

Introduced by Council member _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA ADDING CHAPTER 8.63 TO TITLE 8 OF THE PASADENA MUNICIPAL CODE PERTAINING TO DISPOSABLE ACCESSORY FOODWARE ITEMS OPT-IN REQUIREMENT FOR RESTAURANTS AND THIRD-PARTY APP-BASED DELIVERY PLATFORMS

SECTION 1. Ordinance No. _____, due to its length and corresponding cost of publication, will be published by title and summary as permitted by Section 508 of the Pasadena City Charter. The approved summary of this Ordinance is as follows:

“Summary

Ordinance No. _____ will amend Title 8 of the Pasadena Municipal Code by adding a new chapter 8.63 to require restaurants and other food service providers to only provide disposable accessory foodware items upon the request of the customer.

Ordinance No. _____ shall require third-party, app-based delivery platforms to include on their platforms an option for customers to affirmatively request disposable food service accessories.

Ordinance No. _____ shall take effect 30 days following its publication by title and summary.”

SECTION 2. A new Chapter 8.63 is added to Title 8 of the Pasadena Municipal Code to read as follows:

“Chapter 8.63. DISPOSABLE ACCESSORY FOODWARE ITEM OPT-IN REQUIREMENT FOR RESTAURANTS AND THIRD-PARTY APP-BASED DELIVERY PLATFORMS

8.63.010 – SHORT TITLE.

This ordinance shall be known and designated as the “Disposable Accessory Foodware Item” ordinance.

8.63.020 – PURPOSE OF ORDINANCE.

The purpose of the ordinance codified in this chapter is to require customers to affirmatively request these disposable accessories rather than giving out the items with all orders in order to reduce and prevent the presence of this type of litter in the environment and to promote environmentally sustainable practices in the City.

8.63.030 – DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply:

- A. "Accessory Foodware Item" means any item used or provided by the Food Service Provider to consume food or beverages, other than the containers holding the food or beverage. Accessory Foodware Items include condiment cups and packets, straws, utensils (forks, spoons, sporks, knives, chopsticks), drink stirrers, beverage spill plugs, napkins and other drink or food accoutrements.
- B. "City" means the City of Pasadena
- C. "Customer" means an individual, the individual's agent or caregiver.
- D. "Delivery Customer" means a Customer who purchases Prepared Food or Beverages from a Food or Beverage Facility and has the Prepared Food or Beverages delivered to him or her by the Food or Beverage Facility or by a third party delivery service.
- E. "Director" means the director of the department of public works and is hereby designated as the administrator and enforcement official under Chapters 1.25 and 1.26 of this code.
- F. "Disposable" means items designed to be used once or a limited number of times and then discarded, whether the item is non-recyclable, recyclable or compostable.
- G. "Food Service Provider" means a facility located in the City of Pasadena that sells or otherwise provides Prepared Food or Beverages for consumption on or off its premises, and includes but is not limited to, a shop sales outlet, restaurant, bar, pub, coffee shop, coffee stand, juice bar, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, roadside stand, kiosks, carts, or a Vendor or any organization, group or individual that regularly provides Prepared Food or Beverages as part of its service.
- H. "Person" means a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, or organization, or the manager, lessee, agent, servant, office or employee of any of them.
- I. "Prepared Food or Beverage" means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique, including by not limited to cooking, chopping, slicing, mixing, freezing, squeezing, or brewing, and which requires no further preparation to be consumed. Prepared Food includes uncooked fruits or vegetables, "take-out" food, or food prepared to be consumed off the Food Service Establishment premises. Prepared Food does not include any uncooked meat, fish or poultry.

- J. "Take-out Customer" means a Customer who purchases Prepared Food or Beverages at a Food or Beverage Facility and consumes it off the premises of the Food or Beverage Facility.

8.63.040 – LIMITATION ON THE USE OF DISPOSABLE ACCESSORY FOODWARE ITEMS.

- A. Restaurants and other Food Service Providers shall only provide Disposable Accessory Foodware Items upon the request of the Customer. This provision does not prohibit a restaurant or other Food Service Provider from asking a Customer if they would like Disposable Accessory Foodware Items with their order or providing self-service dispensers.
- B. Third-party App-based Delivery Platforms shall include an option during the ordering process to allow the delivery Customer to affirmatively request Disposable Accessory Foodware Items as a part of their delivery or takeout order.

8.63.050 – ADMINISTRATIVE RULES AND REGULATIONS.

The Director may adopt administrative rules and regulations not inconsistent with provisions of this chapter and state law as needed for the purpose of clarifying any of the administrative requirements of this chapter, such as but not limited to specifying the types of disposable foodware that meet the requirements of this chapter and/or establishing frequency and protocol of City regulatory inspections and overall compliance monitoring. A proposed rule or regulation shall be posted at City Hall and public counters, providing notice that it is to be considered for adoption no earlier than 21 calendar days from the date on the posted notice and indicating the manner in which written comments may be provided to the Director. A copy of the final adopted rule or regulation shall be posted in City Hall and public counters no later than 10 days prior to the effective date of the rule or regulation. A copy of all adopted administrative rules and regulations shall be on file in the Director's office.

8.63.60 – EXEMPTION FROM COMPLIANCE WITH THIS CHAPTER.

Emergency supplies and services.

8.63.070 – AUTHORITY TO INSPECT AND TO MONITOR.

The Director or his designee may inspect and monitor affected locations to determine compliance with this chapter.

8.63.080 – OPERATIVE DATE.

Restaurants and other Food Service Providers shall comply with the requirements of the Disposable Accessory Foodware Item Ordinance within 30 days following the adoption of the Ordinance.

8.63.090 – APPEAL.

Any person or entity aggrieved by any decision or finding under the provisions of this chapter with respect to citations for violations of this chapter or granting or denying an application for an exemption from compliance with this chapter, may appeal such decision or finding. An appeal must be filed within 3 days after receipt of notice of any protested decision or finding by filing with the Director a letter of appeal briefly stating therein the basis for such appeal. A hearing shall be held on a date no more than 10 days after receipt of the letter of appeal. Appellant shall be given at least 5 days' notice of the time and place of the hearing. A hearing officer, appointed by the city manager, shall give the appellant, and any other interested party, a reasonable opportunity to be heard, in order to show cause why the decision or finding should not be upheld. In all such cases, the burden of proof shall be upon the appellant to show that there was no substantial evidence to support the decision or finding appealed. At the conclusion of the hearing, the hearing officer shall make a final and conclusive determination. The appeal process set forth in this section does not apply to administrative citations pursuant to Chapter 1.25 or to orders to comply pursuant to Chapter 1.26.

8.67.100 - VIOLATION OF THIS CHAPTER.

It shall be unlawful and a violation of this chapter to fail to comply with any provision of this chapter.

8.67.110 - 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 Chapters 1.25 and 1.26. 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 pursuant to Section 1.26.060. 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.

8.67.120 - 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.

8.67.130 -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 phrase be declared unconstitutional or invalid or effective. To this end the provisions of this chapter are declared to be severable."

Section 3. The City Clerk shall certify the adoption of this Ordinance and shall cause this ordinance to be published by title and summary.

Section 4. This Ordinance shall take effect 30 days following its publication by title and summary.

Signed and approved this _____ day of _____, 2021.

Victor M. Gordo
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting on ____ day of ____ 2021 by the following vote:

AYES:

NOES:

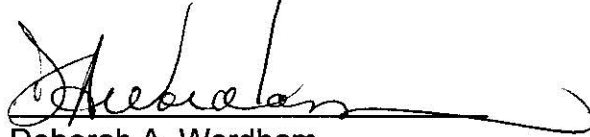
ABSENT:

ABSTAIN:

Published:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Deborah A. Wordham", with a long horizontal flourish extending to the right.

Deborah A. Wordham
Deputy City Attorney