

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

ORDINANCE NO. ORD-20-0009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING SECTIONS 8.63.020, 8.63.030, 8.63.050 AND 8.63.070; 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

1 Convention Center, the Aquarium, and the Long Beach Airport.

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

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

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

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

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

17 H. "Director" means the Director of the Department of Public
18 Works, or his/her designee, who is hereby designated to issue a
19 compliance order or an administrative citation to enforce this Chapter
20 pursuant to Chapter 9.65 of the Long Beach Municipal Code or to grant an
21 exemption to compliance with this Chapter pursuant to Section 8.63.050 of
22 the Long Beach Municipal Code.

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

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

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

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

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

28 N. “Plastic or Bio-Plastic straw” means a tube made

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

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

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

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

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

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

1 eaten either on or off the Food Provider's premises.

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

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

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

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

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

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

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

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

1 information demonstrating that the disposable material is not polystyrene
2 and is either Recyclable or Compostable.

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

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

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

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

27 G. No person, vendor, business or event promoter in the City
28 may sell, rent or otherwise provide any polystyrene food service ware

1 product which is not wholly encapsulated or encased within a more durable
2 material, except as exempted herein. This specifically includes, but is not
3 limited to, cups, cup lids, condiment cups, food trays, plates, bowls,
4 clamshells and other products primarily for food service use, as well as
5 Polystyrene Coolers and ice chests.

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

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

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

18
19 Section 3. Section 8.63.050 of the Long Beach Municipal Code is
20 amended to read as follows:

21 8.63.050 Exemption from compliance with this Chapter:

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

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

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

28 3. Food brought by individuals for personal consumption

1 to City facilities, including but not limited to City parks, provided the City
2 facility is being used for individual recreation or similar purposes and such
3 facility use is not part of a larger organized event requiring a special events
4 permit from the City.

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

10 5. During a locally declared emergency, the City,
11 emergency response agencies operating within the City, users of City
12 facilities, and Food Providers and beverage providers shall be exempt from
13 the provisions of this Chapter.

14 6. The Food Provider or beverage provider provides or
15 distributes a plastic beverage straw upon request to individuals with
16 disabilities as needed to comply with the Americans with Disabilities Act.

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

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

23 1. A request for an exemption shall be filed in writing with
24 the Director and shall include documentation of the reason for the claimed
25 exemption and any other information necessary for the department to make
26 its decision. The department may require the Applicant to provide additional
27 information as necessary to make the required determinations.

28 2. The Director may grant an exemption for a maximum of

1 one (1) year, with or without conditions, upon finding that compliance would
2 create an undue hardship. Applications for exemption renewals will also be
3 considered. Undue hardship shall be construed to include but not be limited
4 to situations where:

5 a. There are no reasonable alternatives to
6 polystyrene food service ware for reasons that are unique to the Applicant;
7 or

8 b. Compliance with the requirements of this
9 Chapter would deprive a person of a legally protected right.

10 3. The Director's written decision on the exemption is
11 effective within ten (10) days of the decision. Decisions of the Director may
12 be appealed by the person applying for the exemption utilizing the process
13 outlined in Section 8.63.080.
14

15 Section 4. Section 8.63.070 of the Long Beach Municipal Code is
16 amended to read as follows:

17 8.63.070 Operative date.

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

27 B. No Food Provider shall distribute or utilize disposable food
28 service ware containing polystyrene on or after nine (9) months following

1 the operative date of the ordinance codified in this Chapter by the City
2 Council.

3 C. No Small Food Provider shall distribute or utilize disposable
4 food service ware containing polystyrene on or after eighteen (18) months
5 following the operative date of the ordinance codified in this Chapter by the
6 City Council.

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

11 E. The prohibition against retail sales contained in Section
12 8.63.030 (G), (H) and (I) shall be effective on or after October 1, 2020.

13
14 Section 5. The City Clerk shall certify to the passage of this ordinance by
15 the City Council and cause it to be posted in three (3) conspicuous places in the City of
16 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
17 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 February 18, 2020, by the following vote:

Ayes: Councilmembers: Zendejas, Pearce, Supernaw, Mungo, Uranga, Austin.

Noes: Councilmembers: None.

Absent: Councilmembers: Price, Andrews, Richardson.

Recusal(s): Councilmembers: None.

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
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My. De. Y. ...
City Clerk

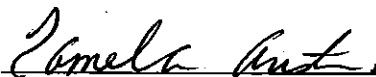
[Signature]
Mayor

Approved: 2/26/20
(Date)

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA) ss
COUNTY OF LOS ANGELES)
CITY OF LONG BEACH)

Tamela Austin being duly sworn says: That I am employed in the Office of the City Clerk of the City of Long Beach; that on the 21st day of February, 2020, I posted three true and correct copies of ORD-20-0009 in three conspicuous places in the City of Long Beach, to wit: One of said copies in the lobby of Civic Chambers; one of said copies in the Main Library; and one of said copies on the front counter of the Office of the City Clerk.



Subscribed and sworn to before me
This 21st day of February 2020.



CITY CLERK