



Beverly Hills City Council Liaison / Public Works Commission Committee will conduct a Special Meeting, at the following time and place, and will address the agenda listed below:

**CITY OF BEVERLY HILLS
455 N. Rexford Drive
Room 280A
Beverly Hills, CA 90210**

IN-PERSON / TELEPHONIC / VIDEO CONFERENCE MEETING

**Beverly Hills Liaison Meeting
www.beverlyhills.org/MyCommittee
Meeting ID: 516 191 2424
Passcode: 90210**

**You can also dial in by phone:
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**Thursday, January 25, 2024
11:30 AM**

Please be advised that pre-entry metal detector screening requirements are now in place in City Hall. Members of the public are requested to plan visits accordingly.

In the interest of maintaining appropriate social distancing, members of the public can view this meeting through live webcast at www.beverlyhills.org/live and on BH Channel 10 or Channel 35 on Spectrum Cable, and can participate in the teleconference/video conference by using the link above. Written comments may be emailed to mayorandcitycouncil@beverlyhills.org and will also be taken during the meeting when the topic is being reviewed by the Beverly Hills City Council Liaison / Public Works Commission Committee. Beverly Hills Liaison meetings will be in-person at City Hall.

AGENDA

- 1) Public Comment
 - a. Members of the public will be given the opportunity to directly address the Committee on any item listed on the agenda.

- 2) Amending the Ordinance of the City of Beverly Hills Relating to the Removal of Groundwater – Dewatering Ordinance

3) Proposed Ordinance Amending the Beverly Hills Municipal Code to Regulate Polystyrene Foodware and Plastic Waste

4) Adjournment



Huma Ahmed
City Clerk

Posted: January 18, 2024

**A DETAILED LIAISON AGENDA PACKET IS AVAILABLE FOR REVIEW AT
WWW.BEVERLYHILLS.ORG**



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CITY OF BEVERLY HILLS
DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

TO: Public Works Commission

FROM: Josette Descalzo, Environmental Compliance and Sustainability Programs Manager
Robert Welch PE, Utilities General Manager

DATE: January 25, 2024

SUBJECT: Amending the Ordinance of the City of Beverly Hills Relating to the Removal of Groundwater – Dewatering Ordinance

ATTACHMENTS:

1. December 8, 2022 and April 13, 2023 Public Works Commission Staff Reports
2. Draft Ordinance

RECOMMENDATION

Staff recommends the Public Works Commission Liaison recommend to amend the Dewatering Ordinance by removing the R-1 (Single-Family Residential Zone) exemption and apply the requirements to use groundwater for beneficial use or alternatively pay a replenishment fee for new and substantially remodeled R-1 projects.

BACKGROUND

Staff presented this item for amendment consideration to the Public Works Commission during the December 8, 2022 and April 13m 2023 meetings. The item was brought for consideration due to a number groundwater discharges occurring in single-family residential properties located north of Sunset Boulevard. These discharges are observed to exit from the property at the curb and gutter. The quantity of these discharges is unknown because they are not metered. The consideration to remove the R-1 exemption has the potential to promote the use of groundwater beneficially rather than wasting a resource by discharging it to the storm drain system.

In this Public Works Commission meeting on December 8, 2022, staff presented two options for the Commission to consider:

1. Alternative 1: Require a Dewatering Permit for existing properties, new construction and remodeled projects that alter more than 50% of the project site, that are managing rising groundwater (artesian groundwater) or dewatering, will be required to put groundwater discharge to beneficial use or pay a replenishment fee.
2. Alternative 2 : Maintain the existing R-1 exemption in the Dewatering Ordinance and only recommend that R-1 property owners use groundwater (artesian or dewatered) beneficially.

The Commission recommended to move forward with Alternative 1 with the following alterations:

1. Apply the ordinance (require the Dewatering Permit to new construction and substantially remodeled projects that alter more than 50% of the project site).
2. Beneficial use will be focused on irrigation (post-construction) and use for construction (temporary).
3. New and substantially remodeled R-1 projects will be required to pay the replenishment fee to help entice property owner's to use the water beneficially.

The Commission also recommended to waive permit fees to incentivize projects to use the water beneficially and asked City staff to provide technical assistance on assessing the Return on Investment (ROI) on beneficial use. At a following Commission meetings, there were discussions to also consider requiring a Dewatering Permit for existing SFRs after the sale of the property that is currently dewatering.

DISCUSSION

The proposed amendment for consideration was brought to the Public Works Commission after large amount of discharges were observed from single-family residential (SFR) properties north of Sunset Boulevard. After staff investigation, the discharges were determined to be groundwater. Dewatering systems were installed at these properties to prevent groundwater from infiltrating building structures. Discharges are typically collected in a small sump well and pumped to the front curb and gutter of the property and not used beneficially on-site. The volume of groundwater from SFR cannot be estimated because these systems are not metered. Based on staff observation, the volume is large and continuous to be used beneficially on-site for items such as irrigation.

To put groundwater into beneficial use, the Dewatering Ordinance needs to be amended to remove the SFR exemption. Staff presented the Dewatering Ordinance for Amendment during the December 8, 2022 and again at the April 13, 2023 Public Works Commission meetings (Attachment 1).

During the April 13, 2023 meeting, the Public Works Commission recommended to move forward to amend the ordinance by removing the SFR exemption and require the Dewatering Ordinance to new construction and remodeled projects that alter more than 50% of the project site.

The recommendation came after staff presented the potential benefits of implementing a beneficial use system and also providing flexibility by requiring replenishment fee to property owners who opts-out of implementing a beneficial use system.

The environmental and cost analyses for implementing a beneficial use system are summarized in Table 3 and Table 4. *Note: New SFR projects and most substantially remodeled projects are required to install a new irrigation meter.* If the property chooses to install a beneficial use system instead, an irrigation meter will not be required as long as the outdoor water use is not connected to the domestic meter.

Table 3: First-Year Avoided Costs for a Beneficial-Use System

Item	Estimated Cost
Irrigation meter installation cost	\$13,385 (1" meter) to \$15,264 (1.5-2.0" meter)
Water Consumption Using 2023 Water Rates	\$12,161

(Annual Average Irrigation Water Use of 772,000 gallons (1032 HCF) in Beverly Hills)	
Annual Replenishment Fee per acre-feet (AF)	\$1343.45/AF (projected 5% annual increase)
Estimated Total	\$26,890 to \$28,768

Table 4: Subsequent Years Avoided Costs for a Beneficial Use System

Item	Estimated Cost
Water Consumption Using Tier 2 Rates (Projected Annual Average Irrigation Water Use of 772,000 gallons (1032 HCF) in Beverly Hills)	\$12,161
Annual Replenishment Fee per acre-feet (AF)	\$1343.45/AF (projected 5% annual increase)
Estimated Total	\$13,504

To calculate the Return on Investment (ROI) for implementing a beneficial use system, staff used estimates to drill a dewatering well or build a collection, storage, pump and treatment system similar to stormwater capture and re-use systems. The estimates are summarized in Table 5.

Table 5: Estimated cost for a Beneficial Use System

Item	Estimated Cost
Dewatering well	\$3,250 per well
Collection, storage, pump and treatment system	\$20,000

Based on Tables 3, 4 and 5, an SFR can have a ROI within 1-year and have additional savings of approximately \$13,500 on subsequent years from water rates and replenishment fees.

Potential Impacted Areas

Staff currently forecasts that 5% of the SFR parcels may be affected by amending the Dewatering Ordinance. These parcels are located north of Sunset Boulevard where staff have observed dewatering activities. This forecast may increase and be applicable throughout the City as basements and subterranean structures are becoming more common in SFR projects. This assumption is also based that rising groundwater will become more common because of varying rainy seasons because of climate change.

NEXT STEPS

If the Public Works Liaison recommends the ordinance to City Council, staff will finalize the Draft Ordinance for City Council consideration in 2024. Staff will continue to work with Community Development to develop beneficial use system guidelines and ROI systems to assist project developers.

ATTACHMENT 1



CITY OF BEVERLY HILLS
DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

TO: Public Works Commission

FROM: Josette Descalzo, Environmental Compliance and Sustainability Programs Manager
Robert Welch PE, Utilities General Manager

DATE: April 13, 2023

SUBJECT: Amending the Ordinance of the City of Beverly Hills Relating to the Removal of Groundwater – Dewatering Ordinance

ATTACHMENT: 1. December 8, 2022 Public Works Commission Staff Report
2. Draft Ordinance

RECOMMENDATION

Staff recommends the Public Works Commission recommend to amend the Dewatering Ordinance removing the R-1 (Single-Family Residential Zone) exemption and recommend the amendment for City Council adoption. The amendment requires new and substantial remodel R-1 projects to use groundwater for beneficial use or alternatively pay a replenishment fee.

BACKGROUND

Staff presented this item for amendment consideration to the Public Works Commission during the December 8, 2022 meeting (Attachment 1). Staff presented two options for the Commission to consider:

1. Alternative 1: Existing properties, new construction and remodeled projects that alter more than 50% of the project site, that are managing rising groundwater (artesian groundwater) or dewatering, will be required to put groundwater discharge to beneficial use or pay a replenishment fee.
2. Alternative 2 : Maintain the existing R-1 exemption in the Dewatering Ordinance and only recommend that R-1 property owners use groundwater (artesian or dewatered) beneficially

The Commission recommended to move forward with Alternative 1 with the following alterations:

1. Apply the ordinance to new construction and substantially remodeled projects that alter more than 50% of the project site.
2. Beneficial use will be focused on irrigation.
3. New and substantially remodeled R-1 projects will not be required to pay the replenishment fee.

The Commission also recommended to waive permit fees to incentivize projects to use the water beneficially and asked City staff to provide technical assistance on assessing the Return on Investment (ROI) on beneficial use.

DISCUSSION

Attachment 2 is the draft amended Dewatering Ordinance. The amended ordinance will be applicable to new and substantially remodeled R-1 (Single Family Residential Zone) projects. The ordinance provisions apply for construction (temporary) and post-construction dewatering activities. R-1 projects will be required to apply for a dewatering permit from the City. The permit application will determine if the project will use the groundwater for beneficial use or alternatively pay a replenishment fee to City.

During the December 8, 2022 Public Works Commission meeting, the Commission suggested that the beneficial use option for R-1 projects be used only for irrigation and to keep it simple and implementable. Staff is recommending that the beneficial use options be retained as defined below in order for the ordinance to be applicable for both construction and post-construction.

1. Use for dust control or other construction related activities
2. Deliver groundwater to City operations as directed by the City
3. Use for non-potable water-use features such as decorative fountains, irrigation, etc.
4. Drill a dewatering well for non-potable water-use (i.e. landscape irrigation)

These beneficial use options have several positive impacts to the community such as sustainability and reduced overall water demands from the City's water system. Additionally, the property owner will be able to offset purchased water from the City.

In terms of the replenishment fee, the Commission recommended that single-family residential projects should not pay a replenishment fee. Upon consideration and legal review, there may be unforeseen impacts with not charging a replenishment fee for R-1 projects. The replenishment fee forces the property owner to perform a cost benefit analysis for a beneficial use system. The existing Dewatering Ordinance has worked well with commercial properties evaluating construction techniques resulting in structural designs to prevent continuous groundwater pumping by constructing thick slab walls and foundation eliminating groundwater intrusion. The existing Dewatering Ordinance has paved the way for innovative designs used in recent large commercial development like the Maybourne Hotel and Resort. Also, the provisions of the Dewatering Ordinance have been included in Development Agreements in recent commercial developments in the City, which incentivizes development projects to either use the water beneficially during construction and post-construction.

Removing the replenishment fee may hinder influencing R-1 projects from investing in beneficial use systems. The replenishment fee is one of the variables on determining the ROI on beneficial use systems. If the ROI is not beneficial for the applicant, the applicant will then be required to pay the replenishment fee which in turn benefits the City as it continues to find additional groundwater resources.

As mentioned above, the proposed amendment will also be applicable during construction dewatering. Beneficial use during construction may include collection and use on-site or delivery of water to the City at no cost. Prior to delivering the water to the City, the City will need to determine feasibility which includes consideration of water quality, traffic/noise impact and the quantity.

As part of this analyses, staff researched the dewatering requirements for the City of Palo Alto and compared it to the City of Beverly Hills Dewatering Ordinance. The Palo Alto ordinance differs from the Beverly Hills ordinance by only requiring the provisions during construction dewatering (temporary) activities. The Palo Alto requirements are located in the shoring and erosion control section of the municipal code and require these key provisions:

1. Hydrology studies, including groundwater monitoring wells during the discharge season.
2. Require cut-off walls or secant exclusionary techniques to minimize the amount of groundwater pumped out of the work area. *
 *Cut-off walls are used to remove groundwater from an excavation in order to minimize the dewatering pumping demand. The approach usually involves building a physical cut-off wall or barrier with low permeability across the perimeter of the excavation to avoid the intrusion of groundwater in the working area.
3. Require delivering groundwater to city parks and schools as requested by the City.
4. Allow neighbors to attach hoses to the dewatering facility and use it beneficially.
5. Discharges can only commence between April 1 to October 31 due to the capacity of the storm drain system.

The Palo Alto ordinance does not have a replenishment fee component or a post-construction beneficial use requirement.

The City of Beverly Hills Dewatering Ordinance is applicable to both construction (temporary) and permanent dewatering activities and the provisions are located in the groundwater section of the municipal code. Considering the placement of the ordinance, it is not necessary to include the Palo Alto shoring and construction activities in this section. Rather the current beneficial use definition in the ordinance covers the beneficial use requirements from Palo Alto.

Staff also researched neighboring cities to see if they have dewatering ordinances similar to Beverly Hills and Palo Alto. Thus far, they do not. Dewatering references in their municipal codes are often a small subset in the shoring and grading sections of the municipal codes and only require project developers to get regulatory permits prior to starting dewatering activities.

COST ANALYSIS

The cost related to this ordinance can be divided into avoided cost by implementing beneficial use systems, beneficial use systems and replenishment fees.

Avoided Costs

Avoided costs is the cost avoided by implementing beneficial use systems in the property. Costs in this category include water quantity costs, water meter installation costs and replenishment fees.

Water quantity costs are the following based on the current water rates:

Table 1: Single Family Irrigation Cost per unit of 100 cubic feet (HCF)

Tier	Unit Cost
Tier 1: 0 to 26	\$3.65
Tier 2: 26 to 48	\$7.12
Tier 3: 48 to 86	\$10.48
Tier 4: over 86	\$14.87

The quantity cost depends on the landscape size and water consumption of the property. The estimated water consumption can be reviewed during plan review and an estimated consumption can be provided to the applicant for consideration.

Irrigation meter installation costs can also be avoided or reduced if the property implements a beneficial use irrigation system that meets or reduce water demands. Below is the typical cost for irrigation meter for a 1" to 2" meter size.

Table 2: Irrigation Meter Installation Cost

Meter Size	Cost
1"	\$12,627
1.5" to 2"	\$14,400

The last avoided costs for implementing beneficial use system is the replenishment fee. The replenishment fee for 2022 is \$1,343.45 per acre-feet (AF) of discharge. The replenishment is expected to increase annually because it is based on Metropolitan Water District (MWD) Tier 1 treated cost.

Based on the list of avoided costs, residential projects may find it is economical to invest on the beneficial use systems to avoid one time or annual avoided cost.

Beneficial Use System Costs

The beneficial use system costs are based on the project's infrastructure cost to design, build and operate the system. The cost is unknown because each system vary in size and complexity.

Properties may elect to install dewatering wells on property for irrigation or non-potable water use. Dewatering well installation vary from the number of wells installed in the property. According to the State of California, a 50 foot well will cost on average between \$25 to \$65 per foot or \$1,250 to \$3,250 per well. These cost estimates are from the California Central Valley Flood Protection Board and Sacramento Area Sewer District.

Replenishment Fee

Projects that do not implement a beneficial use system will be subjected to the replenishment fee. The current replenishment fee is \$1,343.45 per AF. The replenishment fee is expected to increase annually as MWD Tier 1 treated water is expected to increase through time. In addition to the replenishment fee, the single-family residential property owner will be required to install a volumetric meter to record the discharges. Meter installation costs is listed in Table 2 for a typical single-family residential.

NEXT STEPS

If the commission recommends the ordinance to City Council, staff will begin developing guidelines for project developers. Public Works staff will begin coordination with Community Development staff to disseminate information to project developers and include this requirement on appropriate projects. Staff will also schedule the item to be heard and consider by adoption by City Council in the summer or fall of 2023.



CITY OF BEVERLY HILLS
DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

TO: Public Works Commission

FROM: Josette Descalzo, Environmental Compliance and Sustainability Programs Manager
Robert Welch PE, Utilities General Manager

DATE: December 8, 2022

SUBJECT: Considerations in Amending the Ordinance of the City of Beverly Hills Relating to the Removal of Groundwater – Dewatering Ordinance

RECOMMENDATION

Staff recommends that the Public Works Commission provide a recommendation to amend the Dewatering Ordinance removing the R-1 exemption from the Dewatering Ordinance. The Commission may consider the following alternatives in setting how the Dewatering Ordinance apply to properties in R-1 areas:

1. Alternative 1: Existing properties, new construction and remodeled projects that alter more than 50% of the project site, that are managing rising groundwater (artesian groundwater) or dewatering, will be required to put groundwater discharge to beneficial use or pay a replenishment fee.
2. Alternative 2 : Maintain the existing R-1 exemption in the Dewatering Ordinance and only recommend that R-1 property owners use groundwater (artesian or dewatered) beneficially.

DISCUSSION

Title 9, Chapter 4 Article 610 (BHMC 9-4-610) of the Beverly Hills Municipal Code is an ordinance relating to the removal of groundwater (dewatering) and furthering management of the groundwater basin by regulating the use of shallow groundwater towards beneficial use rather than continued discharge to the stormwater conveyance system. The municipal code established a permit process and options for dewatering facilities. The municipal code provided management options to existing and future dewaterers that include:

1. Dewaterers can replenish the groundwater basin. The dewaterer will have to adhere to all state and federal laws to implement groundwater replenishment.
2. A permit and a replenishment fee will be required for any dewaterer that cannot use its groundwater for beneficial use.
3. A permit and an annual consumption and usage report will be required for any dewaterer that uses its groundwater for beneficial use. There is no replenishment fee.
4. If the dewaterer wishes to deliver its groundwater to the City, then an agreement will be established between the dewaterer and the City.

The replenishment fee discussed in the ordinance is constructed to assist in paying for the costs of purchasing replacement water. The fee is only intended to recover this cost and not to provide added revenue to the City. The collection of a replenishment fee is to offset the City's already expended cost to replace the groundwater that is not being extracted within the City limits due to continued dewatering activities. All funds collected are deposited into the Water Enterprise Fund, which is solely for the use to provide a reliable high quality water supply in Beverly Hills and portions of West Hollywood.

Currently, the ordinance applies to all parcels with the exemption of those in areas classified as R-1 (Single-Family Residential Zone). The majority of the dewatering permittees are existing commercial properties and projects that dewater during construction. The majority of these properties have opted to pay for the replenishment fee as there was no feasible avenue to use the water beneficially.

During the October 13, 2022 Public Works Commission meeting, Commissioner Charles Alpert brought to staff's attention that a significant amount of groundwater is discharged in R-1 areas that could be captured and used beneficially. The Commission requested staff bring forth an item to consider removing the R-1 exemption from the Dewatering Ordinance.

The remainder of the report will contextualized dewatering in Beverly Hills, which includes the feasibility and challenges of using dewatering discharges for beneficial use and the replenishment fee. The last part of the report includes alternatives that the Commission can use to establish how the Dewatering Ordinance applies to R-1 areas. Lastly, staff will be seeking the Commission's recommendation to move forward in amending the Dewatering Ordinance by removing the R-1 exemptions from the ordinance.

Existing Dewatering in Beverly Hills

Groundwater is present throughout the City. The depth of which it exists varies in different parts of the City. Shallow groundwater (less than 100 feet in depth) is commonly found east and west between Santa Monica Boulevard and Wilshire Boulevard and the hillside single-family residential areas. Geological tests will typically determine the exact depth of groundwater. Project site developers and designers use this information to design dewatering systems during construction and post-construction preventing groundwater from affecting building structures. In recent years, developers have designed structures to prevent water intrusion without a dewatering system. Properties that dewater during construction and post-construction are required to have a National Pollutant Discharge Elimination System (NPDES) permit from the Regional Water Quality Control Board (Regional Board). Typically these projects would shore greater than 20 feet below surface to build structures and hit a groundwater aquifer that requires dewatering. Permittees are required to report discharge volumes and water quality test results to demonstrate permit compliance to the Regional Board. Therefore, permittees install volumetric meters to accurately report discharge volumes.

Currently, commercial properties that dewater maintain NPDES permits and are permitted dischargers under the Dewatering Ordinance. These properties submit quarterly NPDES reports to the Regional Board and annually to the City as required by the Dewatering Ordinance. Recently, a few of these commercial properties have been in violation of water quality standards of their NPDES permits and have asked the City's assistance to allow them to discharge to the sewer system as this is their most viable option to comply with the permit. The proposed amendment of the wastewater ordinance will be brought back to the Commission in early 2023 for consideration to allow groundwater to be discharged to the sewer system. In addition, these same properties have vetted the feasibility of using their water beneficially, but determined the option is unfeasible due to the following:

1. Lack of non-potable water demand in the property.
2. Cost to retrofit the entire plumbing is cost prohibitive and risky for cross-connection contamination between potable water and non-potable water.
3. Additional cost to treat and operate captured groundwater to meet various regulatory requirements.

Based on these main reasons, existing commercial dewatering facilities are unable to use its groundwater beneficially.

The same general reasons can be applied to existing properties in the R-1, hillside areas. In addition, determining the presence of groundwater prior to construction have been trivial in the areas for a couple of reasons:

1. Initial geological tests indicated groundwater was not present during construction and post-construction phases.
2. Years or decades later, existing homes begin to experience the rise of groundwater into their property or leaching into their neighbor's property.

Typically, residents are recommended to hire contractors that would design a system to remove rising groundwater (artesian groundwater) from property. System designs vary from French Drains (perforated pipe) systems that would direct artesian groundwater to the property's front curb and gutter by gravity to French Drains that collect artesian groundwater to a common sump well where it is pumped to the curb and gutter. Both, French Drains and sump well/pump systems are not required to have a volumetric meter. Unlike the commercial properties with NPDES permits, removal of artesian groundwater is exempted from NPDES permit requirements and therefore do not have a meter.

Considerations for removing the R-1 exemptions in the Dewatering Ordinance

Alternative 1: Existing properties, new construction and remodeled projects that alter more than 50% of the project site, that are managing rising groundwater (artesian groundwater) or dewatering, will be required to put groundwater discharge to beneficial use or pay a replenishment fee.

Removing the Dewatering Ordinance exemptions on R-1 areas would potentially require existing hillside residential property owners, who remove artesian groundwater onsite by either French Drain or sump well/pump systems or other means to:

1. Use groundwater for beneficial use similar to the options listed above.
2. If it is not feasible to use the water beneficially, the resident would be subject to the replenishment fee as described above. In addition, the residential property owner will be required to install a volumetric meter at their own expense to accurately measure its discharge volume.

The Commission should also consider the feasibility of use, constructing and operating a groundwater beneficial use system for an existing hillside residential property. Below are some items for consideration:

1. Capturing artesian groundwater for beneficial use would require the installation of a collection and storage (cistern) system (above surface or below surface). Storage systems require substantial footprint that requires extensive construction work whether it is above or below surface. The same applies to constructing the collection system.
2. Non-potable water use demand is variable. Existing residential property owners will need to hire a professional to determine the non-potable water use on-site and compare it to

an estimated water collected for beneficial use. There may be instances where there is sufficient water demands (larger lots) and there may be some instances where there is insufficient water demands on property (smaller lots). Excess groundwater should also be anticipated and this excess water would eventually need to be discharged to the curb and gutter. Staff recommends that excess groundwater be exempt from replenishment fee because they are using groundwater to the most extent practicable on-site. Similarly, the Dewatering Ordinance is specific that the dewaterer either uses the water for beneficial use and if not, pay for the replenishment fee.

3. There are cross-connection hazards between potable water and non-potable water systems to consider. Typically property owners do not have existing plumbing plans in their possession. This may lead to cross-connection hazards when contractors mistakenly connect beneficial water use systems to potable water systems, which should not occur. This will require additional training and coordination between LA County Department of Public Health and the City's building inspectors to identify potential issues during construction.
4. Depending on the intent for beneficial use, the property owner will be required to treat the captured artesian groundwater to meet non-potable water-use standards. Requirements varies from solids removal to chemical treatment in order to protect the water user. The property owner will be required to get a permit from Los Angeles County Department of Public Health.
5. Property owners will be responsible for the lifetime operation and maintenance of their system, which includes regulatory compliance and reporting to various agencies.

New construction and remodeled projects that alter more than 50% of the project site may be more suitable to install a beneficial use system for the following reasons:

1. Water demands for non-potable water use can be fully evaluated within the design of a new construction or remodel project greater than 50% of the property site. Cost-benefit analyses can be fully evaluated for new construction and remodeled projects that alter more than 50% of the project site.
2. The remodel will allow for the proper design of a collection and storage system, including required treatment system depending on the end-use. Beneficial use systems can be fully integrated with the overall function and design of the property. This includes designing a system that would meet all regulatory requirements for non-potable water use.
3. The potential for cross-connection hazard will be significantly reduced because new plumbing plans will correctly identify potable water systems versus non-potable water systems.

The construction of a beneficial use system will require significant design, construction work and costs to manage groundwater (artesian or extracted). Based on the reasons above, there's an easier degree of constructability and safety for beneficial use systems on new construction and large remodel projects.

Alternative 2: Maintain the existing R-1 exemption in the Dewatering Ordinance and recommend to install a beneficial use system.

As demonstrated in Alternative 1, beneficial use systems can be cost prohibitive for some existing residents and for new or large remodeled projects. A replenishment fee can also be cost-prohibitive because the current rate is at \$1300 per acre-foot (AF) and also the property

owner would need to install a meter at their own expense to report their annual discharge to the City.

NEXT STEPS

Based on the commission's recommendation, staff will begin drafting the amended ordinance. Once drafted, staff will publicize the proposed amended ordinance and receive public comment. Staff anticipates completing these tasks and presenting the draft amended ordinance back to the Commission by March 2023.

ATTACHMENT 2

ORDINANCE NO. 23-O- [REDACTED]

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO APPLY DEWATERING PROVISIONS OF THE WATER SUPPLY ORDINANCE TO BUILDINGS IN THE ONE-FAMILY RESIDENTIAL ZONES THAT ARE NEWLY CONSTRUCTED OR PROPERTIES THAT ARE SUBSTANTIALLY REMODELED

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES ORDAIN AS FOLLOWS:

Section 1. Section 9-4-602 (“DEFINITIONS”) of Article 6 (“WATER SUPPLY”) of Chapter 4 (“WATER REGULATIONS”) of Title 9 (“BUILDING AND PROPERTY HEALTH AND SAFETY REGULATIONS”) of the Beverly Hills Municipal Code is amended by adding new entries for “SUBSTANTIALLY REMODELED” and “LANDSCAPED AREA” to read as follows:

“SUBSTANTIALLY REMODELED: Any project or projects that affects the removal or replacement of 50% or more of the linear length of the existing exterior walls of the building, and/or 50% or more of the linear length of the existing exterior wall plate height is raised, and/or 50% or more of the existing roof framing area is removed or replaced, and/or 50% or more of the landscaped area is removed or replaced over a 3-year period.

LANDSCAPED AREA: The total surface area dedicated to plants, turf, and water features. The landscaped area does not include footprints of buildings or structures, sidewalks, driveways, parking lots, decks, patios, gravel or stone walks, or other hardscapes.”

Section 2. Section 9-4-610 (“DEWATERING”) of Article 6 (“WATER SUPPLY”) of Chapter 4 (“WATER REGULATIONS”) of Title 9 (“BUILDING AND PROPERTY HEALTH AND SAFETY REGULATIONS”) of the Beverly Hills Municipal Code is amended to read as follows:

“A. Prohibited Without A Permit: No person owning, leasing, occupying or having charge or possession of any premises in the city shall cause the dewatering of the basin or the basin drainage area, by the extraction, diversion, transportation or movement of water from, through or across the premises, unless the person has obtained prior approval from the city by applying for and obtaining a dewatering permit, in accordance with this article. This requirement applies to all dewatering, including any dewatering commenced prior to November 3, 2006.

B. Use In Lieu Of Dewatering: Unless impracticable, all persons shall place all extracted ground water to reasonable and beneficial purposes rather than causing the dewatering of the basin. For purposes of this section, “impracticable” shall mean technically infeasible or requiring the expenditure of a greater amount than the replenishment fee described in subsection I of this section, and “beneficial purposes” shall mean placing extracted ground water towards the purposes set forth in subsections C or D of this section.

C. Beneficial Purposes (Non-One-Family Residential Zone Properties): For all properties except those in the R-1, R-1.X, R-1.5, R-1.5X, R-1.5X2, R-1.6X, R-1.7X, and R-1.8X zones, the beneficial purposes to which extracted ground water may be placed include:

1. Recharging the ground water to the basin;
2. Placing the ground water to reasonable and beneficial use on the property, including irrigation or other nonpotable use, subject to the permitting requirements of section 9-4-603 of this Article; or
3. Delivering the ground water to the city for treatment and use by the city, including the design, construction, operation, maintenance, repair and replacement of all facilities necessary for conveyance of the water to the city's water treatment plant, at no cost to the city.

D. Beneficial Purpose (One-Family Residential Zone Properties): For properties in the R-1, R-1.X, R-1.5, R-1.5X, R-1.5X2, R-1.6X, R-1.7X, and R-1.8X zones, the beneficial purpose to which extracted ground water may be placed is limited to non-potable water use on the property, including, without limitation, decorative fountains and irrigation systems, or delivery at the direction of the City, subject to the permitting requirements of section 9-4-603 of this Article.

E. Permit Procedures: The director of public works may issue dewatering permits in accordance with Title 4, Chapter 1, Article 1 of this code.

F. Permit Application: In addition to any other information required by section 4-1-102 of this code and any other information the director of public works may deem necessary in order to determine whether a dewatering permit should be issued, an application for a dewatering permit shall include all of the following information:

1. The applicant's name and address;
2. The location of the property on which dewatering will occur;
3. A description of the legal interest the applicant has in the property (e.g., owner, lessee, renter) and the name and address of the owner of the property if the applicant is not the owner;
4. A detailed description of the purpose or purposes for which the dewatering is proposed. Such description shall include:
 - a. The activity or activities that will necessitate the dewatering of the basin;
 - b. The method by which the dewatering will be effected;
 - c. The estimated duration of the dewatering, including beginning and ending dates;
 - d. The estimated amount of water that will be dewatered from the basin, including the amount estimated to be dewatered daily;
 - e. A statement that the dewatering site is in compliance with all federal, state and local laws and regulations;

5. A declaration that the applicant shall pay to the city the replenishment fee described in subsection I of this section.

G. Standards For Permit Issuance: The director of public works may issue a dewatering permit if it finds that the alternatives described in subsection C or D of this section in lieu of dewatering are impracticable, and the applicant has satisfied the general criteria of section 4-1-103 of this code.

H. Permit Conditions: Any dewatering permit shall be conditioned upon:

1. The permittee's reporting the amount of ground water dewatered as required by the director of public works; and
2. Paying the replenishment fee described in subsection I of this section.

I. Replenishment Fee: In the event that placing dewatered ground water towards a beneficial purpose is impracticable, the permittee shall pay to the city an annual fee based upon the cost of replacing the dewatered ground water, as recommended by the director of public works and determined by the city council. The fee may be set based upon either direct or in lieu replenishment of the basin by the city, and may account for the treatment of water or stranded capital facilities of the city, at the discretion of the city council. The amount of dewatered ground water subject to the fee shall be measured or estimated by the permittee according to a method approved by the director of public works.

J. Exemption: Persons owning, leasing, occupying or having charge or possession of any building in the R-1, R-1.X, R-1.5, R-1.5X, R-1.5X2, R-1.6X, R-1.7X, or R-1.8X zones that have a valid national pollutant discharge elimination system (NPDES) permit are exempt from the requirements of this section, except that this subsection J shall not apply to persons owning, leasing, occupying or having charge or possession of any newly constructed building or substantially remodeled property in the R-1, R-1.X, R-1.5, R-1.5X, R-1.5X2, R-1.6X, R-1.7X, or R-1.8X zones that is deemed complete after July 6, 2023.”

K. Revocation Or Suspension Of Permit: The director of public works may revoke or suspend a dewatering permit in accordance with title 4, chapter 1, article 1 of this code.”

Section 3. CEQA. The City Council finds that the adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15307 (14 C.C.R. Section 15307), which applies to actions taken by regulatory agencies as authorized by local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. This Ordinance is intended to regulate, conserve, protect and preserve the city's water supply through expanding the applicability of dewatering regulations to protect the environment.

Section 4. 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 5. 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 this certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 6. 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 EPSTEIN
Director of Public Works



CITY OF BEVERLY HILLS
PUBLIC WORKS DEPARTMENT
MEMORANDUM

TO: Public Works Commission

FROM: Josette Descalzo, Environmental Compliance and Sustainability Programs Manager
Robert Welch PE, Utilities General Manager

DATE: January 25, 2024

SUBJECT: Proposed Ordinance Amending the Beverly Hills Municipal Code to Regulate Polystyrene Foodware and Plastic Waste

ATTACHMENT: 1. Draft Ordinance

RECOMMENDATION

Staff is recommending that the Public Works Commission Liaison Committee recommend moving forward with the proposed ordinance for City Council consideration.

INTRODUCTION

The goal of the proposed ordinance is to protect the health and safety of the consumer and reduce plastic and polystyrene pollution in the environment. The initiative was presented and vetted through a yearlong series of Public Works Commission and various community-based organization (CBO) meetings in 2022 that included the Chamber of Commerce, the Rotary Club and the Ad-hoc committee meeting comprised of members of the Commission, CBOs and business community members. Based on this process, the Los Angeles County adopted version of the ordinance was the model ordinance used for the draft ordinance language. The draft ordinance encompassed the goals of pollution reduction, providing flexibility to businesses and sufficient time for business implementation. The initiative will also include an Early Adopters Program where the City will be assisting small businesses to purchase compostable foodware. The Public Works Commission recommended moving forward with the ordinance for City Council consideration during its November 9, 2023 meeting.

DISCUSSION

The draft ordinance (Attachment 1) for consideration is the culmination of a yearlong process that included feedback from the Public Works Commission, CBOs and the business community. The process included various presentations and notifications to the Chamber of Commerce, Rotary Club, Ad-Hoc committee and members of the business community.

The Los Angeles County Reduction of Waste from Single-Use Articles and Expanded Polystyrene Products Ordinance served as the model ordinance for the draft ordinance. The elements of the model ordinance were accepted by the Commission, CBO's and business community as it provided balance between the goals and flexibility for businesses to comply based on their business application.

The ordinance covers the following main goals:

1. Prohibit the distribution and sale of single-use articles that are neither compostable nor recyclable.
2. Prohibit the sale of expanded polystyrene products.
3. Provide flexibility that allows the use of certain single-use article products that are not compostable or recyclable for specific food-service application for which no compostable or recyclable products are available.
4. Provide clear definitions for compostable and recyclable products.
5. Require full-service restaurants to use multi-service (reusable) utensils for in-dining service or ready-to-eat food consumed on premise.
6. Require third-party and online food-ordering platforms to limit the distribution of single-use foodware accessories (i.e. utensils, straws, etc.) by having it available upon request.
7. Include exemptions to the ordinance is applicable to supplies used during emergency and health facilities providing ready-to-eat food to patients who are in treatment.
8. Give waivers or extensions in 1-year increments to businesses that may experience undue hardship.

The main goals of the ordinance are applicable to three food facility categories. The ordinance defines a food facility as set forth in California Health and Safety Code section 113789; it includes restaurants, bars, coffee shops, fast food restaurants, food carts, grocery stores, supermarkets, convenience stores, school cafeterias, hospitals and nursing facilities, snack bars, food trucks, juice bars, farmers markets, and temporary food facilities, such as those participating in fairs or events. A "food facility" does not include a third-party, online food-ordering business. For purposes of this ordinance, the term "food facility" includes only businesses that are located, or that operate, within the City, or that operate within a City facility.

Based on this definition, the three food facility categories are defined as follows:

- Category 1 food facility means any food facility not included within the definition of Category 2 or Category 3 food facility.
- Category 2 food facility means mobile food facility and;
- Category 3 food facility means certified farmers' market, a temporary food facility, or a catering operation.

All food facility categories are required to comply with the main requirements which are:

1. Prohibit the distribution and sale of single-use articles that are neither compostable nor recyclable. (Chapter 5-12-3)
2. Prohibit the sale of expanded polystyrene products. (Chapter 5-12-6)

The effective dates for the requirements are different for each food facility category and are as follows:

1. Category 1 facilities have 1-year upon ordinance adoption
2. Category 2 facilities have 1.5 years upon ordinance adoption
3. Category 3 facilities have 2 years upon ordinance adoption

Working with CBOs and the business community, it was necessary that flexibility be built within the ordinance. There is language under **Chapter 5-12-3** that will allow certain food facilities to use single-use plastic foodware that are not compostable or recyclable, as defined. For these circumstances, the ordinance allows the Director of Public Works to provide alternatives in addition to exemptions. For now, it is the intent of the City to allow single-use plastic foodware with a recyclable value, according to Athens Services, as an alternative. As more compostable or recyclable foodware articles arrive in the market, the City anticipates all businesses would be able to easily comply with the ordinance.

The ordinance also requires Third-Party and Online Food Ordering Platforms to reduce waste. **Chapter 5-12-4** will be enhancing the requirements of the Disposable Foodware Accessories Ordinance (5-11-2) requirements in the following:

1. Third-party, online food-ordering businesses must provide food facilities with the opportunity to specify which single-use foodware accessories, if any, will be offered on their menus appearing on the food-ordering platforms, so that customers may select which accessories, if any, will be included with their orders.
2. If a food facility chooses not to specify any single-use foodware accessories to be offered to customers on its menu appearing on the food-ordering platform, then the third-party, online food-ordering business shall post the following statement with such food facility's menu: "This restaurant has chosen not to make single-use foodware accessories available on its online menu."
3. Third-party, online food-ordering businesses may, but are not required to, provide grocery stores with the opportunity to customize the menus appearing on the businesses' online food-ordering platforms in accordance with subsection A.1, above. However, neither a grocery store nor a third-party, online food-ordering business is permitted to provide a single-use foodware accessory to a customer unless the customer has requested it. If an online food-ordering platform does not include options for customers purchasing online from a grocery store to request single-use foodware accessories, then no single-use foodware accessories may be provided to such online customers.

Lastly, the ordinance prohibits the selling of expanded polystyrene products (**Chapter 5-12-6**). The ordinance clearly prohibits the sale of such materials; however, it does not apply to online sales of products that are shipped from a location outside of the City.

Exemptions, Waivers or Extensions (Chapter 5-12-7 & 5-12-8):

The Exemptions, Waivers or Extension sections of the ordinance provides additional flexibility to businesses. These sections pause the requirements of this ordinance when single-use foodware articles are in-use to respond to emergencies declared by the City, State and/or Federal government. Health care facilities that provide ready-to-eat food to patients during treatment are also exempted from the ordinance, but the requirements are not exempted to food facilities that sells to employees or the general public such as cafeterias and snack bars.

Businesses that may endure hardships due to the ordinance can apply for a waiver or extension. Waivers and extensions will be given in one (1) year increments, and the business will be required to demonstrate compliant efforts to be considered for additional waivers or extensions.

Enforcement and Violations

The draft ordinance did not include an enforcement or violations section, per the City Attorney's Office council because the City will be using the Administrative Citation regulations, which is already in place. Violations of the ordinance will be enforced using the Municipal Code's Administrative Citation process which includes:

1. Written notice of violation and shall be subject to administrative penalty.
2. Subsequent violations of this chapter are subject to the following administrative penalties:
 - a. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the written notice of violation is issued;
 - b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the written warning notice is issued; or
 - c. A fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violations after the written warning notice is issued.

COST IMPACT

With the further development and availability of compostable materials, the implementation cost is minimal and ranges from \$0.02 to \$0.06 unit price. Table 1 Summarizes the projected cost impact.

Table 1: General cost difference on transitioning to compostable foodware accessories.

Foodware Type	Plastic Avg. Unit Price	Compostable Avg. Unit Price	Delta
Utensils	\$0.01	\$0.03	\$0.02
Beverage Containers	\$0.07	\$0.12	\$0.05
Take Out Containers	\$0.20	\$0.26	\$0.06
Straws	\$0.01	\$0.04	\$0.03

OUTREACH AND INCENTIVE PLAN

Outreach for the initiative has been ongoing for one year. Efforts included a virtual workshop and presentations to the Chamber of Commerce, Rotary Club, and Public Works Commission. Staff directly contacted businesses by email and phone to inform them of the initiative and directed them to the initiative website at www.beverlyhills.org/plasticandfoam. The website contains simple and useful information such as ordinance basics, compliance, exemption and business resources that includes a list of compliant foodware suppliers and the Early Adopter Program.

Staff will be continuing outreach in early 2024 by directly meeting with groceries, markets and pharmacies. Staff is also planning to meet with the Beverly Hills School District and other private schools within the City and is planning two (2) virtual workshops with businesses before the end of June 2024; and staff will continue direct outreach to brick and mortar restaurants in the City.

The Early Adopter Program will be established to assist and jump-start small businesses to transition to compostable materials. The program will provide approximately 1-month supply of foodware articles worth \$500. At this time, the budget anticipates support of 20 businesses. Businesses interested in participating in the program must fall into the following criteria:

1. Is a brick-and-mortar food facility in the City
2. Has fewer than 26 employees
3. Has fewer than 20 tables for in-dining service
4. Is currently using plastic or expanded polystyrene single-use articles for food service
5. Can demonstrate financial hardship incurred from complying with the ordinance
6. Is in good standing with the City, meaning it has paid business license fees and does not have any local or state environmental violations
7. Commits to signing up for the Green Business Program

NEXT STEPS

If the Public Works Liaison Committee approves the proposed ordinance, staff will schedule the ordinance to be considered by the City Council by the first quarter of 2024 and will be continuing its outreach plan to the community.

ATTACHMENT 1

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 ("REDUCTION OF WASTE FROM SINGLE-USE ARTICLES AND EXPANDED POLYSTYRENE PRODUCTS") 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:

Category 1 Food Facility means any food facility not included within the definition of a Category 2 or Category 3 Food Facility.

Category 2 Food Facility means a mobile food facility.

Category 3 Food Facility means a certified farmers' market as defined in California Health and Safety Code section 113742, a temporary food facility, or a catering operation as defined in Health and Safety Code section 113739.1. **City Facility** means any building, structure, property, park, open space, or vehicle, owned or leased by the City, its agents, agencies, or departments.

Compostable means consisting entirely of material that will promptly and safely break down into, or otherwise become part of, usable compost. For purposes of this chapter, in order to be considered "compostable," a product must, at a minimum, conform to the following requirements:

1. It must be free of all intentionally added fluorinated chemicals, including, but not limited to, per-and polyfluoroalkyl substances (PFAS); and
2. It must satisfy one or more of the following additional requirements:
 - a. It must be certified as "Home Compostable" by a certifying organization acceptable to the Director of Public Works, including, but not limited to, the organizations provided in subsection 2.c;

b. It must be certified by its manufacturer to be composed solely of fiber-based material, such as paper or wood, without any coatings or additives that are not made entirely from fiber-based material; or

c. It must accommodate a specific food-service application for which the Director of Public Works has determined, through a site inspection, has no single-use article that complies with subsection 2.a or 2.b of this definition is readily available, and it must have been certified as compostable by both the Biodegradable Products Institute ("BPI") and the Compost Manufacturing Alliance ("CMA").

The Director of Public Works may issue rules and guidelines that set forth requirements for products to be considered "compostable" in accordance with this definition and identify specific products and categories of products that are, and are not, considered "compostable" for purposes of this definition.

Condiment has the meaning set forth in California Health and Safety Code section 113756; it includes such foods as ketchup, mustard, mayonnaise, sauerkraut, soy sauce, salsa, syrup, jam, jelly, salt, sugar, sugar substitute, cream, coffee creamer, pepper, chili-pepper or cheese topping. "Condiment" does not include an ingredient or component of a ready-to-eat food item that constitutes an integral part of that item even if such integral ingredient or component is packaged separately from the ready-to-eat food item.

Customer means any natural person or such person's agent or caregiver.

Egg Carton means a container commonly used to package raw eggs sold to retail customers.

Expanded Polystyrene means polystyrene that has been expanded or "blown," using a gaseous blowing agent, into a solid foam, and is sometimes known by the trade-name "Styrofoam."

Expanded Polystyrene Product means a product made from expanded polystyrene, and includes, without limitation, such products as coolers, ice chests, cups, bowls, plates, shipping boxes, packing peanuts, packing materials, and pool or beach toys, that are made from expanded polystyrene. Expanded polystyrene products do not include products such as surfboards, coolers, and craft supplies that are wholly encapsulated or encased in a more durable material. Nor do expanded polystyrene products include products that are pre-packaged outside of the City using expanded polystyrene as part of the packaging material, as long as the products themselves are not made of expanded polystyrene that is not encased in a more durable material.

Food Facility has the meaning set forth in California Health and Safety Code section 113789; it includes restaurants, bars, coffee shops, fast food restaurants, food carts, grocery stores, supermarkets, convenience stores, school cafeterias, hospitals and nursing facilities, snack bars, food trucks, juice bars, farmers markets, and temporary food facilities, such as those participating in fairs or events. "Food facility" does not include a third-party, online food-ordering business. For purposes of this chapter, the term "food facility" includes only businesses that are located, or that operate, within the City, or that operate within a City facility.

Food Tray means a tray commonly used for packaging raw, uncooked food sold to retail customers, such as meat, fish, and whole fruits and vegetables.

Full Service Restaurant means a restaurant where food may be consumed on the premises, and where each of the following would typically occur when a customer consumes food on the premises:

1. The customer is escorted or directed to an assigned eating area. An employee of the restaurant may choose the assigned eating area or may seat the customer according to the customer's need for accommodation or other request;
2. Except for food that is included in a buffet or salad bar, the customer's food and beverage orders are delivered directly to the customer; and
3. If a customer wants additional items with the customer's food or beverage order, the customer requests such items from the server, and the server brings the requested items to the customer.

Grocery Store has the meaning set forth in California Health and Safety Code section 113948(c)(3); it means a store primarily engaged in the retail sale of canned foods, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry, and any area within the store (that is not separately owned or operated) where food is prepared or sold, including a bakery, deli, and meat and seafood counter.

Health Facility has the meaning set forth in California Health and Safety Code section 1250; it means a facility for the care, treatment, and diagnosis of human illness to which persons are admitted for a 24-hour stay or longer, including, among other facilities, acute care hospitals, psychiatric hospitals, skilled and intermediate nursing facilities, and rehabilitation facilities.

Home Compostable means that the material will biodegrade at moderate temperatures in a composting bin designed for home use.

Mobile Food Facility has the meaning set forth in California Health and Safety Code section 113831; it means a vehicle, such as a food truck, that is used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail.

Multiservice Utensil has the meaning set forth in California Health and Safety Code section 113837; it includes foodware used for serving and consuming ready-to-eat food, including, but not limited to, plates, bowls, trays, condiment containers, cups, or drink ware, and accessories, such as cutlery, that is manufactured from durable materials and that is specifically designed to be cleaned after each use and reused.

Online Food-Ordering platform means the digital technology provided on a website or mobile application through which a customer can place an order for pick-up or delivery of ready-to-eat food. Online food-ordering platforms include such platforms: operated directly by food facilities; operated by third-parties that place ready-to-eat food orders with food facilities on behalf of customers and then deliver the food; and operated by third-parties that place orders with food facilities on behalf of customers without providing delivery service.

Plastic has the meaning set forth in California Public Resources Code section 42372; it means a synthetic material made from a wide range of organic polymers such as polyethylene, polyvinyl chloride (PVC), nylon, that can be molded into shape while soft and then set into a rigid or slightly elastic form. "Plastic" includes all materials identified with, or conforming to, Resin Codes 1 to 7, inclusive, as provided

in California Public Resources Code section 18015, without regard to whether such material displays a Resin Code.

Polystyrene 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). This definition applies to material made with polystyrene, regardless of whether it exhibits a label, "6" as the Resin Code, or the abbreviation "PS" identifying it as polystyrene.

Ready-To-Eat-Food has the meaning set forth in California Health and Safety Code section 113881; it includes food and beverages that may be consumed without additional preparation to achieve food safety.

Recyclable means capable of being source-separated or otherwise removed from the waste stream when discarded, and then feasibly recycled, salvaged, processed, or marketed by any means other than landfilling or burning, and returned to use by society, irrespective of whether it is compostable. For single-use articles to be considered recyclable, it is necessary that recycling, salvage, or processing facilities be readily available, and they must have the technical and operational ability, as well as adequate capacity, to receive, recycle, salvage and/or process the material from which such single-use article is composed, and there must be a market for such recycled, salvaged, or processed material. For purposes of this chapter, in no event shall single-use articles made with plastic be considered recyclable.

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

Retail Establishment means any commercial establishment located within the City that sells goods directly to customers primarily for their own consumption or use.

Reusable Foodware refers to non-disposable food service items manufactured of durable materials specifically designed and manufactured to be safely and repeatedly washed, sanitized and reused over an extended period of time.

Self-Serve Dispenser or Station means any type of dispenser, container, counter, shelf, or other location that is accessible to customers of a food facility at which such customers can independently access single-use foodware accessories.

Single-Use or Disposable means that the item has been designed and constructed for one-time, one-person use, after which the item is meant to be discarded.

Single-Use Article means an item of foodware within the meaning of California Health and Safety Code section 113914, that is intended for a single-use, and that is used for serving, consuming, transporting, or containing food and beverages, including, but not limited to, clamshells, pizza boxes, plates, bowls, trays, wrappers, cups, straws, stirrers, knives, forks, spoons, and lids. "Single-use articles" include food trays and egg cartons. "Single-use article" does not include beverage containers that are subject to the California Redemption Value ("CRV") in accordance with the California Beverage Container Recycling and Litter Reduction Act, Public Resources Code section 14500, et seq.

Single-Use Foodware Accessory means a single-use article that is provided alongside or with ready-to-eat food, including straws, stirrers, knives, forks, spoons, chopsticks, condiment packets, condiment containers, napkins, cup lids, spill plugs, and hot beverage sleeves. "Single-use foodware accessory" does not include plates, cups, bowls, containers, wrappers, bags or other single-use articles that are used for holding or containing ready-to-eat food while it is being delivered, transported, or consumed.

Street Food Vendor means a mobile food facility that has all of the following characteristics: (1) the vehicle from which the vendor sells food is not enclosed; (2) the vehicle from which the vendor sells food is nonmotorized; and (3) the vendor operates upon a public sidewalk or other pedestrian path.

Take-Out Food means ready-to-eat food that a customer purchases from a food facility for consumption outside of the premises of the food facility.

Temporary Food Facility means a temporary food facility, as defined in California Health and Safety Code section 113930, that is approved by the Director of Public Works and operates at an approved community event.

Third-Party, Online Food-Ordering Business means a person that is not a food facility and that operates an online food-ordering platform for customers to order, for take-out or delivery, ready-to-eat food that is prepared or sold by food facilities.

5-12-3 - PROHIBITION OF DISTRIBUTION AND SALE OF SINGLE-USE ARTICLES THAT ARE NEITHER COMPOSTABLE NOR RECYCLABLE

A. Except as provided in subsections B and C of this section and as otherwise provided in this chapter:

1. A food facility shall not provide any single-use article with ready-to-eat food that it offers to a customer unless such single-use article is either compostable or recyclable; and
2. A food facility shall not provide a food tray or egg carton with any food that it offers to a retail customer unless such food tray or egg carton is either compostable or recyclable.

B. The requirements of this section do not apply to single-use articles that are included with ready-to-eat food that is pre-packaged at a location that is outside of the premises of the food facility, provided that such ready-to-eat food is offered to the customer as originally packaged. Except as otherwise provided in this chapter, if a food facility adds any single-use articles when providing such pre-packaged food to a customer, such additional single-use articles shall comply with subsection A, above.

C. The Director of Public Works may authorize the use of specific categories or types of single-use articles that are not compostable or recyclable as defined in Section 5-12-2 if the Director of Public Works determines that there is a specific food-service application for which no compostable or recyclable single-use article can feasibly be used. For purposes of this section, a compostable or recyclable product can feasibly be used for a particular food-service application only if, in the determination of the Director of Public Works, such product is: (a) readily available; and (b) can effectively be used for the particular application. Except as provided in Section 5-12-6, the Director of Public Works shall not approve the use of a product that is made from expanded polystyrene. The Director of Public Works may also authorize the use of a non-compostable plastic single-use article product that would not be considered recyclable under this chapter if the Director of Public Works determines, based upon developments in recycling technology and infrastructure, that such product is feasibly recyclable.

D. The Director of Public Works shall identify, in the rules and guidelines adopted in accordance with Section 5-12-2 of this chapter, any non-compostable, non-recyclable single-use articles that food facilities are authorized to use in accordance with subsection C, above, as well as any products that the Director of Public Works approves as compostable as defined in this chapter.

E. The Director of Public Works may rescind any approval of any non-compostable and non-recyclable single-use article product that was granted in accordance with subsection C of this section, or in accordance with the definition in Section 5-12-2. If the Director of Public Works rescinds any such authorization or determination, the Director of Public Works shall update the rules and guidelines accordingly. Any revision to the rules and guidelines rescinding an authorization to use a single-use article that is not compostable or recyclable shall not become effective until one (1) year after the date of the amendment. The requirements of this section shall become effective on the following dates for the following categories of food facilities:

1. One-year after adoption for Category 1 Food Facilities;
2. One and a half years after adoption for Category 2 Food Facilities; and
3. Two years after adoption for Category 3 Food Facilities.

5-12-4 - AVAILABILITY OF SINGLE-USE ACCESSORIES THROUGH THIRD-PARTY, ONLINE FOOD-ORDERING PLATFORMS

A. Except as provided in subsection B, below, any third-party, online food-ordering business that conducts business in the City, either by picking up ready-to-eat food from a food facility located within the City for delivery to a customer, or by delivering ready-to-eat food to a customer at a location within the City, shall comply with the following requirements to enable customers to select which single-use foodware accessories, if any, the customers chooses to have included with their order:

1. Third-party, online food-ordering businesses must provide food facilities with the opportunity to specify which single-use foodware accessories, if any, will be offered on their menus appearing on the food-ordering platforms, so that customers may select which accessories, if any, will be included with their orders.

2. If a food facility chooses not to specify any single-use foodware accessories to be offered to customers on its menu appearing on the food-ordering platform, then the third-party, online food-ordering business shall post the following statement with such food facility's menu: "This restaurant has chosen not to make single-use foodware accessories available on its online menu."

B. Third-party, online food-ordering businesses may, but are not required to, provide grocery stores with the opportunity to customize the menus appearing on the businesses' online food-ordering platforms in accordance with subsection A.1, above. However, neither a grocery store nor a third-party, online food-ordering business is permitted to provide a single-use foodware accessory to a customer unless the customer has requested it. If an online food-ordering platform does not include options for customers purchasing online from a grocery store to request single-use foodware accessories, then no single-use foodware accessories may be provided to such online customers.

5-12-5 - FULL-SERVICE RESTAURANTS REQUIRED TO USE MULTI-SERVICE UTENSILS

Full-service restaurants shall not provide single-use articles to customers with ready-to-eat food that they serve to customers for consumption on the premises. Full-service restaurants shall instead serve ready-to-eat food in, or with, multiservice utensils, except that full-service restaurants may provide single-use foil wrappers, napkins, straws, and placemats to customers who are dining on the premises so long as these single-use articles otherwise comply with the requirements of this chapter. Nothing in this section is intended to prevent a full-service restaurant from providing single-use articles to customers with take-out food, or as a container for customers to transport uneaten food, as long as such single-use articles otherwise comply with the requirements of this chapter.

5-12-6- PROHIBITING RETAIL ESTABLISHMENTS FROM SELLING EXPANDED POLYSTYRENE PRODUCTS

A. Except as provided in subsection B, below, and Section 5-12-7, effective [insert date], retail establishments shall not sell, rent, or offer any expanded polystyrene products to customers. This section does not apply to online sales of products that are shipped from a location outside of the City.

B. The Director of Public Works is authorized to grant a general exemption from the requirements of this section if, in the determination of the Director of Public Works, no substitute product that complies with subsection A, above, is readily available that can feasibly be used for a specific application. General

exemptions granted under this subsection B shall be temporary and shall be cancelled once the Director of Public Works determines that a substitute product that is not made of expanded polystyrene has become readily available.

5-12-7 - EXEMPTIONS

The requirements of this chapter are subject to the following exemptions and qualifications:

A. The requirements of this chapter do not apply to supplies and services provided in response to an emergency that is declared or ratified by the City, County, State or federal government.

B. The requirements of this chapter do not apply to single-use articles that health facilities provide to patients with ready-to-eat food during the course of treatment. Health facilities are not exempt from the requirements of this chapter with respect to single-use articles provided with ready-to-eat food served at food facilities located within such health facilities that sell or provide food to employees or the general public, such as cafeterias and snack bars. Nor are retail establishments that are located within health facilities exempt from any of the requirements of this chapter.

C. Food facilities may also retain and provide single-use articles as reasonable accommodations to persons with disabilities who request these items.

5-12-8 - WAIVERS OR EXTENSIONS

A. The Director of Public Works may grant waivers, with or without conditions, based upon a determination that requiring a food facility or retail establishment to comply with this chapter, or any portion thereof, would result in undue hardship. Undue hardship may include, but is not necessarily limited to, the following situations:

1. Compliance with the requirement in Section 5-12-5 that full service restaurants utilize reusable foodware will result in undue hardship because of a restaurant's lack of adequate dishwashing facilities;

2. Compliance with this chapter will result in an undue financial hardship for a food facility or retail establishment; or

3. A food facility or retail establishment purchased products that do not comply with the requirements of this chapter before receiving notice of the requirements of this chapter. A waiver under these circumstances shall be granted for only as long as is necessary, as determined by the Director of Public Works, for the food facility or retail establishment to use or sell such previously purchased products.

B. Waivers may be granted for a specified period of up to one (1) year. During the waiver term, the food facility or retail establishment shall make diligent efforts to become compliant. Should a food facility or retail establishment demonstrate that, at the close or expiration of a granted waiver term, and with diligent efforts to become compliant, compliance remains infeasible or would result in undue hardship, the Director of Public Works is authorized to extend the waiver for an additional specified period of time, except that waivers granted under subsection A.3, above, may not be renewed. It is the responsibility of the food facility or retail establishment to apply for any waivers or extensions in a timely manner.

5-12-9 - RECORDS

Each food facility, third-party online food ordering platform, and retail establishment subject to this chapter shall maintain records, in either written or electronic form, evidencing compliance with this chapter, for a period of three (3) years, and shall make them available for inspection at the request of the Director of Public Works.

5-12-10 - ENFORCEMENT AND PENALTIES

- A. Violations of this chapter shall be subject to the administrative citation process set forth in Chapter 3 of Title 1 of the Beverly Hills Municipal Code.

All fines collected pursuant to this chapter shall be deposited in the solid waste conservation fund to assist the Department of Public Works with its costs of implementing and enforcing the requirements of this chapter.

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. This Ordinance shall become operative on _____ for Category 1 Food Facilities; _____ for Category 2 Food Facilities; and _____ for Category 3 Food Facilities.

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:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

NANCY HUNT-COFFEY
City Manager

SHANA E. EPSTEIN
Director of Public Works