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
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 Chapter 9.65 of the Long Beach Municipal Code or to grant an exemption to comply with this Chapter pursuant to Section 8.63.050 of the Long Beach Municipal Code.

I. “Disposable food service ware” or “disposables” means single-use, disposable products used for serving or transporting prepared food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, clamshells, condiment containers, cups or drink ware, cup lids, or any other container in or on which prepared foods are placed or packaged for consumption. This does not include utensils.
J. "Food Provider" means any person or place, other than a "Small Food Provider," that provides or sells prepared food within the City to the general public to be consumed on the premises or for take-away consumption. "Food Provider" includes but is not limited to: (1) a grocery store, supermarket, restaurant, drive-thru, cafe, coffee shop, snack shop, public food market, farmers market, convenience store, or similar fixed place where prepared food is available for sale on the premises or for take-away consumption, and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. "Food Provider" also includes any Franchise restaurant, drive-thru, café, coffee-shop or the like. "Food Provider" also includes any organization, group or individual that regularly provides prepared food to its members or the general public as a part of its activities or services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.63.050 Exemption from compliance with this Chapter:

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

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

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

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

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

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

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

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

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

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

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

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

or

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.

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

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

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

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

Section 5. 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 February 18, 2020, by the following vote:

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

Noes: Councilmembers: None.


Recusal(s): Councilmembers: None.

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.

[Signature]

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

[CITY CLERK]