

8/27/19 AGENDA, ITEM 5a - INTRODUCTION OF ORDINANCE 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
SUPPLEMENTAL EMAIL AND ATTACHMENTS SUBMITTED BY CRAIG CADWALLDER TO THE CITY COUNCIL ON 8/27/19 AT 10:31 AM.

From: Craig W. Cadwallader <craigc@surfrider-southbay.org>
Sent: Tuesday, August 27, 2019 10:31 AM
To: Mayor Stacey Armato <sarmato@hermosabch.org>; Mayor Pro Tem Mary Campbell <mcampbell@hermosabch.org>; Councilmember Hany Fangary <hfangary@hermosabch.org>; Councilmember Justin Massey <jmassey@hermosabch.org>; Councilmember Jeff Duclos <jduclos@hermosabch.org>
Cc: Elaine Doerfling <edoerfling@hermosabch.org>; Suja Lowenthal <suja@hermosabch.org>; Ken Robertson <krobertson@hermosabch.org>; Ann Yang <anny@hermosabch.org>
Subject: Important information regarding Item 5.a on tonight's Hermosa Beach City Council Agenda

Dear Mayor Armato, Mayor Pro Tempore Campbell, Councilmember Fangary, Councilmember Massey, and Councilmember Duclos:

I am writing to thank the Hermosa Beach City Council for taking action on July 9, 2019, to instruct staff to agendize an upgrade to existing Hermosa Beach Polystyrene Ordinance No. 12-1332, to in essence "match" the existing cumulative adopted City of Manhattan Beach plastics ordinances (through Ordinance No. 19-0009, as adopted on March 19, 2019).

During the July 9 meeting, for Municipal Matter item 6.d titled "Discussion and Possible Action Regarding Consideration of Options for the Regulation of Single Use Plastic Products," you considered and discussed amending Hermosa Beach Ord. No. 12-1332 to in essence conform to plastics pollution prevention best practices embodied in the most current Manhattan Beach plastics ordinances (including regulating balloons).

To facilitate understanding the proposed amendments to Ord. No. 12-1332 that would conform Chapter 8.64 of the Hermosa Beach Municipal Code to the latest Manhattan Beach code, as you recall, a redline draft of a proposed update to Ord. No. 12-1332 was included with the July 9 Staff Report, along with a list of potential additional amendments for consideration - please see copies of these two documents attached, titled "6.d.1_UPDATED_Polystyrene_Ordinance_19-xxxx_REDLINE_07092019.pdf" and "6.d.2_Food_Service_Ware_Ordinance_Upgrade_Add-Ons_07092019.pdf" respectively.

For your convenience, I have also included a combined copy of the cumulative Manhattan Beach adopted plastics ordinances through Ord. No. 19-0009 - please see "Manhattan_Beach Plastics_Ordinances_Combined_through_Ord._No._19-0009_03192019.pdf" attached.

For Public Hearing Item 5.a on tonight's City Council meeting agenda, a draft ordinance is included as Attachment 1 - please see "5.a.1_Draft_Ordinance_08272019.pdf" attached. It is assumed that this draft ordinance purportedly amends Ord. No. 12-1332 to conform to both the July 9 redline Attachment 1 (item "6.d.1"), which itself conforms to the most current Manhattan Beach combined plastics ordinances (through Ord. No. 19-0009).

Unfortunately, the proposed draft ordinance (item "5.a.1") deviates from full conformance to the July 9 redline (item "6.d.1"), and consequently deviates from full conformance to the Manhattan Beach combined ordinance. Some deviations are minor (eg., a definition was included out of alphabetical

order), but others are more significant as they represent elements explicitly included in the Manhattan Beach ordinance for good cause.

To facilitate the identification and proposed remediation of these deviations, a new redline version of tonight's draft ordinance has been created which conforms to the July 9 redline as well as to the Manhattan Beach combined ordinance - please see

"5.a.1_v2_Draft_Ordinance_REDLINE_REMEDIATIONS_08272019.pdf" attached. I urge City Council to seriously consider adoption of these proposed adjustments to the draft ordinance.

Incorporating these proposed adjustments enables tonight's draft ordinance to then conform to both the July 9 redline and the Manhattan Beach model, in fulfillment of City Council's directives, as also represented by your unanimous vote supporting same at the July 9, 2019 Hermosa Beach City Council meeting. I encourage you to consider adopting these proposed adjustments to the draft ordinance, and hope to have the opportunity to speak to this issue tonight. And while I realize that the Public Hearing for this item will be continued to an unspecified future meeting, I hope that will be at the earliest possible date, so that Hermosa Beach might fulfill a leadership role to help foster other cities contemplating similar measures to engage in the process sooner rather than later.

Finally, I strongly urge City Council to move tonight to approve the draft resolution in support of SB 54/AB 1080 ("5.a.2_Draft_Resolution_08272019.pdf" attached) as there are only a few days remaining in this year's legislative session, and adding the City's support for these important measures will help build the momentum to push this very important legislation over the goal line!

I look forward to the opportunity to address you on these important issue tonight.

Thank you again for your continuing support for a clean and healthy environment!

Best regards,

Craig W. Cadwallader
Surfrider Foundation South Bay Chapter

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

Examples of Ordinance Extensions to the Ban on Single Use Plastics

1. Balloons – adopted in Manhattan Beach

Manhattan Beach Ordinance No. 19-0003 (adopted March 6, 2019):

Recitals:

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.

These environmental regulations reduce single-use waste; reduce greenhouse gas emissions; reduce the distribution of disposable single-use plastic; reduce polystyrene use and litter in the City; keep plastic waste from landfills; and reduce balloon litter threats to natural ecosystems and ocean wildlife. The additional regulations hereinafter will further serve the City's goal of reducing litter.

Definitions:

"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.

"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.

"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.

Regulations:

5.80.060 - Regulations on the sale, distribution, and use of balloons; Prohibition of the sale, distribution and use of "foil," "metalized," or "Mylar" Balloons; Prohibition of the release of Latex balloons.

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, "metalized" or Mylar balloons within the City either as a separate item or included in a packaged product set.

No Person shall use or distribute foil, "metalized" or Mylar balloons on public property including parks and beaches.

No Person shall use or distribute latex balloons filled with air or helium at any City function or City sponsored event.

No Person shall release latex balloons filled with air or helium anywhere within the City limits.

2. PFAS Chemical-Free – adopted in Berkeley and San Francisco

Berkeley Ordinance No. 7639-N.S. (adopted February 19, 2019):

11.64.010 - Findings and Purpose:

C. Among other hazards, plastic debris attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish, other seafood and salt that is eventually sold for human consumption. Certain SUDs, including food contact papers and compostable paperboard containers, can also contain harmful fluorinated chemicals that are linked to serious health conditions.

11.64.020 - Definitions.

D. "Disposable Foodware" means all containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, utensils, straws, lids, sleeves, condiment containers, spill plugs, paper or foil wrappers, liners and any other items used to hold, serve, eat, or drink Prepared Food, which are designed for single use and in which Prepared Food is placed or packaged on a Prepared Food Vendor's premises.

F. "Accessory Disposable Foodware Item" means any Disposable Foodware item such as straws, stirrers, napkins and utensils; condiment cups and packets; cup sleeves, tops, lids, and spill plugs; and other similar accessory or accompanying Disposable Foodware items used as part of food or beverage service or packaging.

Regulations:

11.64.050 - Compostable Disposable Foodware.

Effective January 1, 2020:

- A. Takeout Food shall only be served in Disposable Foodware that conforms to the Disposable Foodware Standards in Section 11.64.070.
- B. Accessory Disposable Foodware Items shall conform with the Disposable Foodware Standards in 11.64.070.
- C. Takeout Food Delivery Services shall only deliver Takeout Food from a Prepared Food Vendor that is served in Disposable Foodware and with Accessory Disposable Foodware Items, if any, that conform to the Disposable Foodware Standards in 11.64.070.

11.64.070 Disposable Foodware Standards.

- A. Disposable Foodware must be accepted by City of Berkeley municipal compost collection programs and be free of all intentionally added fluorinated chemicals, as certified by the Biodegradable Product Institute or other independent third party certifying organization or agency recognized by the City, except that non-compostable foil wrappers that are accepted in the City of Berkeley recyclable collection program may be used for burritos, wraps, and other items that require foil to contain and form the food item.
- B. The City shall maintain on its website a list of suppliers that offer Disposable Foodware that complies with these Disposable Foodware Standards.
- C. Changes, if any, to Disposable Foodware Standards shall become effective on January 1 of the next calendar year, and the City of Berkeley shall provide notice of any such changes to Prepared Food Vendors at least 90 days prior.

San Francisco Ordinance No. 201-18 (adopted July 31, 2018):

Ordinance amending the Environment Code to prohibit the sale or use in the City of single-use food service ware made with fluorinated chemicals and certain items made with plastic; ...

Section 2. Findings.

- (b) Single-use service ware may threaten public health because many types contain many additives that are known or suspected carcinogens or endocrine disruptors, such as phthalates, perchlorate, and fluorinated chemicals. These additives are known to leach from food service ware into the food and beverages they contain.
- (c) Fluorinated chemicals, also known as per- and polyfluorinated alkyl substances ("PFAS"), are synthetic chemicals commonly used in and on single-use service ware products to repel water and grease. A 2018 Center for Environmental Health study found that 57% of tested food service ware contained significant levels of fluorinated chemicals. Fluorinated chemicals are extremely persistent in the environment, leach into food, and can be taken up from soil into food. In 2016, the FDA rescinded its approval for use of three such fluorinated chemicals from food contact materials due to associated heightened risks of cancer, toxicity, and other health effects. Other PFAS chemicals have similar chemical structures, and may pose similar risks.

SEC. 1602. DEFINITIONS.

"Fluorinated Chemical" means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as perfluoroalkyl and polyfluoroalkyl substances, or PFAS chemicals.

"Fluorinated Chemical Free" means an item (1) contains no intentionally added Fluorinated Chemicals beyond a Department-determined acceptable threshold, as determined by the Department of the Environment; (2) is listed, described, or referenced as fluorinated chemical free on the Department's website; and (3) is either certified by

the Biodegradable Product Institute or other third party as recognized by the Department, or is a napkin, stirrer, splash stick, cocktail stick, toothpick, or utensil made entirely of Natural Fiber.

Regulations:

SEC. 1603. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED.

- (a) No person may sell, offer for sale, or otherwise Distribute within the City (1) any Food Service Ware that is not either Compostable or Recyclable, (2) any Food Service Ware made, in whole or in part, from Polystyrene Foam, (3) any single-use stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic, including compostable, bio- or plant-based plastic, or (4) beginning January 1, 2020, any Food Service Ware that is Compostable and not Fluorinated Chemical Free.
- (b) The Director may adopt a list of suitable alternative Compostable or Recyclable Food Service Ware products. "Suitable alternative Compostable or Recyclable Food Service Ware products" means Food Service Ware products that the Director determines serve the same intended purpose as non-compliant products, meet the standards for what is Compostable and/or Recyclable set under this Chapter 16, and are reasonably affordable. The Director shall regularly update the list.
- (c) Beginning January 1, 2020, no person may sell, offer for sale, or otherwise Distribute within the City Food Service Ware that does not contain a minimum post-consumer recycled content that may be specified by the Director in regulations according to the Director's assessment of market availability and costs.

If a product is included on the Director's list, it will be deemed to comply with this Section 1603. If a product is not included on the Director's list, the person using the product as Food Service Ware will have the burden of establishing to the Director's satisfaction that the product complies with this Section.

SEC. 1604. USE OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED.

- (a) Food Vendors may not sell, offer for sale, or otherwise Distribute Prepared Food (1) in Food Service Ware made, in whole or in part, from Polystyrene Foam, (2) in Food Service Ware that is not Compostable or Recyclable, or (3) beginning January 1, 2020, in Food Service Ware that is Compostable and not Fluorinated Chemical Free.
- (b) City Facility Food Providers may not provide Prepared Food to City Facilities (1) in Food Service Ware made, in whole or in part, from Polystyrene Foam, (2) in Food Service Ware that is not Compostable or Recyclable, or (3) beginning January 1, 2020, in Food Service Ware that is Compostable and not Fluorinated Chemical Free.
- (c) City Departments may not purchase, acquire, or use Food Service Ware for Prepared Food (1) where the Food Service Ware is made, in whole or in part, from Polystyrene Foam, (2) where the Food Service Ware is not Compostable or Recyclable, or (3) beginning January 1, 2020, in Food Service Ware that is Compostable and not Fluorinated Chemical Free.

- (d) City contractors and lessees may not use Food Service Ware for Prepared Food in City Facilities and while performing under a City contract or lease (1) where the Food Service Ware is made, in whole or in part, from Polystyrene Foam, (2) where the Food Service Ware is not Compostable or Recyclable, or (3) beginning January 1, 2020, where the Food Service Ware is Compostable and not Fluorinated Chemical Free. All new leases and permits authorizing the sale of food and beverages at the San Francisco International Airport must incorporate terms requiring the lessee or permittee to comply with the terms of this Chapter 16. This requirement shall also apply to any such lease or permit renewed, extended, or materially amended after July 1, 2019.
- (e) The Director may adopt a list of suitable alternative Compostable or Recyclable Food Service Ware products. "Suitable alternative Compostable or Recyclable Food Service Ware products" means Food Service Ware products that the Director determines serve the same intended purpose as non-compliant products, meet the standards for what is Compostable and/or Recyclable set under this Chapter 16, and are reasonably affordable. The Director shall regularly update the list.

If a product is included on the Director's list, it will be deemed to comply with this Section 1604. If a product is not included on the Director's list, the person using the product as Food Service Ware will have the burden of establishing to the Director's satisfaction that the product complies with this Section.

- (f) It shall not be a violation of this Section 1604 to sell, provide, or purchase Prepared Food packaged in Food Service Ware otherwise prohibited by subsections (a) through (c), or to use Food Service Ware otherwise prohibited by subsection (d), if the Prepared Food is packaged outside the City and is sold or otherwise provided to the consumer in the same Food Service Ware in which it originally was packaged. Businesses packaging Prepared Food outside the City are encouraged to use Food Service Ware that is Compostable or Recyclable, is Compostable and Fluorinated Chemical Free, and is not made, in whole or in part, from Polystyrene Foam.

3. Disposable Fee – adopted in Berkeley (coming in July to San Francisco)

Berkeley Ordinance No. 7639-N.S. (adopted February 19, 2019):

11.64.020 - Definitions.

E. "Disposable Cup" is a beverage cup designed for single use to serve beverages, such as water, cold drinks, hot drinks and alcoholic beverages.

11.64.050 - Compostable Disposable Foodware.

Effective January 1, 2020:

D. Prepared Food Vendors shall charge customers twenty five cents (\$0.25) for every Disposable Cup provided.

4. Take-Out Fee – adopted in numerous ordinances, City of Alameda example

Alameda City Ordinance No. 3193 New Series (adopted October 3, 2017):

Regulations:

4-4.5 - Compostable Disposable Food Service Ware Required.

All food vendors using disposable food service ware shall use compostable disposable food service ware unless the food vendor can demonstrate an undue hardship as provided in to subsection (b) of Section 4-4.6.

Food vendors are strongly encouraged to provide reusable food service ware in place of disposable food service ware.

In instances where food vendors decide to use compostable disposable food service ware that is higher priced than their current ware, a food vendor may charge a "take out fee" to customers to cover the cost difference.

All persons in charge of City facilities will use compostable disposable food service ware unless such use is an undue hardship. Agents, contractors, and vendors doing business with the City will use compostable food service ware in City facilities or on City projects, unless the City Manager or his or her designee finds an undue hardship.

5. Reusable Customer Cups / Reusables for Dine-In – adopted in Berkeley

Berkeley Ordinance No. 7639-N.S. (adopted February 19, 2019):

11.64.020 - Definitions.

- G. "Reusable Foodware" means all foodware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.

Regulations:

11.64.040 - Reusable Customer Cups.

- A. Except as provided in Chapter 11. Temporary Food Facilities of the California Health and Safety Code, Section 114353, customers may provide their own Reusable Foodware

cups for beverage service in accordance with California State Health Code 114075(e) and as amended. Prepared Food Vendors may refuse, at their sole discretion, any customer-provided Reusable Foodware cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a Reusable Foodware cup for a beverage consumed on the premises, or a Disposable Cup that conforms to the Disposable Foodware Standards in 11.64.070 for a beverage to be consumed off the premises, with any charge required pursuant to Section 11.64.050.D.

11.64.060 - Reusable Foodware for Dining on the Premises.

Effective July 1, 2020:

- A. Prepared Food served for consumption on the premises of a Prepared Food Vendor shall only be served using Reusable Foodware, except that disposable paper food wrappers, sleeves and bags; foil wrappers; paper napkins; straws and paper tray- and plate-liners shall be allowed for dining on the premises, so long as they meet the Disposable Foodware Standards in Section 11.64.070.
- B. Notwithstanding the requirements at Section 11.64.060.A, Prepared Food Vendors that do not have on-site or off-site dishwashing capacity or are unable to contract for services to wash, rinse and sanitize Reusable Foodware in compliance with the California State Health Code may request a waiver or partial waiver pursuant to Section 11.64.090. To obtain a waiver, the Prepared Food Vendor must demonstrate inability to comply due to insurmountable space constraints, undue financial hardship and/or other extraordinary, insurmountable circumstances.
- C. All Disposable Foodware used on the premises by Prepared Food Vendors that are operating under full or partial waivers obtained pursuant to 11.64.090 shall conform to the Disposable Foodware Standards in Section 11.64.070.

6. Providing Reusable Beverage Cups at Events – adopted in San Francisco

San Francisco Ordinance No. 201-18 (adopted July 31, 2018):

... require reusable beverage cups at certain events that necessitate a City permit or are held at a City-owned or City-leased facility; ...

Section 2. Findings.

- (h) As of 2012, 120 billion single-use cups are used per year in the United States, equal to 370 per person per year. By this measure, San Franciscans use more than 300 million cups per year, with a total estimated weight of 10 million pounds. Since the average CO₂ footprint of a paper cup is 0.033 pounds of carbon dioxide emissions, San Francisco single-use cup use equals to nearly 5000 tons of greenhouse gas emissions.

...

- (l) Policies that promote reusable food service ware encourage both reuse of materials, and reduction of pollutants. These twin strategies are crucial for conserving resources and protecting the environment. They are thus integral to San Francisco's goal of zero waste.
- (m) The Clean Water Fund Rethink Disposable program, in partnership with San Francisco and other Bay Area cities, found over the last four years that reusable food and beverage service ware offers environmental and economic advantages over single-use products, and that the benefits multiply with each use. Switching to reusables was found to save food service businesses costs, even with dishwashing, energy, and labor expenses factored in. Food establishments that have participated in the ReThink Disposable program to reduce the use of single-use food service ware and beverage cups have demonstrated that businesses can save thousands of dollars per year while providing their customers with a more enjoyable dining experience.
- (n) The practice of freely giving customers single-use food service ware encourages customers and food vendors to pay little attention to the quantity of disposable packaging products they consume and the associated environmental impact.
- (o) The City and County of San Francisco has adopted a citywide goal of zero waste. Single-use food service ware poses difficulties for composting and recycling, because these items are often too small to sort, or are made from a combination of materials, such as plastic-coated paper. Such combinations risk contamination problems, and increase discard management costs, hampering San Francisco from achieving zero waste.

Regulations:

SEC. 1611. PROVIDING REUSABLE BEVERAGE CUPS AT EVENTS.

- (a) Beginning on January 1, 2020, Event Producers providing Prepared Food beverages at Events must either make Reusable Beverage Cups available to no less than 10% of their attendees, or be able to demonstrate to the Director that reasonable effort has been made to ensure that at least this percentage of attendees or visitors brought or will have access to a Reusable Beverage Cup at the Event. The Director may pass regulations to increase this percentage in furtherance of the objectives of this Chapter.
- (b) To meet the requirement in subsection (a), Event Producers may provide, lend, or sell Reusable Beverage Cups to Event attendees, and promote or incentivize attendees to bring their own Reusable Beverage Cups. A permit application for any Event must indicate how the requirement in subsection (a) shall be met. The Event Producer's selected method for meeting the requirement in subsection (a) must be included in any contract, agreement, or permit for the Event.

7. Pool and Beach Toys ("un-encapsulated") – adopted in Malibu and San Francisco

Malibu Ordinance No. 412 (adopted November 28, 2016):

Regulations:

9.24.040 Other Polystyrene Foam Products

- A. No person may sell, offer for sale, or otherwise Distribute within the City the following materials if they are made in whole or in part from Polystyrene Foam, unless they are wholly encapsulated or encased within a more durable material:

...

3. Pool or beach toys; or

...

- B. No Polystyrene Foam product listed in Section 9.24.040(A) shall be allowed on any beach within the City.

San Francisco Ordinance No. 140-16 (adopted July 19, 2016):

Regulations:

SEC. 1605. OTHER POLYSTYRENE FOAM PRODUCTS.

- (a) No person may sell, offer for sale, or otherwise Distribute for compensation within the City:

...

- (3) pool or beach toys; or

...

made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a more durable material.

City of Manhattan Beach
(Combined through Ordinance No. 19-0009)

Chapter 5.80 - ENVIRONMENTAL REGULATIONS

Section 5.80.010 - Purpose
Section 5.80.020 - Definitions
Section 5.80.030 - Plastic Bags
Section 5.80.040 - Polystyrene
Section 5.80.050 - Single-Use Plastics
Section 5.80.060 - Balloons
Section 5.80.070 - Extensions and Exemptions
Section 5.80.080 - Certification
Section 5.80.090 - Infraction

5.80.010 - Purpose.

Manhattan Beach has long-been an environmental leader in addressing pollution issues. Balloons and plastic pollution, including single-use plastics and polystyrene, have raised environmental and health concerns related to water pollution, the welfare of marine life, and human health. These regulations reduce single-use waste; reduce greenhouse gas emissions; reduce the distribution of disposable single-use plastic; reduce polystyrene use and litter in the City; keep plastic waste from landfills; and reduce balloon litter threats to natural ecosystems and ocean wildlife, in order to protect the health of the Manhattan Beach community and promote environmentally sustainable practices in the City.

(§ 2, Ord. 13-009, adopted September 10, 2013; as amended by § 3, Ord. 14-0003, eff. May 2, 2014; § 3, Ord. 18-0016, eff. June 5, 2018; § 2, Ord. 19-0003, eff. March 6, 2019)

5.80.020 - Definitions.

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

"Affected retail establishment" means any retail establishment located within or doing business within the geographical limits of the City.

"Balloon" means a flexible bag, including, but not limited to, those made from rubber, latex, foil, metal, polychloropene, 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 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, its agents, agencies, or departments.

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

"City-sponsored event" means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.

"Compostable" means all the materials in the product or package that will break down, or otherwise become part of usable compost (soil-conditioning material, mulch), such as paper and certified compostable plastics that meet the American Society for Testing and Materials (ASTM) standard specifications for compostable plastics D6400 or biodegradable plastics D6868 for compostability.

"Customer" means any person obtaining goods from an affected retail establishment, vendor or non-profit vendor.

"Disposable food service ware" or "disposables" means single-use, disposable products used for serving, consuming or transporting prepared food and, raw food, or beverages, including but 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 container in or on which prepared food and, raw food, or beverages are placed or packaged for consumption.

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

"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 establishment that provides or sells prepared food or raw food or beverages within the City to the general public to be consumed on the premises or for take-away consumption. Food provider includes but is not limited to: (1) a grocery store, supermarket, restaurant, drive-thru, 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.

"Grocery store" means any dealer in staple foodstuffs, meats, produce and dairy products and usual household supplies.

"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 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.

"Pharmacy" means a retail use where the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescription medications are offered for sale.

"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 carry-out bag" or "plastic bag" means any bag made from plastic (including compostable and biodegradable plastic), excluding reusable bags, provided by an affected retail establishment, vendor or non-profit vendor to a customer at the point of sale for the purpose of carrying away goods.

"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 or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, expanded polystyrene molding, or extrusion-blow molding (extruded polystyrene), and clear or solid polystyrene (oriented polystyrene). The resin code for polystyrene is '6' 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 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.

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

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

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

"Recyclable paper bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber; (2) is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content; and (3) displays the words "reusable" and "recyclable" in a highly visible manner on the outside of the bag.

"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.

"Reusable bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is either: (1) made of cloth or other machine washable fabric; or (2) made of other durable material suitable for reuse.

"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.

(§ 2, Ord. 2115, eff. August 15, 2008; as amended by §§ 1-3, Ord. 2158, eff. June 1, 2012; §§ 1-2, Ord. 14-0004, eff. May 2, 2014; § 2, Ord. 13-009, adopted September 10, 2013; as amended by § 4, Ord. 14-0003, eff. May 2, 2014; § 4, Ord. 18-0016, eff. June 5, 2018; § 2, Ord. 19-0003, eff. March 6, 2019; § 2, Ord. 19-0009, eff. March 19, 2019)

5.80.030 - Plastic Carry-Out Bags Prohibited.

- A. No affected retail establishment, vendor or non-profit vendor shall provide plastic carryout bags to customers at the point of sale. Reusable bags and recyclable paper bags are allowed alternatives.
- B. Nothing in this section shall be read to preclude affected retail establishments, restaurants, vendors and non-profit vendors from making recyclable paper bags available to customers.
- C. Affected retail establishments are strongly encouraged to provide incentives for the use of reusable bags through education and through credits or rebates for customers that use reusable bags at the point of sale for the purpose of carrying away goods.
- D. No person shall distribute plastic carry-out bags at any City facility or any event held on City property.
- E. This chapter shall apply only to plastic carry-out bags provided at the point of sale for the purpose of carrying away goods. This chapter shall not apply to single-use plastic produce bags distributed in a grocery store exclusively for the purpose of transporting produce to the point of sale.

(§ 2, Ord. 2115, eff. August 15, 2008; as amended by §§ 1-3, Ord. 2158, eff. June 1, 2012; §§ 1-2, Ord. 14-0004, eff. May 2, 2014; §§ 2-3, Ord. 19-0003, eff. March 6, 2019)

5.80.040 - 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 shall distribute or sell any polystyrene food service ware in conjunction with the sale of prepared food or raw food or beverages at any location within the City.
- 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.
- E. Food providers and beverage providers that distribute prepared food or raw food or beverages in disposable food service ware shall: (1) distribute only disposables that exhibit a resin code other than 'No. 6' or 'PS'; and (2) maintain documentation about 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.

- F. 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 a violating contractor's security deposit will be forfeited if the City Manager or his designee determines that polystyrene food service ware was used in violation of the rental agreement.
- G. 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 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.
- H. The City, 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.

(§ 2, Ord. 13-009, adopted September 10, 2013; as amended by §§ 5-6, Ord. 14-0003, eff. May 2, 2014; §§ 5, 7, 8, Ord. 18-0016, eff. June 5, 2018; § 2, Ord. 19-0003, eff. March 6, 2019; § 3, Ord. 19-0009, eff. March 19, 2019)

5.80.050 - 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 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 straws as an accommodation to people with disabilities who request them to enjoy equal access to food and beverage services within the City.

(§ 6, Ord. 18-0016, eff. June 5, 2018; § 2, Ord. 19-0003, eff. March 6, 2019)

5.80.060 - Regulations on the sale, distribution, and use of balloons; Prohibition of the sale, distribution and use of “foil,” “metalized,” or “Mylar” Balloons; Prohibition of 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, “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, “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.

(§ 2, Ord. 19-0003, eff. March 6, 2019)

5.80.070 - Extensions and Exemptions.

- A. The following are exempt from the provisions of this Chapter:
 - 1. Food prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits. This exemption does not apply to raw produce, meat, or eggs.
 - 2. Coolers and ice chests, other than those defined as polystyrene coolers in this chapter.
 - 3. Food brought by individuals for personal consumption to City facilities, including but not limited to City parks and the beach, provided the City facility is being used for individual recreation or similar purposes and such facility use is not part of a larger organized event that is otherwise governed by Section 5.80.030.
- B. The City Manager or his/her designee may provide extensions of time for compliance or exempt any person from the requirements of Ordinance No. 19-0003 codified in this Chapter, as follows:
 - 1. A request for an extension or claimed exemption shall be filed in writing with the City Manager or his/her designee and shall include documentation of the reason for the requested extension or exemption and any other information necessary for the City to make its decision. The City may require the applicant to provide additional information as necessary to make the required determinations.
 - 2. The City Manager or his/her designee may approve the extension or exemption for a maximum of one year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship may 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 Ordinance No. 19-0003 codified in this Chapter would deprive a person of a legally protected right. The extension or exemption may be extended for additional terms of up to one year each, upon a showing of the continuation of the legal right.
- C. The City Manager's written decision on the extension or exemption is effective within 10 days of the decision.
- D. Decisions of the City Manager may be appealed by the person applying for the extension or exemption to the City Council. Appeals shall be filed in writing with the City Clerk within 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 10 days prior to the hearing. The City Council shall make its decision within 60 days of receiving the appeal.

(§ 2, Ord. 2115, eff. August 15, 2008, as amended by §§ 1-3, Ord. 2158, eff. June 1, 2012; §§ 1-2, Ord. 14-0004, eff. May 2, 2014; § 2, Ord. 13-009, adopted September 10, 2013; as amended by § 7, Ord. 14-0003, eff. May 2, 2014; § 9, Ord. 18-0016, eff. June 5, 2018; § 2, Ord. 19-0003, eff. March 6, 2019; § 4, Ord. 19-0009, eff. March 19, 2019)

5.80.080 - Certification of compliance.

All businesses that are subject to this chapter shall certify compliance with this chapter on the annual business license renewal application.

(§ 8, Ord. 14-0003, eff. May 2, 2014; § 2, Ord. 19-0003, eff. March 6, 2019)

5.80.090 - Infraction.

In addition to any other applicable civil or criminal penalty, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable pursuant to the penalty provisions set forth in Chapter 1.04 of this Code.

(§ 2, Ord. 19-0003, eff. March 6, 2019)

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:

- | | |
|----------|---|
| 8.64.010 | Purpose |
| 8.64.020 | Definitions |
| 8.64.030 | Prohibition of Prepared Food in Polystyrene Food Service Ware |
| 8.64.040 | Prohibition of Other Polystyrene Products |
| 8.64.050 | Prohibition of Plastic Straws, Stirrers, and Utensils; “upon-request” policy for non-plastic single use straws, stirrers, and utensils |
| 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 |
| 8.64.070 | Exemptions |
| 8.64.080 | Enforcement and Compliance |

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

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 fulfill 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, [and Egg Cartons](#), 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:

8.64.010	Purpose
8.64.020	Definitions
8.64.030	Prohibition of Prepared Food in Polystyrene Food Service Ware
8.64.040	Prohibition of Other Polystyrene Products
8.64.050	Prohibition of Plastic Straws, Stirrers, and Utensils; “upon-request” policy for non-plastic single use straws, stirrers, and utensils
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
8.64.070	Exemptions
8.64.080	Enforcement and Compliance

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

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

"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 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.

"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.

"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 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.

"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.

"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 [meat, fish, poultry](#), vegetable, fruit, or egg.

→ **"Reecycle Resin 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 [or Beverage Provider or Non-Profit Vendor](#) shall distribute or sell Prepared Food [or Raw Food or beverages](#) in any Polystyrene Food Service Ware 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 [Reecycle 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 at any location within the City.](#)

→ **B.C.** 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.

→ **C.D.** 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.

→ **D.E.** 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 and Egg Cartons. No person may sell, offer for sale, or otherwise distribute for compensation within the City, Meat and Fish Trays or Produce Trays or
→ Egg Cartons 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, vegetables, fruit, or eggs.

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 [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 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, [Egg Cartons](#), 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:

APPROVED AS TO FORM:

City Clerk

City Attorney

RESOLUTION NO. 19-XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA SUPPORTING AB 1080 (GONZALES) AND SB 54 (ALLEN), THE CALIFORNIA CIRCULAR ECONOMY AND PLASTIC POLLUTION ACT

WHEREAS, any official position of the City of Hermosa Beach with respect to legislation, rules, regulations, or policies proposed or pending before a local, state, or federal government body or agency must have first been adopted in the form of a Resolution by the City Council; and

WHEREAS, the United States discards approximately 30 million tons of plastic each year; and

WHEREAS, plastic is not biodegradable in that it simply breaks down into smaller pieces thereby polluting the environment; and

WHEREAS, local governments in California spend millions of dollars each year to clean up and prevent plastic materials and other litter from entering rivers and streams and polluting the ocean; and

WHEREAS, discarded plastic materials negatively impact marine life as demonstrated by countless seabirds, turtles, and marine mammals dying from plastic ingestion or entanglement; and

WHEREAS, to address this matter the State Legislature introduced AB 1080 (Gonzales) and SB 54 (Allen), the California Circular Economy and Plastic Pollution Reduction Act, which would require the State to adopt regulations to reduce and recycle 75% of single-use plastic materials sold or distributed in the State by 2030; and

WHEREAS, these measures would also require a manufacturer of single-use plastic materials in the State to demonstrate a recycling rate of not less than 20% on and after January 1, 2024, not less than 40% on and after January 1, 2028, and not less than 75% on and after January 1, 2030, as a condition of sale; and

WHEREAS, the City of Hermosa Beach has been a leader in source reduction and recycling in that 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); and

WHEREAS, the Hermosa Beach City Council is introducing 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.

NOW, THEREFORE, BE IT RESOLVED that by the adoption of this Resolution, the City of Hermosa Beach hereby SUPPORTS AB 1080 (Gonzales) and SB 54 (Allen), the California Circular Economy and Plastic Pollution Act, which would require the Department of Resources Recycling and Recovery (CalRecycle) to adopt regulations to reduce and recycle 75% of single-use plastic materials sold or distributed in the State by 2030 and to require a manufacturer of single-use plastic materials in the State to demonstrate a recycling rate of not less than 20% on and after January 1, 2024, not less than 40% on and after January 1, 2028, and not less than 75% on and after January 1, 2030, as a condition of sale.

PASSED, APPROVED and ADOPTED this 27th day of August, 2019.

MAYOR of the City of Hermosa Beach, California

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney