

ORDINANCE NO. 19-0003

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH AMENDING THE MANHATTAN BEACH MUNICIPAL CODE TO EXPAND THE ENVIRONMENTAL REGULATIONS IN CHAPTER 5.80 TO REGULATE BALLOONS AND ADDITIONAL POLYSTYRENE PRODUCTS

RECITALS

- A. The California Legislature has declared that littered plastic products have caused and continue to cause significant environmental harm and burdened local governments with significant environmental cleanup costs (California Public Resources Code Section 42355).
- B. On September 10, 2013, the City Council of Manhattan Beach (“City”) adopted Ordinance No. 13-0009 prohibiting the use of polystyrene products by food vendors, including single-use, disposable products such as plates, bowls, trays, wrappers, platters, cartons, condiment containers, cups or drink ware, and any other container in which prepared foods are placed for consumption.
- C. On April 1, 2014, the City Council adopted Ordinance No. 14-0003, which expanded the regulations in Ordinance No. 13-0009 to include a prohibition on the distribution and sale of polystyrene straws, cup lids, and utensils in connection with the preparation of prepared food and the retail sale of polystyrene food service ware and ice chests.
- D. On June 5, 2018, the City Council adopted Ordinance No. 18-0016 to regulate single-use plastic products that are harmful to the environment including single-use plastic straws, utensils, and stirrers.
- E. 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.
- F. 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.
- G. The following amendment to Chapter 5.80 includes many restatements of existing Code provisions, albeit renumbered or re-lettered, for the purpose of consolidation and clarity. Such restatements of existing law are not intended, and shall not be construed, as the adoption of new provisions.

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. CEQA Finding. This Ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency for the protection of the environment because it will strengthen the City's regulations regarding the distribution and sale of single-use plastic (including polystyrene) products that harm the environment. Thus, this Ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

SECTION 2. The City Council hereby amends Chapter 5.80 to read as follows:

"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

Section 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.

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 biodegradeable 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.

5.80.030 - Plastic Carry-Out Bags Prohibited.

A. No affected retail establishment, vendor or non-profit vendor shall provide plastic carry-out 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.

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.

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.

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.

5.80.070- Extensions and Exemptions.

- A. The following are exempt from the provisions of this Chapter:
 - a. 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.
 - b. Coolers and ice chests, other than those defined as polystyrene coolers in this chapter.
 - c. 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:
 - a. 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.
 - b. 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:
 - i. There are no reasonable alternatives for reasons that are unique to the applicant; or
 - ii. 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.

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.

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."

SECTION 3. The City Council hereby repeals Municipal Code Chapter 5.88 in its entirety.

SECTION 4. INTERNAL CONSISTENCY. Any provisions of the Municipal Code, or any other resolution or ordinance of the City, to the extent that they are inconsistent with this Ordinance are hereby repealed, and the City Clerk shall make any necessary changes to the Municipal Code for internal consistency.

SECTION 5. SEVERABILITY. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or their application and, to this end, the provisions of this Ordinance are severable.

SECTION 6. CERTIFICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

ADOPTED _____, 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

STEVEN A. NAPOLITANO
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM

QUINN M. BARROW
City Attorney