

ORDINANCE NO. ~~12-1332~~ 19-xxxx

AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA, ~~ADDING~~ AMENDING CHAPTER 8.64 TO THE HERMOSA BEACH MUNICIPAL CODE ~~TO BAN POLYSTYRENE FOOD SERVICE WARE AND AMENDING CHAPTER 1.10 TO MAKE VIOLATIONS OF CHAPTER 8.64 SUBJECT TO ADMINISTRATIVE PENALTY PROCEDURES~~ REGARDING THE PROHIBITION AGAINST THE SALE AND USE OF CERTAIN POLYSTYRENE PRODUCTS AND THE ADDITION OF REGULATIONS REGARDING DISPOSABLE SINGLE-USE STRAWS, STIRRERS, AND UTENSILS

The City Council of the City of Hermosa Beach does ordain as follows:

SECTION 1. ~~A new~~ The City Council hereby amends the title of Chapter 8.64 ~~is added~~ to Title 8 of the Hermosa Beach Municipal Code to read as follows:

CHAPTER 8.64 ~~BAN ON POLYSTYRENE FOOD SERVICE WARE~~ PROHIBITION AGAINST THE SALE AND USE OF CERTAIN POLYSTYRENE PRODUCTS AND REGULATIONS REGARDING DISPOSABLE SINGLE-USE STRAWS, STIRRERS, AND UTENSILS

8.64.010 Purpose.

The purpose of this Chapter is to establish and extend standards and procedures to reduce adverse environmental and public health impacts and promote environmentally sustainable practices in the City of Hermosa Beach by prohibiting the use of certain ~~disposable~~ polystyrene ~~food containers~~ products and the regulation of disposable single-use straws, stirrers, and utensils.

A. Expanded Polystyrene ~~Food Service Ware~~, a lightweight petroleum-based plastic material, is commonly littered or blown out of trash receptacles and migrates to the storm drain system and eventually to the ocean and beaches. In the marine environment, this material breaks down into smaller pieces, which negatively impacts water quality and harms marine wildlife, which often mistakes polystyrene pieces for food.

B. Littered Polystyrene ~~Food Service Ware~~, especially expanded foam, is difficult to clean up and may cumulatively result in increased litter. Reduction of polystyrene in the environment

will advance compliance with federal, state and city clean water mandates including compliance with Total Maximum Daily Loads and other requirements of the National Pollutant Discharge Elimination System.

C. Education about and reduction of food-soiled Polystyrene Food Service Ware, which can be difficult to clean and recycle, may advance waste stream reduction and recycling efforts and reduce the presence of this non-biodegradable material in landfills.

D. Polystyrene Food Service Ware has been shown to pose human health impacts to workers and consumers and these impacts can be mitigated by reducing its use.

8.64.020 Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

"Beverage Provider" means any business, organization, entity, group, or individual that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption. Beverage provider also includes any organization, group or individual that regularly provides beverages to its members or the general public as a part of its activities or services.

"City Facility" means any building, structure, property, park, open space, or vehicle, owned or leased by the City of Hermosa Beach, or its agents, agencies, or departments.

"City Contractor" means any person that enters into a written contract or verbal agreement to furnish products or services to or for the City of Hermosa Beach.

"City-Sponsored Event" means any event, activity or meeting organized or sponsored by the City of Hermosa Beach or any department of the City of Hermosa Beach.

"Disposable Food Service Ware" or "Disposables" means single-use, disposable products used for serving or transporting Prepared Food, Raw Food, or Beverages. This includes but is not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, straws, lids, utensils, stirrers, lid plugs (splash sticks), or any other container in or on which Prepared Foods, Raw Food, or Beverages are placed or packaged for consumption, ~~but excludes single-use disposable straws, cup lids, and utensils.~~

"Egg Carton" means a carton for raw eggs sold to consumers from a refrigerator case or similar appliance.

"Food Provider" means any Person or place that provides or sells Prepared Food or Raw Food or Beverages within the City of Hermosa Beach to the general public to be consumed on the premises or for take-away consumption. Food Provider includes but is not limited to (1) a grocery store, supermarket, restaurant, drive-thru, cafe, coffee shop, snack shop, public food market, farmers' market, convenience store, or similar fixed place where Prepared Food or Raw Food or Beverages is available for sale on the premises or for take-away consumption, and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food Provider also includes any organization, group or individual that regularly provides Prepared Food or Raw Food or Beverages to its members or the general public as a part of its activities or services.

"Meat and Fish Tray" means a tray for raw meat, fish, or poultry sold to consumers from a refrigerator case or similar retail appliance.

"Non-Profit Vendor" means a recognized tax exempt organization which provides goods as a part of its services.

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

"Plastic Beverage Straw" means a tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, used to transfer a beverage from its container to the mouth of the drinker. Plastic beverage straw includes compostable, petroleum-based or a biologically-based polymer straw, but does not include straws that are made from non-plastic materials, including but not limited to paper, pasta, sugar cane, wood, or bamboo.

"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 compostable,

petroleum-based, or a biologically-based polymer stirrers and lid plugs (splash sticks), but does not include stirrers that are made from non-plastic materials, including but not limited to paper, pasta, sugar cane, wood, or bamboo.

"**Plastic Utensil**" means any plastic utensil, including but not limited to forks, spoons, sporks, knives, cutlery, and disposable flatware intended for only one-time use. Plastic utensils includes compostable, petroleum-based, or biologically-based polymer forms of utensils, but does not include forms of utensils that are made from non-plastic materials, including but not limited to paper, sugar cane, wood, or bamboo.

"**Polystyrene**" means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to rigid polystyrene-~~foam~~ or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The ~~Reeeyele~~ Resin Code for polystyrene is '6' or 'PS,' either alone or in combination with other letters. This definition applies to all Polystyrene Food Service Ware and Polystyrene Packaging products, regardless of whether it exhibits a ~~Reeeyele~~ Resin Code.

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

"**Polystyrene Food Service Ware**" means Disposable Food Service Ware that contains or utilizes Polystyrene.

"**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 and packing peanuts.

"**Prepared Food**" means any food or beverage that is (1) ready to consume without any further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a Food Provider using any cooking, packaging or food preparation technique. Prepared Food may

be eaten either on or off the Food Provider's premises. ~~Prepared Food does not include (1) any raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers' markets and other food vendors.~~

"Raw Food" means any meat, fish, poultry, vegetable, fruit, or egg.

"~~Reeyele~~ 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 business facility that sells goods directly to the ultimate consumer including but not limited to grocery stores, pharmacies, liquor stores, "mini-marts," and retail stores and vendors selling clothing, food and personal items.

"Vendor" means any store, shop, restaurant, sales outlet, mobile food vendor, pushcart, or other commercial establishment located within or doing business within the City of Manhattan Beach, which provides perishable or nonperishable goods.

8.64.030 ~~Food Packaging Prohibitions.~~ Prohibition of use, distribution, and sale of polystyrene food service ware, coolers, packing materials, egg cartons, and produce and meat trays.

A. No Food Provider or Beverage Provider or Non-Profit Vendor shall distribute or sell ~~Prepared Food in any Polystyrene Food Service Ware~~ any Polystyrene Food Service Ware in conjunction with the sale of Prepared Food or Raw Food or Beverages at any location within the City of Hermosa Beach. Food Providers or Beverage Providers or Non-Profit Vendors that distribute Prepared Food or Raw Food or Beverages in Disposable Food Service Ware shall (1) distribute only Disposables that exhibit a ~~Reeyele~~ Resin Code other than No. 6 or PS, or (2) maintain documentation onsite of the composition of the Disposable Food Service Ware. Documentation may include information from the supplier, manufacturer, or bulk packaging for

the Disposables, and any other relevant information demonstrating that the disposable material is not polystyrene.

B. No Person shall sell any Polystyrene Food Service Ware or Polystyrene Cooler at any location within the City.

C. No Business or Vendor in the City shall sell, distribute, or use Polystyrene Packing Material, including but not limited to foam peanuts, packing peanuts, foam popcorn or packing noodles.

D. No Person may sell, offer for sale, or otherwise distribute for compensation within the City Meat and Fish Trays, Produce Trays or Egg Cartons made, in whole or in part, from Polystyrene, either as separate items or as part of the sale of meat, fish, poultry, vegetables, fruit, or eggs sold to consumers.

~~B~~E. No Person shall distribute or sell Prepared Food or Raw Food or Beverages in any Polystyrene Food Service Ware at City Facilities that have been rented, leased or are otherwise being used with permission of the City. This Subsection is limited to use of City facilities for which a Person has entered into an agreement with the City to rent, lease or otherwise occupy a City facility. All facility rental agreements for any City facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of Polystyrene Food Service Ware while using City facilities. The facility rental agreement shall indicate that the violating contractor's security deposit will be forfeited if the City Manager or his/her designee determines that Polystyrene Food Service Ware was used in violation of the rental agreement.

~~E~~F. No Person shall use or distribute Polystyrene Food Service Ware at City-sponsored events, City-managed concessions and City meetings open to the public. This subsection shall apply to the function organizers, agents of the organizers, City Contractors, Food Providers, Beverage Providers, or Non-Profit Vendors, and any other Person that enters into an agreement

with one or more of the function sponsors to sell or distribute Prepared Food [or Raw Food or Beverages](#) or otherwise provide a service related to the function.

DG. The City of Hermosa Beach, its Departments, and its City Contractors, agents, and employees acting in their official capacity, shall not purchase or acquire Polystyrene Food Service Ware, or distribute it for public use.

8.64.035 Single-Use plastic straws, stirrers and utensils prohibition; "upon-request" policy for non-plastic single use straws, stirrers and utensils.

A. Prohibition on Single-Use Plastic. Food Providers and Beverage Providers and Non-Profit Vendors shall not 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, made from non-plastic materials, such as paper, pasta, sugar cane, wood, or bamboo.

B. "Upon Request" policy for non-plastic single use straws, stirrers and utensils. No Food Provider or Beverage Provider or Non-Profit Vendor shall provide non-plastic, single-use straws, utensils or stirrers, except upon the request of the customer.

C. Accommodations. Food Providers and Beverage Providers and Non-Profit Vendors, 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 enjoy equal access to food and beverage services within the City.

8.64.040 Exemptions.

A. Food prepared or packaged outside the City of Hermosa Beach is exempt from the provisions of this Chapter, provided such food is not altered, packaged or repackaged within the City of Hermosa Beach limits unless otherwise stated. [This exemption does not apply to raw produce, meat, or eggs.](#)

B. Food provided by the Hermosa Beach School District under its official Food Service program.

C. Coolers and ice chests ~~made of Polystyrene intended for reuse~~ other than those defined as polystyrene coolers in this chapter, are exempt from the provisions of this Chapter.

D. The City Manager or his/her designee may exempt any Person from Sections 8.64.030 and 8.64.035 following the operative date of this ordinance, as follows:

1. A request for an exemption shall be filed in writing with the City Manager or his/her designee and shall include documentation of the reason for the claimed 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 or hi/her designee may approve the exemption for a maximum of one (1) year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include but not be limited to situations where:

a. There are no reasonable alternatives to Polystyrene Food Service Ware for reasons that are unique to the applicant; or

b. Compliance with the requirements of this Chapter would deprive a person of a legally protected right. The exemption may be extended for additional terms of up to one (1) year each, upon a showing of the continuation of the legal right.

3. The City Manager's written decision on the exemption is effective within ten (10) days of the decision. Decisions of the City Manager may be appealed 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. The City Council shall make its decision within sixty (60) days of receiving the appeal.

E. Sections 8.64.030 and 8.64.035 shall not apply to individuals bringing food for personal consumption at City Facilities, including but not limited to City parks and the beach, provided the facility is being used for individual recreation or similar purposes and such facility use is not part of a larger organized event that is otherwise governed by that Section.

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

8.64.050 Enforcement and Compliance.

A. This Chapter shall be enforced by the City Manager or his/her designee. Nothing in this Chapter shall be construed to create a private cause of action. The City Manager, or his/her designee, is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter including, but not limited to, inspecting any Food Provider's premises and requiring documentation of the composition of Polystyrene Food Service Ware material to verify compliance.

B. Violations of the provisions of this Chapter are subject to the administrative penalty provisions of Chapter 1.10.

C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

D. The remedies and penalties provided in this section are cumulative and not exclusive of one another.

E. All Food Providers required under this Code to have a business license shall certify compliance with this Chapter on the annual business license renewal application.

SECTION 2. Section 1.10.040 of the Hermosa Beach Municipal Code is hereby amended to add subparagraph (A)(19) to read as follows:

19. Chapter 8.64: ~~Ban on Polystyrene Food Service Ware~~ Prohibition Against the Sale and Use of Certain Polystyrene Products and Regulations Regarding Disposable Single-Use Straws, Stirrers, and Utensils.

SECTION 3. This Ordinance shall become operative and be in full force and in effect from and after one hundred eighty (180) days of its final passage and adoption, which will be ~~March 10, 2013~~_____.

SECTION 4. Prior to the expiration of fifteen (15) days after the date of its adoption, the City Clerk shall cause this Ordinance to be published in the Easy Reader, a weekly newspaper of general circulation published and circulated, in the City of Hermosa Beach in the manner provided by law.

SECTION 5. The City Clerk shall certify to the passage and adoption of this Ordinance, shall enter the same in the book of original Ordinances of said city, and shall make minutes of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted.

PASSED, APPROVED and ADOPTED this ~~11th day of September, 2012~~ _____ day of _____ ~~2012~~ 2019 by the following vote:

AYES: ~~Fishman, Tucker, Mayor Duclos~~

NOES: ~~Bobko, DiVirgilio~~

ABSENT: ~~None~~

ABSTAIN: ~~None~~

PRESIDENT of the City Council and **MAYOR** of the City of Hermosa Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney