

Introduced by Council member _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA ADDING CHAPTER 8.67 TO TITLE 8 OF THE PASADENA MUNICIPAL CODE PROHIBITING THE DISTRIBUTION OF PREPARED FOOD OR BEVERAGE IN ANY POLYSTYRENE FOOD SERVICE WARE

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 8.67 to prohibit the distribution of prepared food or beverage in any polystyrene food service ware.

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

SECTION 2. A new Chapter 8.67 is added to Title 8 of the Pasadena Municipal Code to read as follows:

"Chapter 8.67. Prohibition of the Distribution or Sale of Prepared Food or Beverages in any Polystyrene Food Service Ware

8.67.010 - Short title.

This ordinance shall be known and designated as the "polystyrene food packaging" ordinance.

8.67.020 - Purpose of ordinance.

The purpose of the ordinance codified in 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, and promote environmentally sustainable practices in the City.

8.67.030 - Definitions.

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

- 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 Pasadena 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.**
- 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-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.**
- E. "Department" means the Department of Public Works.**
- F. "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 Pasadena Municipal Code or to grant an exemption to compliance with this chapter pursuant to Section 8.67.060.**
- G. "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 or any other container in or on which prepared foods are placed or packaged for consumption. This does not include straws, cup-lids, or utensils, nor does it include packaging for unprepared foods.**
- H. "Food provider" means any 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. Food provider includes but is not limited to: (1) a grocery store, supermarket, restaurant, drive-thru, café, 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 organization, group or individual that regularly provides prepared food to its members or the general public as a part of its activities or services.**
- I. "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.**

- J. "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.
- K. "Polystyrene cooler" means any cooler or ice chest made of polystyrene foam, where such foam is not fully encased in a durable material.
- L. "Polystyrene food service ware" means disposable food service ware that contains or utilizes polystyrene.
- M. "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. Prepared food does not include: (1) any raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers markets and other food vendors.
- N. "Recycle code" means a resin identification code placed on plastics to identify the material composition for separation of different types of plastics for recycling.
- O. "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 Pasadena's Special Events permit process.

8.67.040 – 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 Pasadena.
- B. Food providers that distribute prepared food or beverages in disposable food service ware shall: (1) distribute only disposables that 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.

- 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. 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 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 coolers or polystyrene food service ware including cup-lids, straws, or utensils.
- F. All food providers required to have a business license by Pasadena Municipal Code Chapter 5 shall certify compliance with this chapter on the annual business license renewal application.
- G. No person, vendor, business or event promoter may sell, rent or otherwise provide any polystyrene 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, plates, bowls, clamshells and other products primarily for food service use, as well as polystyrene coolers and ice chests.

8.67.050 - 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 acceptable alternative food packaging 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 adopted 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.

8.67.060 – 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. Emergency supplies and services.**

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 months following its operative date.

C. The Director may exempt any person from Section 8.67.040 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 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 8.67.090.**

8.67.070 – Authority to inspect and to monitor.

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

8.67.080 - Operative date.

- A. No food provider shall distribute or utilize disposable food service wares containing polystyrene on or after 12 months following the adoption of the ordinance codified in this Chapter by the City Council.**
- B. 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 the effective date of the ordinance codified in this Chapter.**

8.67.090 - 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.

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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 phrases 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.

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Signed and approved this _____ day of _____, 2016.

Terry Tornek
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 held on _____ day of _____ 2016 by the following vote:

AYES:

NOES:

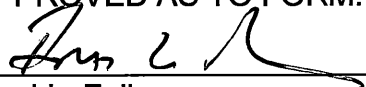
ABSENT:

ABSTAIN:

Published:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:



Brad L. Fuller
Assistant City Attorney