

**ORDINANCE NO. 19-1398**

**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 AS AMENDED 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, egg cartons, 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.

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

4 E. A ban on certain additional polystyrene products, single-use  
5 plastic products, and other single use products will further serve the City's  
6 goal of reducing litter.  
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8 **The City Council of the City of Hermosa Beach does ordain as follows:**  
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10 **SECTION 1.** Chapter 8.64 of Title 8 of the Hermosa Beach Municipal Code  
11 is amended to read as follows:  
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13  
14 **CHAPTER 8.64 BAN ON CERTAIN POLYSTYRENE**  
15 **PRODUCTS, SINGLE-USE PLASTIC PRODUCTS, AND SINGLE-USE**  
16 **PRODUCTS**  
17

18 **Sections:**

- 19 8.64.010 Purpose  
20 8.64.020 Definitions  
21 8.64.030 Prohibition of Prepared Food in Polystyrene Food Service  
22 Ware  
23 8.64.040 Prohibition of Other Polystyrene Products  
24 8.64.050 Prohibition of Plastic Straws, Stirrers, and Utensils;  
25 "upon-request" policy for non-plastic single use straws,  
26 stirrers, and utensils  
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1                   8.64.060       Regulation on the sale, distribution, and use of balloons;  
2                               Prohibition of the sale, distribution, and use of “foil,”  
3                               “metalized,” or “Mylar” Balloons; Prohibition on the  
4                               release of Latex balloons

5                   8.64.070   Exemptions

6                   8.64.080   Enforcement and Compliance

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9       **8.64.010 Purpose.**

10               The purpose of this Chapter is to establish standards and procedures to reduce  
11               adverse environmental and public health impacts and promote environmentally  
12               sustainable practices in the City of Hermosa Beach by prohibiting the use of certain  
13               polystyrene products, single-use plastic products, and single-use products.

14               A. Polystyrene, a lightweight petroleum-based plastic material, is commonly  
15               littered or blown out of trash receptacles, is difficult to clean up, and migrates to the  
16               storm drain system and eventually to the ocean and beaches.

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

21               C. These regulations will reduce polystyrene use and litter in the City;  
22               reduce the distribution of disposable single-use plastic; reduce single-use waste;  
23               reduce balloon litter; reduce greenhouse gas emissions; and reduce threats to  
24               natural ecosystems and ocean wildlife, in order to protect the health of the Hermosa  
25               Beach community and expand environmentally sustainable practices in the City.  
26               These regulations will also advance compliance with federal, state and city clean  
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1 water mandates including compliance with Total Maximum Daily Loads and other  
2 requirements of the National Pollutant Discharge Elimination System.

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4 **8.64.020 Definitions.**

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

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

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

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

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

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

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

4 “Egg Carton” means a carton for raw eggs sold to consumers from a  
5 refrigerator case or similar appliance.

6 “Foil Balloon” includes but is not limited to balloons that are made of  
7 “metalized” nylon film, and include balloons often referred to as made of Mylar,  
8 which is a brand name for a special type of polyester film. Foil or metallic balloons  
9 are made of plastic (nylon) sheets coated with polyethylene and metallic materials  
10 that are sealed together with heat.  
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12 "Food Provider" means any Person or place that provides or sells Prepared  
13 Food or Raw Food or beverages within the City of Hermosa Beach to the general  
14 public to be consumed on the premises or for take-away consumption. Food  
15 Provider includes but is not limited to (1) a grocery store, supermarket, restaurant,  
16 drive-thru, cafe, coffee shop, snack shop, public food market, farmers' market,  
17 convenience store, or similar fixed place where Prepared Food or Raw Food or  
18 beverages is available for sale on the premises or for take-away consumption, and  
19 (2) any mobile store, food vendor, caterer, food truck, vending machine or similar  
20 mobile outlet. Food Provider also includes any organization, group or individual  
21 that regularly provides Prepared Food or Raw Food or beverages to its members or  
22 the general public as a part of its activities or services.  
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24 “Latex Balloon” is a balloon made with the sap from a rubber tree which  
25 during the manufacturing process many chemicals are added to the raw rubber  
26 including pigments, oils, curing agents, and accelerators.  
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1           “Meat and Fish Tray” means any tray for raw meat, fish, or poultry sold to  
2 consumers from a refrigerator case or similar retail appliance.

3           “Non-profit Vendor” means a recognized tax-exempt organization which  
4 provides goods as part of its services

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

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

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

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

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

9 "Polystyrene Cooler" means any cooler or ice chest made of polystyrene foam, where  
10 such foam is not fully encased in another material.  
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12 "Polystyrene Food Service Ware" means Disposable Food Service Ware that  
13 contains or utilizes Polystyrene.

14 "Polystyrene Packing Material" means polystyrene material used to hold,  
15 cushion, or protect items packed in a container for shipping, transport, or storage,  
16 including shipping boxes and packing peanuts.  
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18 "Prepared Food" means any food or beverage that is (1) ready to consume  
19 without any further food preparation, alteration or repackaging; and (2) prepared,  
20 provided, sold or served by a Food Provider using any cooking, packaging or food  
21 preparation technique. Prepared Food may be eaten either on or off the Food  
22 Provider's premises.

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

25 "Raw Food" means any meat, fish, poultry, vegetable, fruit, or egg.  
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27 "Resin Code" means a resin identification code placed on plastics to identify  
28 the material composition for separation of different types of plastics for recycling.

1           “Vendor” means any store, shop, restaurant, sales outlet, mobile food vendor,  
2           pushcart, or other commercial establishment located within or doing business within  
3           the City of Hermosa Beach, which provides perishable or nonperishable goods.  
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6           **8.64.030 Prohibition of Prepared Food in Polystyrene Food Service Ware.**

7           A. No Food Provider or Beverage Provider or Non-Profit Vendor shall  
8           distribute or sell Prepared Food or Raw Food or beverages in any Polystyrene Food  
9           Service Ware at any location within the City of Hermosa Beach. Food Providers or  
10          Beverage Providers or Non-Profit Vendors that distribute Prepared Food or Raw Food  
11          or beverages in Disposable Food Service Ware shall (1) distribute only Disposables  
12          that exhibit a Resin Code other than No. 6 or PS, or (2) maintain documentation onsite  
13          of the composition of the Disposable Food Service Ware. Documentation may include  
14          information from the supplier, manufacturer, or bulk packaging for the Disposables,  
15          and any other relevant information demonstrating that the disposable material is not  
16          polystyrene.  
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18          B. No person shall sell any Polystyrene Food Service Ware at any location  
19          within the City.  
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21          C. No Person shall distribute or sell Prepared Food or Raw Food or beverages  
22          in any Polystyrene Food Service Ware at City Facilities that have been rented, leased  
23          or are otherwise being used with permission of the City. This Subsection is limited  
24          to use of City facilities for which a Person has entered into an agreement with the  
25          City to rent, lease or otherwise occupy a City facility. All facility rental agreements  
26          for any City facility shall include a provision requiring contracting parties to assume  
27          responsibility for preventing the utilization and/or distribution of Polystyrene Food  
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1 Service Ware while using City facilities. The facility rental agreement shall indicate  
2 that the violating contractor's security deposit will be forfeited if the City Manager  
3 or his/her designee determines that Polystyrene Food Service Ware was used in  
4 violation of the rental agreement.

5 D. No Person shall use or distribute Polystyrene Food Service Ware at City-  
6 sponsored events, City-managed concessions and City meetings open to the public.  
7 This subsection shall apply to the function organizers, agents of the organizers, City  
8 Contractors, Food Providers, Beverage Providers or Non-Profit Vendors and any  
9 other Person that enters into an agreement with one or more of the function sponsors  
10 to sell or distribute Prepared Food or Raw Food or beverages or otherwise provide a  
11 service related to the function.  
12

13 E. The City of Hermosa Beach, its Departments, and its City Contractors,  
14 agents, and employees acting in their official capacity, shall not purchase or acquire  
15 Polystyrene Food Service Ware, or distribute it for public use.  
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17 **8.64.040 Prohibition of Other Polystyrene Products.**  
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19 A. Packaging Materials. No business or Vendor in the City shall sell,  
20 distribute, or use Polystyrene Packing Material, including but not limited to foam  
21 peanuts, packing peanuts, foam popcorn, or packing noodles.

22 B. Meat and Fish Trays and Produce Trays and Egg Cartons. No person may  
23 sell, offer for sale, or otherwise distribute for compensation within the City, Meat and  
24 Fish Trays or Produce Trays or Egg Cartons made, in whole or in part, from  
25 polystyrene, either as separate items or as part of the sale of Raw Food or raw meat,  
26 fish, or poultry, vegetables, fruit or eggs.  
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1 C. Coolers. No Person shall sell any Polystyrene Cooler at any location  
2 within the City.

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4 **8.64.050 Prohibition of Plastic Straws, Stirrers, and Utensils; “upon-request”**  
5 **policy for non-plastic single use straws, stirrers, and utensils.**

6 A. Prohibition on Plastic Straws, Stirrers, and Utensils. Food Providers and  
7 Beverage Providers and Non-Profit Vendors shall not use or distribute Plastic  
8 Beverage Straws, Plastic Stirrers or Plastic Utensils, whether for use on-site, to-go,  
9 or delivery. Disposable straws, stirrers, and utensils must be non-plastic, made from  
10 non-plastic materials, such as paper, pasta, sugar cane, wood, or bamboo.

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

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

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24 **8.64.060 Regulation on the sale, distribution, and use of balloons; Prohibition**  
25 **of the sale, distribution, and use of “foil,” “metalized,” or “Mylar” Balloons;**  
26 **Prohibition on the release of Latex balloons.**

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

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

7           C.       No Person shall use or distribute Latex Balloons filled with air, helium  
8 or lighter than air gas at any City function or City sponsored event.

9           D.       No Person shall release Latex Balloons filled with air, helium or lighter  
10 than air gas anywhere within the City limits.  
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13 **8.64.070 Exemptions.**

14           A.       Food prepared or packaged outside the City of Hermosa Beach is  
15 exempt from the provisions of this Chapter, provided such food is not altered,  
16 packaged or repackaged within the City of Hermosa Beach limits unless otherwise  
17 stated. This exemption does not apply to raw meat, fish, poultry, produce, or eggs.

18           B.       Food provided by the Hermosa Beach School District under its  
19 official Food Service program.  
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21           C.       Food for personal consumption at City Facilities, including but not  
22 limited to City parks and the beach, provided the facility is being used for individual  
23 recreation or similar purposes and such facility use is not part of a larger organized  
24 event that is otherwise governed by that Section.

25           D.       The City Manager or his/her designee may exempt any Person from  
26 the requirements of this Chapter, as follows:  
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1           1. A request for an exemption shall be filed in writing with the City Manager  
2           or his/her designee and shall include documentation of the reason for the claimed  
3           exemption and any other information necessary for the City to make its decision. The  
4           City may require the applicant to provide additional information as necessary to  
5           make the required determinations.

6           2. The City Manager or his/her designee may approve the exemption for a  
7           maximum of one (1) year, with or without conditions, upon finding that compliance  
8           would create an undue hardship. Undue hardship shall be construed to include but  
9           not be limited to situations where:  
10          

11                 a. There are no reasonable alternatives for reasons that are unique to  
12                 the applicant; or

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

17           3. The City Manager's written decision on the exemption is effective  
18           within ten (10) days of the decision. Decisions of the City Manager may be appealed  
19           to the City Council. Appeals shall be filed in writing with the City Clerk within ten  
20           (10) days of the decision and may be accompanied by a fee set by resolution of the  
21           City Council. Notice of hearing shall be given to the applicant at least ten (10) days  
22           prior to the hearing. The City Council shall make its decision within sixty (60) days  
23           of receiving the appeal.  
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26           **8.64.080 Enforcement and Compliance.**  
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1           A. This Chapter shall be enforced by the City Manager or his/her designee.  
2     Nothing in this Chapter shall be construed to create a private cause of action. The City  
3     Manager, or his/her designee, is authorized to promulgate regulations and to take any  
4     and all other actions reasonable and necessary to enforce this Chapter including, but  
5     not limited to, inspecting the premises of any Food Provider, Beverage Provider,  
6     Vendor, or Person in accordance with law and requiring documentation of the  
7     composition of Food Service Ware, Meat and Fish Trays, Produce Trays, Coolers,  
8     Egg Cartons and Packing Materials to verify compliance.

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

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

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

15           E. All businesses that are subject to this Chapter shall certify compliance  
16    with this Chapter on the annual business license renewal application.

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19             
20    **SECTION 2.** Subsection 15 of section 1.10.040 of Chapter 1.10 of Title 1 of  
21    the Hermosa Beach Municipal Code is amended to read as follows:

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

24             
25           **SECTION 3.** This Ordinance was assessed in accordance with the  
26    authority and criteria contained in the California Environmental Quality Act  
27    (CEQA), the State CEQA Guidelines, and the environmental regulations of the  
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1 City. The City Council hereby finds that under Section 15061(b)(3) of the State  
2 CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA  
3 because it can be seen with certainty that the provisions contained herein would not  
4 have the potential for causing a significant effect on the environment. It also finds  
5 the Ordinance is exempt from the requirements of CEQA pursuant to CEQA  
6 Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to  
7 protect the environment and natural resources. The reduction of littered plastics,  
8 disposable products, and balloons will help achieve compliance with MS4 permit  
9 requirements and will reduce littered plastics, disposable products and balloons  
10 from accumulating in the environment, the ocean, stormdrains, on the beach and in  
11 landfills.  
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14 **SECTION 4.** This Ordinance shall become operative eight months after its  
15 effective date.  
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18 **SECTION 5.** Prior to the expiration of fifteen (15) days after the date of its  
19 adoption, the City Clerk shall cause this Ordinance to be published in the Easy  
20 Reader, a weekly newspaper of general circulation published and circulated, in the  
21 City of Hermosa Beach in the manner provided by law.  
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23 **SECTION 6.** The City Clerk shall certify to the passage and adoption of this  
24 Ordinance, shall enter the same in the book of original Ordinances of said city, and  
25 shall make minutes of the passage and adoption thereof in the records of the  
26 proceedings of the City Council at which the same is passed and adopted.  
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**PASSED, APPROVED and ADOPTED** this 18<sup>th</sup> day of November 2019.

VOTE: AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
**MAYOR** of the City of Hermosa Beach, California

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney