

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING CHAPTER 8.63 PROHIBITING THE USE OF SINGLE-USE FOOD AND BEVERAGE CONTAINERS MADE OF EXPANDED POLYSTYRENE (EPS) FOAM, RIGID POLYSTYRENE #6, AND NON-RECYCLABLE AND NON-COMPOSTABLE MATERIAL FOR PREPARED FOOD DISTRIBUTION

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

Section 1. Chapter 8.63 is added to the Long Beach Municipal Code to read as follows:

Chapter 8.63

POLYSTYRENE FOOD PACKAGING

8.63.010 Purpose.

The purpose of this Chapter is to regulate the use of polystyrene food packaging in order to reduce and prevent the presence of this type of litter in the environment, protect public health and promote environmentally sustainable practices in the City.

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

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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.

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

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

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

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

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

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

I. "Disposable food service ware" or "disposables" means single-use, disposable products used for serving or transporting prepared

1 food, including but not limited to plates, bowls, trays, wrappers or wrapping,
2 platters, cartons, clamshells, condiment containers, cups or drink ware or
3 any other container in or on which prepared foods are placed or packaged
4 for consumption. This does not include straws, cup-lids, or Utensils, nor
5 does it include packaging for unprepared foods.

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

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

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

1 M. "Person" means any person, business, corporation, or event
2 organizer or promoter; public, nonprofit or private entity, agency or
3 institution; or partnership, association or other organization or group,
4 however organized.

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

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

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

19 Q. "Polystyrene food service ware" means disposable food
20 service ware that contains or utilizes polystyrene.

21 R. "Prepared food" means any food or beverage that is: (1) ready
22 to consume without any further food preparation, alteration or repackaging;
23 and (2) prepared, provided, sold or served by a food provider using any
24 cooking, packaging or food preparation technique. Prepared food may be
25 eaten either on or off the food provider's premises. Prepared food does not
26 include: (1) any raw uncooked meat, poultry, fish or eggs, unless provided
27 for consumption without further food preparation; and (2) fresh produce
28 provided for consumption without food preparation or repackaging,

1 including fruits, vegetables, and herbs, sold by grocery stores,
2 supermarkets, food markets, farmers markets and other food vendors.

3 S. "Recyclable" means material that can be sorted, cleansed and
4 reconstituted using the City's available Residential Recycling Program
5 excluding Plastic containers labeled #6 and any Polystyrene.

6 T. "Recycle code" means a resin identification code placed on
7 plastics to identify the material composition for separation of different types
8 of plastics for recycling.

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

13 V. "Utensil" means a knife, fork, spoon, spork, chopstick, or the
14 like, used for eating food.

15 8.63.030 Prohibition against distribution or sale of polystyrene food service
16 ware.

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

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

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

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

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

23 F. All Food Providers shall certify compliance with this Chapter
24 as part of the Environmental Health inspection process. No person, vendor,
25 business or event promoter may sell, rent or otherwise provide any
26 polystyrene product which is not wholly encapsulated or encased within a
27 more durable material, except as exempted herein. This specifically
28 includes, but is not limited to, cups, plates, bowls, clamshells and other

1 products primarily for food service use, as well as Polystyrene Coolers and
2 ice chests.

3 G. Straws and Utensils for take-away foods shall only be
4 provided upon customer request, including at City facilities.

5 8.63.040 Administrative rules and regulations.

6 The Director may adopt administrative rules and regulations not
7 inconsistent with provisions of this Chapter and state law as needed for the
8 purpose of clarifying any of the administrative requirements of this Chapter,
9 such as but not limited to specifying the types of acceptable alternative food
10 packaging that meet the requirements of this Chapter and/or establishing
11 frequency and protocol of City regulatory inspections and overall
12 compliance monitoring. A proposed rule or regulation shall be posted at City
13 Hall and public counters, providing notice that it is to be adopted no earlier
14 than twenty-one (21) calendar days from the date on the posted notice and
15 indicating the manner in which written comments may be provided to the
16 Director. A copy of the final adopted rule or regulation shall be posted in City
17 Hall and public counters no later than ten (10) days prior to the effective
18 date of the rule or regulation. A copy of all adopted administrative rules and
19 regulations shall be on file in the Director's office.

20 8.63.050 Exemption from compliance with this Chapter.

21 A. The following are exempt from the provisions of this Chapter:

22 1. Food prepared or packaged outside of the City,
23 provided such food is not altered, packaged or repackaged within the City
24 limits.

25 2. Coolers and ice chests, other than those defined as
26 Polystyrene Coolers in this Chapter.

27 3. Food brought by individuals for personal consumption
28 to City facilities, including but not limited to City parks, provided the City

1 facility is being used for individual recreation or similar purposes and such
2 facility use is not part of a larger organized event requiring a special events
3 permit from the City.

4 4. City-sponsored or City-permitted events for which
5 authorizations or permits were issued prior to the operative date of this
6 ordinance; except events for which multi-year authorizations or permits
7 were issued, which must comply within 365 days of the operative date of
8 this ordinance.

9 5. Emergency supplies and services.

10 B. Food Providers that are obligated to purchase or have
11 purchased polystyrene food service ware under a contract entered into
12 within the year prior to the operative date of this ordinance are exempt from
13 the provisions of this Chapter for six (6) months following its operative date.

14 C. The Director may exempt any person from Section 8.63.030
15 following the operative date of this ordinance, as follows:

16 1. A request for an exemption shall be filed in writing with
17 the Director and shall include documentation of the reason for the claimed
18 exemption and any other information necessary for the department to make
19 its decision. The department may require the Applicant to provide additional
20 information as necessary to make the required determinations.

21 2. The Director may grant an exemption for a maximum of
22 one (1) year, with or without conditions, upon finding that compliance would
23 create an undue hardship. Applications for exemption renewals will also be
24 considered. Undue hardship shall be construed to include but not be limited
25 to situations where:

26 a. There are no reasonable alternatives to
27 polystyrene food service ware for reasons that are unique to the Applicant;
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b. Compliance with the requirements of this Chapter would deprive a person of a legally protected right.

3. The Director's written decision on the exemption is effective within ten (10) days of the decision. Decisions of the Director may be appealed by the person applying for the exemption utilizing the process outlined in Section 8.63.080.

8.63.060 Authority to inspect and to monitor.

This Chapter shall be enforced by the City Health Officer, or designee, or by the Director of the Long Beach Public Works Department, or designee. These persons shall be known as enforcement officials and are authorized to take any actions necessary to enforce this Chapter, including inspection and monitoring of affected locations to determine compliance with this Chapter.

8.63.070 Operative date.

A. No City facilities, City contractors, City-sponsored events or City-permitted events shall distribute or utilize disposable food service ware containing polystyrene on or after three (3) months following the adoption of the ordinance codified in this Chapter by the City Council. City-sponsored or City-permitted events for which authorizations or permits were issued prior to the operative date of this Ordinance are exempt as provided in Subsection 8.63.050.A.4. City-sponsored or City-permitted events which are authorized or permitted for multiple years must comply within three hundred sixty-five (365) days of the operative of this ordinance.

B. No Food Provider shall distribute or utilize disposable food service ware containing polystyrene on or after nine (9) months following the operative date of the ordinance codified in this Chapter by the City Council.

C. No Small Food Provider shall distribute or utilize disposable

1 food service ware containing polystyrene on or after eighteen (18) months
2 following the operative date of the ordinance codified in this Chapter by the
3 City Council.

4 D. No person shall sell or distribute Polystyrene Beads for crafts
5 or as filler for bean bags, or Polystyrene Coolers on or after eighteen (18)
6 months following the adoption of the ordinance codified in this Chapter by
7 the City Council.

8 8.63.080 Appeal.

9 Any person or entity aggrieved by any decision or finding under the
10 provisions of this Chapter with respect to citations for violations of this
11 Chapter or granting or denying an application for an exemption from
12 compliance with this Chapter, may appeal such decision or finding. An
13 appeal must be filed within three (3) days after receipt of notice of any
14 protested decision or finding by filing with the Director a letter of appeal
15 briefly stating therein the basis for such appeal. A hearing shall be held on a
16 date no more than ten (10) days after receipt of the letter of appeal.

17 Appellant shall be given at least five (5) days' notice of the time and place of
18 the hearing. A hearing officer, appointed by the City Manager, shall give the
19 appellant, and any other interested party, a reasonable opportunity to be
20 heard, in order to show cause why the decision or finding should not be
21 upheld. In all such cases, the burden of proof shall be upon the appellant to
22 show that there was no substantial evidence to support the decision or
23 finding appealed. At the conclusion of the hearing, the hearing officer shall
24 make a final and conclusive determination. The appeal process set forth in
25 this Section does not apply to administrative citations or to orders to comply
26 pursuant to Chapter 9.65.

27 8.63.090 Violation of this Chapter.

28 It shall be unlawful and a violation of this Chapter to fail to comply

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with any provision of this Chapter.

8.63.100 Enforcement and violation – penalty.

A. It shall be unlawful for any person to violate the provisions of this Chapter. A violation of this Chapter shall be punishable under the administrative citation procedures set forth in Chapter 9.65. The fine imposed for a particular violation shall be in the amount set forth in the administrative citation schedule established by resolution of the City Council. The Director has primary responsibility for enforcement of this Chapter.

B. All fines collected pursuant to this Chapter shall be deposited in the Refuse Fund to assist the department with its costs of implementing and enforcing the requirements of this Chapter.

8.63.110 Remedies not exclusive.

To the maximum extent permitted by law, administrative remedies specified in this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

8.63.120 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Chapter are declared to

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be severable.

Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2018, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
()

Mayor