

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF HERMOSA BEACH,
CALIFORNIA, AMENDING CHAPTER 8.64 OF THE HERMOSA
BEACH MUNICIPAL CODE TO EXPAND THE BAN ON
POLYSTYRENE FOOD SERVICE WARE TO INCLUDE A BAN
ON CERTAIN POLYSTYRENE PRODUCTS, SINGLE-USE
PLASTIC PRODUCTS, AND SINGLE-USE PRODUCTS AND
AMENDING CHAPTER 1.10 TO MAKE VIOLATIONS OF
CHAPTER 8.64 SUBJECT TO ADMINISTRATIVE PENALTY
PROCEDURES**

RECITALS

A. The state Legislature recognized that littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs. (California Public Resources Code §42355.)

B. To fulfil the City of Hermosa Beach's goals of reducing littered plastic products, the Hermosa Beach City Council adopted an ordinance banning polystyrene food service ware on September 11, 2012 (Ordinance No. 12-1332) and adopted an ordinance banning the use of plastic carryout bags on September 1, 2015 (Ordinance No. 15-0648).

C. Despite these efforts, the City continues to confront littered plastic, including other types of polystyrene products, such as coolers, packaging materials, and meat and fish and produce trays, as well as other types of plastic products, such as plastic straws, stirrers, and utensils. The City is also confronted by littered balloons on the streets, parks, and beaches.

D. Balloons and plastic pollution, including polystyrene and single-use products, raise environmental and health concerns related to water pollution, the welfare of marine life, and human health.

E. A ban on additional polystyrene products, single-use plastic products, and single use products will further serve the City's goal of reducing litter.

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

SECTION 1. Chapter 8.64 of the Hermosa Beach Municipal Code is amended to read as follows:

CHAPTER 8.64 BAN ON CERTAIN POLYSTYRENE PRODUCTS, SINGLE-USE PLASTIC PRODUCTS, AND SINGLE-USE PRODUCTS

Sections:

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8.64.010 Purpose.

The purpose of this Chapter is to establish 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 polystyrene products, single-use plastic products, and single-use products.

A. Polystyrene, 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. Littered Polystyrene, especially expanded foam, is difficult to clean up and may cumulatively result in increased litter.

B. Balloons and other plastic pollution, including single-use plastics and polystyrene, also negatively affect the environment and have raised environmental and health concerns related to water pollution, the welfare of marine life, and human health.

C. These regulations reduce polystyrene use and litter in the City; reduce the distribution of disposable single-use plastic; reduce single-use waste; reduce balloon litter; reduce greenhouse gas emissions; and reduce threats to natural ecosystems and ocean wildlife, in order to protect the health of the Hermosa Beach community and provide environmental sustainable practices in the City. These regulations will also 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.

8.64.020 Definitions.

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

“Balloon” means a flexible bag, including, but not limited to, those made from rubber, latex, foil, metal, polychloroprene, Mylar, or nylon fabric, that is designed to be inflated with air or gas lighter than air such as helium, hydrogen, nitrous oxide, or oxygen, causing it to float.

“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 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 (plash sticks), or any other container in or on which Prepared Foods, Raw Foods, or beverages are placed or packaged for consumption.

"Foil Balloon" includes but is not limited to balloons that are made of "metalized" nylon film, and include balloons often referred to as made of Mylar, which is a brand name for a special type of polyester film. Foil or metallic balloons are made of plastic (nylon) sheets coated with polyethylene and metallic materials that are sealed together with heat.

"Food Provider" means any Person or place that provides or sells Prepared Food 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 is available for sale on the premises or for take-away consumption, and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food Provider also includes any organization, group or individual that regularly provides Prepared Food to its members or the general public as a part of its activities or services.

“Latex Balloon” is a balloon made with the sap from a rubber tree. During the manufacturing process many chemicals are added to raw rubber including pigments, oils, curing agents, and accelerators.

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

"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 polystyrene foam or expanded polystyrene, processed by

any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The Recycle Code for polystyrene is '6' or 'PS,' either alone or in combination with other letters. This definition applies to all Polystyrene Food Service Ware, regardless of whether it exhibits a Recycle Code.

"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.

"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.

"Produce Tray" means any tray or carton for vegetable, fruit, or eggs sold to consumers from a refrigerator case or similar retail appliance.

"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.

"Raw Food" means any vegetable, fruit, or egg.

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

"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 Hermosa Beach, which provides perishable or nonperishable goods.

8.64.030 Prohibition of Prepared Food in Polystyrene Food Service Ware.

A. No Food Provider shall distribute or sell Prepared Food in any Polystyrene Food Service Ware at any location within the City of Hermosa Beach. Food Providers that distribute Prepared Food in Disposable Food Service Ware shall (1) distribute only Disposables that exhibit a Recycle 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 distribute or sell Prepared Food 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.

C. 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 and any other Person that enters into an agreement with one or more of the function sponsors to sell or distribute Prepared Food or otherwise provide a service related to the function.

D. 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.

8.64.040 Prohibition of Other Polystyrene Products.

A. Packaging Materials. 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.

B. Meat and Fish Trays and Produce Trays. No person may sell, offer for sale, or otherwise distribute for compensation within the City, Meat and Fish Trays or Produce Trays made, in whole or in part, from polystyrene, either as separate items or as part of the sale of Raw Food or raw meat, fish, or poultry.

C. Coolers. No Person shall sell any Polystyrene Cooler at any location within the City.

8.64.050 Prohibition of Plastic Straws, Stirrers, and Utensils; “upon-request” policy for non-plastic single use straws, stirrers, and utensils.

A. Prohibition on Plastic Straws, Stirrers, and Utensils. Food Providers and Beverage Providers 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 shall provide non-plastic, single-use straws, utensils or stirrers, except upon the request of the customer.

C. Accommodations. Food Providers and Beverage Providers, as well as City facilities, City-managed concessions, City-sponsored events, and City-permitted events, may retain and dispense Plastic Beverage Straws as an accommodation to people with disabilities who request them to enjoy equal access to food and beverage services within the City.

8.64.060 Regulation on the sale, distribution, and use of balloons; Prohibition of the sale, distribution, and use of “foil,” “metalized,” or “Mylar” Balloons; Prohibition on the release of Latex balloons.

A. No Person, including but not limited to a balloon wholesaler, retailer (e.g., party supply, craft store), or third party Vendor shall sell or distribute Foil Balloons or “metalized” or Mylar Balloons within the City either as a separate item or included in a packaged product set.

B. No Person shall use or distribute Foil Balloons or “metalized” or Mylar Balloons on public property, including parks and beaches.

C. No Person shall use or distribute Latex Balloons filled with air or helium at any City function or City sponsored event.

D. No Person shall release Latex Balloons filled with air or helium anywhere within the City limits.

8.64.070 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 meat, fish, poultry, produce, or eggs.

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

C. 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.

D. The City Manager or his/her designee may exempt any Person from the requirements of this Chapter, 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 his/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 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.

8.64.080 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 the premises of any Food Provider, Beverage Provider, Vendor, or Person in accordance with law and requiring

documentation of the composition of Food Service Ware, Meat and Fish Trays, Produce Trays, Coolers, and Packing Materials 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 businesses that are subject to this Chapter 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 read as follows:

15. Chapter 8.64, Ban on Certain Polystyrene Products, Certain Single-Use Plastic Products, and Other Single-Use Products

SECTION 3. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 4. This Ordinance shall become operative and be in full force and in effect on January 1, 2020.

SECTION 5. 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 6. 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 ____ day of _____ 2019.

VOTE: AYES:

NOES:

ABSTAIN:

ABSENT:

MAYOR of the City of Hermosa Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney