique. Prepared food may be  
11 eaten either on or off the food provider's premises. ~~Prepared food does not~~  
12 ~~include: (1) any raw uncooked meat, poultry, fish or eggs, unless provided~~  
13 ~~for consumption without further food preparation; and (2) fresh produce~~  
14 ~~provided for consumption without food preparation or repackaging,~~  
15 ~~including fruits, vegetables, and herbs, sold by grocery stores,~~  
16 ~~supermarkets, food markets, farmers markets and other food vendors.~~

17 S.T. "Recyclable" means material that can be sorted, cleansed and  
18 reconstituted using the City's available Residential Recycling Program  
19 excluding Plastic containers labeled #6 and any Polystyrene.

20 T.U. "Recycle code" means a resin identification code placed on  
21 plastics to identify the material composition for separation of different types  
22 of plastics for recycling.

23 U.V. "Special events" means events that are open to the general  
24 public and take place within the public right-of-way or are located within a  
25 park and/or are coordinated through the City of Long Beach's special  
26 events permit process.

27 V.W. "Utensil" means a knife, fork, spoon, spork, chopstick, or the  
28 like, used for eating food.

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- 1           8.63.030     Prohibition against distribution or sale of polystyrene food service  
2                     ware.
- 3                 A.     No Food Provider shall distribute or sell any polystyrene food  
4                     service ware in conjunction with the sale of prepared food or beverages at  
5                     any location within the City of Long Beach.
- 6                 B.     Food Providers that distribute prepared food or beverages in  
7                     disposable food service ware shall: (1) distribute only disposables that are  
8                     either Recyclable or Compostable, and if plastic, exhibit a recycle code  
9                     other than No. 6 or PS; and/or (2) maintain documentation about the  
10                    composition of any disposable food service ware that does not exhibit a  
11                    recycle code. Documentation may include information from the supplier or  
12                    manufacturer, bulk packaging for the disposables, and any other relevant  
13                    information demonstrating that the disposable material is not polystyrene  
14                    and is either Recyclable or Compostable.
- 15                C.     No person shall distribute or sell prepared food or beverages  
16                    in any polystyrene food service ware at City facilities that have been rented,  
17                    leased or are otherwise being used with permission of the City. If  
18                    disposables are distributed or sold, they shall be either Recyclable or  
19                    Compostable. This Subsection is limited to use of City facilities for which a  
20                    person has entered into an agreement with the City to rent, lease or  
21                    otherwise occupy a City facility. All facility rental agreements for any City  
22                    facility shall include a provision requiring contracting parties to assume  
23                    responsibility for preventing the utilization and/or distribution of polystyrene  
24                    food service ware while using City facilities. The facility rental agreement  
25                    shall indicate that a violating contractor's security deposit will be forfeited if  
26                    the Director determines that polystyrene food service ware or disposables  
27                    that are neither Recyclable nor Compostable was used in violation of the  
28                    rental agreement.

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1 D. No person shall use or distribute polystyrene food service  
2 ware at City-sponsored events, activities and City meetings open to the  
3 public. This Subsection shall apply to the function organizers, agents of the  
4 organizers, City contractors, and Food Providers.

5 E. The City, its departments, its City contractors, agents, and  
6 employees acting in their official capacity, shall not purchase, acquire or  
7 distribute for public use any polystyrene food service ware or disposables  
8 that are neither Recyclable nor Compostable, or Polystyrene Coolers.

9 F. All Food Providers shall certify compliance with this Chapter  
10 as part of the Environmental Health inspection process.

11 G. No person, vendor, business or event promoter in the City  
12 may sell, rent or otherwise provide any polystyrene food service ware  
13 product which is not wholly encapsulated or encased within a more durable  
14 material, except as exempted herein. This specifically includes, but is not  
15 limited to, cups, cup lids, condiment cups, food trays, plates, bowls,  
16 clamshells and other products primarily for food service use, as well as  
17 Polystyrene Coolers and ice chests.

18 H. No person, vendor, business or event promoter in the City  
19 shall sell, distribute, or otherwise provide polystyrene packing material,  
20 including, but not limited to, foam peanuts, packing peanuts, foam popcorn  
21 or packing noodles.

22 F.I. No person, vendor, business or event promoter may sell, rent,  
23 or otherwise distribute within the City meat and fish trays, produce trays or  
24 egg cartons made, in whole or in part, from polystyrene, either as separate  
25 items or as part of the sale of meat, fish, poultry, vegetables, fruit, or eggs  
26 sold to consumers.

27 G.J. Straws and Utensils for take-away foods shall only be  
28 provided upon customer request at all food establishments, including at City

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1 facilities. All straws must not be plastic or bio-plastic straws.

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING SECTIONS 8.63.020 AND 8.63.030; ALL RELATING TO PROHIBITING THE USE AND SALE OF SINGLE-USE FOOD AND BEVERAGE CONTAINERS, PACKAGING AND FOOD SERVICE WARE MADE OF EXPANDED POLYSTYRENE (EPS) FOAM, RIGID POLYSTYRENE #6, AND NON-RECYCLABLE AND NON-COMPOSTABLE MATERIAL FOR PREPARED FOOD DISTRIBUTION, AND THE DISTRIBUTION OF PLASTIC OR BIO-PLASTIC STRAWS

The City Council of the City of Long Beach ordains as follows:

Section 1. Section 8.63.020 of the Long Beach Municipal Code is amended to read as follows:

8.63.020 Definitions.

A. "Applicant" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who applies for a City of Long Beach special events permit or an exemption to the requirements of this Chapter.

B. "City facility" means any building, structure, property, park or open space owned, managed or leased by the City, its agents, agencies, or departments. This includes, but is not limited to, the Queen Mary, the Convention Center, the Aquarium, and the Long Beach Airport.

1 C. "City contractor" means any person who enters into an  
2 agreement with the City to furnish products or services to or for the City.

3 D. "City-permitted event" means any event, activity or meeting  
4 occurring under the auspices of a City-issued permit.

5 E. "City-sponsored event" means any event, activity or meeting  
6 organized or sponsored, in whole or in part, by the City or any department  
7 of the City.

8 F. "Compostable" means all the material in the product or  
9 package will break down, or otherwise become part of, usable compost  
10 (e.g., soil-conditioning material, mulch) in a safe and timely manner.  
11 Compostable material must be made of paper, certified compostable  
12 plastics that meet ASTM D6400 or ASTM D6868 for compostability or  
13 cellulose-based packaging capable of being decomposed through  
14 composting or anaerobic digestion.

15 G. "Department" means the Department of Public Works.

16 H. "Director" means the Director of the Department of Public  
17 Works, or his/her designee, who is hereby designated to issue a  
18 compliance order or an administrative citation to enforce this Chapter  
19 pursuant to Chapters 1.25 or 1.26, respectively, of the Long Beach  
20 Municipal Code or to grant an exemption to compliance with this Chapter  
21 pursuant to Section 8.63.050.

22 I. "Disposable food service ware" or "disposables" means  
23 single-use, disposable products used for serving or transporting prepared  
24 food, including but not limited to plates, bowls, trays, wrappers or wrapping,  
25 platters, cartons, clamshells, condiment containers, cups or drink ware, cup  
26 lids, or any other container in or on which prepared foods are placed or  
27 packaged for consumption. This does not include utensils.

28 J. "Food Provider" means any person or place, other than a

1 "Small Food Provider," that provides or sells prepared food within the City to  
2 the general public to be consumed on the premises or for take-away  
3 consumption. "Food Provider" includes but is not limited to: (1) a grocery  
4 store, supermarket, restaurant, drive-thru, cafe, coffee shop, snack shop,  
5 public food market, farmers market, convenience store, or similar fixed  
6 place where prepared food is available for sale on the premises or for take-  
7 away consumption, and (2) any mobile store, food vendor, caterer, food  
8 truck, vending machine or similar mobile outlet. "Food Provider" also  
9 includes any Franchise restaurant, drive-thru, café, coffee-shop or the like.  
10 "Food Provider" also includes any organization, group or individual that  
11 regularly provides prepared food to its members or the general public as a  
12 part of its activities or services.

13 K. "Franchise" means a food facility in the City that operates  
14 under common ownership or control with at least fifteen (15) other food  
15 facilities with the same name that offer for sale substantially the same menu  
16 items, or operates as a franchised outlet of a parent company with at least  
17 fifteen (15) other franchised outlets with the same name in the state that  
18 offer for sale substantially the same menu items.

19 L. "Small Food Provider" means a person or place that provides  
20 or sells prepared food within the City to the general public to be consumed  
21 on the premises or for take-away consumption, seating one hundred (100)  
22 or fewer persons.

23 M. "Person" means any person, business, corporation, or event  
24 organizer or promoter; public, nonprofit or private entity, agency or  
25 institution; or partnership, association or other organization or group,  
26 however organized.

27 N. "Plastic or Bio-Plastic straw" means a tube made  
28 predominantly of plastic derived from either petroleum or biologically based

1 polymer, such as corn or plant sources, for transferring a beverage from its  
2 container to the mouth of the drinker. This includes compostable and  
3 biodegradable petroleum or biologically based polymer straws, but does not  
4 include straws that are made from non-plastic materials, such as paper,  
5 sugarcane, bamboo, etc.

6 O. "Polystyrene" means a thermoplastic petrochemical material  
7 utilizing the styrene monomer, including but not limited to, polystyrene foam  
8 or expanded polystyrene, processed by any number of techniques,  
9 including but not limited to fusion of polymer spheres (expandable bead  
10 polystyrene), injection molding, foam molding, or extrusion-blow molding  
11 (extruded foam polystyrene), and clear or solid polystyrene (oriented  
12 polystyrene). The recycle code for polystyrene is "6" or "PS," either alone or  
13 in combination with other letters. This definition applies to all polystyrene  
14 food service ware, regardless of whether it exhibits a recycle code.

15 P. "Polystyrene Beads" means expanded polystyrene foam  
16 beads used as filler for toys and beanbags and in crafts.

17 Q. "Polystyrene Cooler" means any cooler or ice chest made of  
18 polystyrene foam, where such foam is not fully encased in a durable  
19 material.

20 R. "Polystyrene food service ware" means disposable food  
21 service ware that contains or utilizes polystyrene. This includes but is not  
22 limited to cups, cup lids, condiment cups, food trays, plates, bowls,  
23 clamshells and any other product made primarily for food service use.

24 S. "Prepared food" means any food or beverage that is: (1) ready  
25 to consume without any further food preparation, alteration or repackaging;  
26 and (2) prepared, provided, sold or served by a Food Provider using any  
27 cooking, packaging or food preparation technique. Prepared food may be  
28 eaten either on or off the Food Provider's premises.

1 T. "Recyclable" means material that can be sorted, cleansed and  
2 reconstituted using the City's available Residential Recycling Program  
3 excluding Plastic containers labeled #6 and any Polystyrene.

4 U. "Recycle code" means a resin identification code placed on  
5 plastics to identify the material composition for separation of different types  
6 of plastics for recycling.

7 V. "Special events" means events that are open to the general  
8 public and take place within the public right-of-way or are located within a  
9 park and/or are coordinated through the City of Long Beach's special  
10 events permit process.

11 W. "Utensil" means a knife, fork, spoon, spork, chopstick, or the  
12 like, used for eating food.

13  
14 Section 2. Section 8.63.030 of the Long Beach Municipal Code is  
15 amended to read as follows:

16 8.63.030 Prohibition against distribution or sale of polystyrene food  
17 service ware.

18 A. No Food Provider shall distribute or sell any polystyrene food  
19 service ware in conjunction with the sale of prepared food or beverages at  
20 any location within the City of Long Beach.

21 B. Food Providers that distribute prepared food or beverages in  
22 disposable food service ware shall: (1) distribute only disposables that are  
23 either Recyclable or Compostable, and if plastic, exhibit a recycle code  
24 other than No. 6 or PS; and/or (2) maintain documentation about the  
25 composition of any disposable food service ware that does not exhibit a  
26 recycle code. Documentation may include information from the supplier or  
27 manufacturer, bulk packaging for the disposables, and any other relevant  
28 information demonstrating that the disposable material is not polystyrene

1 and is either Recyclable or Compostable.

2 C. No person shall distribute or sell prepared food or beverages  
3 in any polystyrene food service ware at City facilities that have been rented,  
4 leased or are otherwise being used with permission of the City. If  
5 disposables are distributed or sold, they shall be either Recyclable or  
6 Compostable. This Subsection is limited to use of City facilities for which a  
7 person has entered into an agreement with the City to rent, lease or  
8 otherwise occupy a City facility. All facility rental agreements for any City  
9 facility shall include a provision requiring contracting parties to assume  
10 responsibility for preventing the utilization and/or distribution of polystyrene  
11 food service ware while using City facilities. The facility rental agreement  
12 shall indicate that a violating contractor's security deposit will be forfeited if  
13 the Director determines that polystyrene food service ware or disposables  
14 that are neither Recyclable nor Compostable was used in violation of the  
15 rental agreement.

16 D. No person shall use or distribute polystyrene food service  
17 ware at City-sponsored events, activities and City meetings open to the  
18 public. This Subsection shall apply to the function organizers, agents of the  
19 organizers, City contractors, and Food Providers.

20 E. The City, its departments, its City contractors, agents, and  
21 employees acting in their official capacity, shall not purchase, acquire or  
22 distribute for public use any polystyrene food service ware or disposables  
23 that are neither Recyclable nor Compostable, or Polystyrene Coolers.

24 F. All Food Providers shall certify compliance with this Chapter  
25 as part of the Environmental Health inspection process.

26 G. No person, vendor, business or event promoter in the City  
27 may sell, rent or otherwise provide any polystyrene food service ware  
28 product which is not wholly encapsulated or encased within a more durable

1 material, except as exempted herein. This specifically includes, but is not  
2 limited to, cups, cup lids, condiment cups, food trays, plates, bowls,  
3 clamshells and other products primarily for food service use, as well as  
4 Polystyrene Coolers and ice chests.

5 H. No person, vendor, business or event promoter in the City  
6 shall sell, distribute, or otherwise provide polystyrene packing material,  
7 including, but not limited to, foam peanuts, packing peanuts, foam popcorn  
8 or packing noodles.

9 I. No person, vendor, business or event promoter may sell, rent,  
10 or otherwise distribute within the City meat and fish trays, produce trays or  
11 egg cartons made, in whole or in part, from polystyrene, either as separate  
12 items or as part of the sale of meat, fish, poultry, vegetables, fruit, or eggs  
13 sold to consumers.

14 J. Straws and utensils shall only be provided upon customer  
15 request at all food establishments, including at City facilities. All straws  
16 must not be plastic or bio-plastic straws.

17  
18 Section 3. The City Clerk shall certify to the passage of this ordinance by  
19 the City Council and cause it to be posted in three (3) conspicuous places in the City of  
20 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the  
21 Mayor.

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I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of \_\_\_\_\_, 2020, by the following vote:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Recusal(s): Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

Approved: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Mayor