ORDINANCE NO. 23-O-__________

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING
THE BEVERLY HILLS MUNICIPAL CODE TO REGULATE
POLYSTYRENE FOODWARE AND PLASTIC WASTE

Section 1. The City Council hereby adds Chapter 12 ("POLYSTYRENE AND PLASTIC WASTE REGULATIONS") to Title 5 ("PUBLIC HEALTH, WELFARE, AND SANITATION") of the Beverly Hills Municipal Code to read as follows:

5-12-1 - PURPOSE

The City of Beverly Hills has been a leader in addressing various environmental issues, including plastic pollution related to single-use plastics and polystyrene, as well as the risks to human health and marine life associated with water pollution. This ordinance will reduce single-use waste, greenhouse gas emissions, polystyrene use, and plastic litter threatening natural ecosystems and ocean wildlife, as well as keep overall plastic waste from landfills, in order to protect the health of the community and promote environmentally sustainable practices.

5-12-2 - DEFINITIONS

As used in this chapter, unless the context otherwise clearly indicates, the words and phrases are defined as follows:

**Affected Business Establishment** means any retail or food service establishments such as grocery stores, restaurants, coffee shops, pharmacies, liquor stores, supermarkets, drive-thrus, cafes, snack shops, public food markets, farmer’s markets, convenience stores, “mini-marts”, or any stores, street vendors or restaurants that sell food or beverages from fixed, mobile or temporary facilities, vending machines, carts, vehicles, or mobile units. This includes any person that offers any form of a beverage to the public for consumption on the premises or for take-away consumption, as well as any person that regularly provides beverages to its members or the general public as a part of its activities or services. This term also encompasses any person that provides or sells prepared or raw food to the general public for consumption on the premises or for take-away consumption as well as any person that regularly provides prepared or raw food to its members or the general public as a part of its activities or services. Non-profit organizations do not constitute Affected Business Establishments.

**Aseptic Paper Packaging** means shelf-safe packaging that typically contains layers of paper, plastic, and aluminum.

**Biologically-Based Polymer or Bio-Based Polymer** means materials which at least partially consist of material produced from renewable raw materials, such as corn or sugarcane. The remaining portion of the polymers constitutes fossil fuel-based carbons, or other such non-renewable materials. Examples of a biologically-based polymer include but are not limited to polylactic acid (PLA) and polyhydroxyalkanoates (PHA).

**City Contractor** means any person that enters into an agreement with the City to furnish products or services to or for the City.

**City Facility** means any building, structure, property, park, open space, or vehicle, owned or leased by the City, its agents, agencies, or departments.
**City-Sponsored Event** means any event, activity or meeting organized or managed in whole or in part, by the City or any department of the City.

**Compostable** means any Disposable Foodware item accepted by the City’s municipal waste program that is Fluorinated Chemical-Free, as certified by the Biodegradable Product Institute (BPI) or other independent third party certifying organization or agency recognized by the City.

**Disposable Foodware or Disposables** means single-use disposable products used for serving, consuming or transporting food or beverages, including, but not limited to, single-use bottles, plates, bowls, trays, cups or drinkware, wrappers or wrapping, Aseptic Paper Packaging, condiment containers, straws, lids, utensils, stirrers, lid plugs (splash sticks) or any container in or on which food or beverages are placed or packaged for consumption. This includes Polystyrene Coolers and egg cartons or trays for raw meat, fish, or poultry.

**Fluorinated Chemical** means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as perfluoroalkyl and polyfluoroalkyl substances, or Per- and Polyfluorinated Substances (PFAS).

**Fluorinated Chemical-Free** describes an item that (1) does not contain intentionally added Fluorinated Chemicals or PFAS chemicals, or levels exceeding 100 parts per million (ppm) total fluoride as determined by the EPA and state law; (2) is certified by the Biodegradable Product Institute (BPI); or (3) is a napkin, stirrer, splash stick, cocktail stick, toothpick, or utensil made entirely of Natural Fiber, containing no intentionally added Fluorinated Chemicals.

**Natural Fiber** means a plant-based, non-synthetic fiber, including but not limited to paper, wood, bamboo, palm leaf, wheat straw, or sugarcane. Natural Fiber does not include plastic or any bio-based polymer of any kind.

**Plastic** means a synthetic material made from a wide range of organic polymers such as polyethylene, polyvinyl chloride (PVC), nylon, etc., that can be molded into shape while soft and then set into a rigid or slightly elastic form.

**Plastic Beverage Bottle** means any formed or molded plastic beverage container comprised predominantly with a relatively inflexible fixed shape or form and a smaller neck than the container body, and intended primarily as a single use container.

**Plastic Beverage Straw** means a plastic tube derived from either petroleum or a bio-based polymer. This term does not include straws made solely from non-plastic materials.

**Plastic Stirrer** means a plastic device that is used to mix beverages and/or plug the opening of a beverage lid, and intended for only one-time use. Plastic stirrer includes petroleum-based or a biologically-based polymer stirrers and lid plugs (splash sticks), but does not include stirrers that are made solely from non-plastic materials, including, but not limited to, paper, pasta, sugar cane, wood, glass, or metal.

**Plastic Utensil** means any plastic utensil, including, but not limited to, forks, spoons, sporks, knives, cutlery, and disposable flatware intended for a single use. This term includes petroleum-based or biologically-based polymer forms of utensils, but does not include forms of utensils that are made solely from non-plastic materials, including, but not limited to, paper, sugar cane, wood, glass, or metal.

**Polystyrene** or **PS** means a thermoplastic petrochemical material utilizing the styrene monomer, including, but not limited to, rigid polystyrene or expanded polystyrene, processed by any number of techniques, including, but not limited to, fusion of polymer spheres (expandable bead
polystyrene), injection molding, expanded polystyrene molding, or extrusion-blow molding (extruded polystyrene), and clear or solid polystyrene (oriented polystyrene). The Resin Code for polystyrene is “6,” used either alone or in combination with the abbreviation “PS.” This definition applies to all Polystyrene Foodware, regardless of whether it exhibits a Resin Code.

**Polystyrene Cooler** means any cooler or ice chest made of polystyrene foam (expanded polystyrene), where such foam is not fully encased in another more durable material.

**Polystyrene Foodware** means Disposable Foodware, including, but not limited to, Polystyrene Coolers, Polystyrene Packing Materials, Polystyrene Egg Cartons, Polystyrene Produce Trays, and Polystyrene Meat and Fish Trays, that contains or utilizes polystyrene, or is either labelled with the polystyrene Resin Code “6,” or in combination with the abbreviation “PS.”

**Polystyrene Packing Material** means polystyrene material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage, including shipping boxes, foam popcorn, foam peanuts, packing peanuts, or packing noodles.

**Recyclable** means material that can be sorted, cleansed, and reconstituted using one of the City's two available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

**Resin Code** means a resin identification code placed on plastics to identify the material composition for separation of different types of plastics for recycling.

**Reusable** means that food service items are manufactured of durable materials specifically designed and manufactured to be safely and repeatedly washed, sanitized and reused over an extended period of time.

**5-12-3 - PROHIBITION OF USE, DISTRIBUTION, AND SALE OF POLYSTYRENE FOODWARE**

A. No Affected Business Establishment or person shall sell, offer to sell, or otherwise distribute for compensation any Polystyrene Foodware or items labelled with “PS” or a Resin Code of “6” separately or in conjunction with the sale of prepared or raw food or beverages at any location, including at City-Sponsored Events or City meetings, except for food prepared or packaged outside the City as permitted under Section 5-12-6.B. This subsection applies to organizers of City-Sponsored Events, their agents, City Contractors, and City employees acting in their official capacities, but not the organizers of family gatherings or non-profit events such as fundraisers.

B. No Affected Business Establishment located in the City shall use Polystyrene Packing Materials.

C. No person shall distribute or sell prepared or raw food or beverages in any Polystyrene Foodware at City facilities that have been rented, leased or are otherwise being used with the permission of the City. This subsection is limited to the 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 Foodware while using City facilities. The facility rental agreement shall indicate that a violating contractor's security deposit will be forfeited if the City Manager determines that Polystyrene Foodware was used in violation of the rental agreement.
5-12-4 - PROHIBITION OF SINGLE-USE PLASTIC STRAWS, STIRRERS, UTENSILS, BEVERAGE BOTTLES, AND ASEPTIC PAPER PACKAGING

A. No Affected Business Establishments shall sell, use or distribute plastic beverage straws, plastic stirrers or plastic utensils, whether for use on-site, to-go, or delivery. Disposable straws, stirrers, and utensils must be non-plastic and solely made from non-plastic materials, such as paper, pasta, sugar cane, or wood. Single-use plastic items derived from a petroleum or a biologically-based polymer are likewise prohibited.

B. No City officer, official, employee, representative, contractor or agent, shall use, sell, distribute or otherwise provide any single-use plastic beverage bottle or Aseptic Paper Packaging while acting on behalf of the City or while acting pursuant to a contract or agreement with the City.

C. No Affected Business Establishment shall use, sell, distribute or otherwise provide any beverage in a single-use plastic beverage bottle or Aseptic Paper Packaging within the City.

5-12-5 - REUSABLE FOODWARE FOR DINING ON THE PREMISES

A. Prepared or raw food or beverages served for consumption on the premises of Affected Business Establishments shall only be served using Reusable Foodware, except that disposable paper food wrappers; sleeves and bags; foil wrappers; paper napkins; straws and paper tray- and plate-liners are allowed for dining on the premises as long as the items are Compostable.

B. All Disposable Foodware sold, distributed, or used on the premises by Affected Business Establishments that are operating under a full or partial extension or exemption obtained pursuant to 5-12-6 or otherwise must be Compostable unless the items are accepted in the City’s recycling program or another exception under Section 5-12-6 applies.

5-12-6 - EXTENSIONS AND EXEMPTIONS

A. Affected Business Establishments may request an extension or exemption for specific items pursuant to this section.

B. 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. This exemption applies to raw produce, poultry, vegetables, fruit, fish, meat, or eggs.

2. Food or beverages brought by individuals for personal consumption to City facilities, including, but not limited to, City parks. Any gatherings or events organized by non-profit entities, organizations, or families that do not constitute an Affected Business Establishment are exempt from the requirements under this chapter.

3. Affected Business Establishments that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California State Health Code may request an extension or exemption pursuant to this section. To obtain an extension or exemption, the Affected Business Establishment must demonstrate an inability to comply due to insurmountable space constraints, undue financial hardship or other extraordinary, insurmountable circumstances.
4. Notwithstanding Section 5-12-5, non-compostable foil wrappers that are accepted into the City’s recyclable collection program may be used for burritos, wraps, and other items or dishes that require foil to contain and form the food item.

5. Accommodations. Affected Business Establishments, as well as City facilities, City-managed concessions, City-sponsored Events, and City-permitted events, may retain and dispense plastic straws as an accommodation to people with disabilities who request them to allow equal access to food and beverage services within the City.

C. The City Manager may provide time extensions for compliance or exempt any person from the requirements of this chapter, as follows:

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

2. The City Manager may approve the initial extension or exemption for a maximum of one year, and extend the extension or exemption for additional terms of up to one year each upon a showing of the continuation of a legally protected right, with or without conditions, upon determining that compliance would create an undue hardship. Undue hardship may include but not be limited to, situations where:
   a. There are no reasonable alternatives to the use of polystyrene for reasons that are particular to the applicant; or
   b. Compliance with the requirements of this chapter would deprive a person of a legally protected right.

D. To obtain an extension or exemption for a Disposable Foodware item, the Affected Business Establishment should demonstrate that:

1. No other Compostable Disposable Foodware item exists with substantially similar size, performance, or utility, or if such an item exists, the costs of using such item would cause undue financial hardship, and;

2. The non-conforming Disposable Foodware item to be used in lieu of a conforming item is Recyclable or Compostable in the City’s recycling or compost collection program.

3. The Affected Business Establishment must provide documentation of good faith efforts to obtain a substantially similar compliant item at a non-prohibitive price. Records of attempts to obtain a compliant item may include:
   a. Emails, letters or other correspondence with vendors that furnish Disposable Foodware in which the appellant sought the compliant item.
   b. Responses from such Disposable Foodware vendors including, where applicable, specifications and pricing for such item.
   c. Specifications and pricing for the Recyclable non-conforming item sought to be used, demonstrating its substantial superiority or affordability, and
d. Any other verifiable records which demonstrate a good faith effort to comply with Disposable Foodware Standards for such item.

4. Any reasonable added cost to obtain a conforming item as compared to a substantially similar Recyclable non-conforming item shall not by itself constitute adequate grounds to support an extension or exemption for such item.

E. The City Manager's written decision to deny the extension or exemption is effective ten (10) days after the decision.

F. Decisions of the City Manager may be appealed by the person applying for the extension or exemption to the City Council. Appeals shall be filed in writing with the City Clerk within ten (10) days of the decision and shall be accompanied by a fee set by resolution of the City Council. Notice of hearing shall be given to the applicant at least ten (10) days prior to the hearing.

5-12-7: ENFORCEMENT AND PENALTIES:

A. Any Food Service Establishment that violates this chapter after a written notice of violation has been issued shall be subject to an administrative penalty.

B. Subsequent violations of this chapter are subject to the following administrative penalties:

1. A fine not exceeding one hundred dollars ($100.00) for the first violation after the written notice of violation is issued;

2. A fine not exceeding two hundred dollars ($200.00) for the second violation after the written warning notice is issued; or

3. A fine not exceeding five hundred dollars ($500.00) for the third and any subsequent violations after the written warning notice is issued.

Section 2. CEQA Findings. The City of Beverly Hills has determined that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000, et seq.), pursuant to State CEQA Regulation §15061(b)(3) (14 Cal. Code Regs. § 15061(b)(3)) covering activities with no possibility of having a significant effect on the environment.

Section 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 4. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code; shall certify to the adoption of this Ordinance and shall cause this ordinance and her certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 4. Operative Date. Section 1 of this Ordinance shall become operative for City-Sponsored Events and City Facilities after sixth months of its passage, on ____________, 2023. Section 1 of this Ordinance shall become operative after one year of its passage on ____________, 2024 for Affected Business Establishment operators.
Section 5. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:  
Effective:

JULIAN A. GOLD  
Mayor of the City of Beverly Hills, California

ATTEST:

_________________________  (SEAL)  
HUMA AHMED  
City Clerk

APPROVED AS TO FORM:  
APPROVED AS TO CONTENT:

__________________________________  
LAURENCE S. WIENER  
City Attorney  
NANCY HUNT-COFFEY  
City Manager

____________________________________  
SHANA E. EPSTEIN  
Director of Public Works