

LEGISLATIVE DIGEST

(Additions are shown in single or double underline; deletions are shown in ~~strikeout~~)

ORDINANCE NO. 18-0016

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH
AMENDING THE MANHATTAN BEACH MUNICIPAL CODE TO
EXPAND THE REGULATIONS IN CHAPTER 5.80 TO
REGULATE ADDITIONAL POLYSTYRENE PRODUCTS,
CERTAIN SINGLE-USE PLASTIC, AND OTHER SINGLE-USE
PRODUCTS

Municipal Code Chapter 5.80 amended as follows:

1. The title of Manhattan Beach Municipal Code Chapter 5.80 is hereby amended to read "REGULATIONS ON THE DISTRIBUTION, SALE, AND USE OF CERTAIN POLYSTYRENE PRODUCTS, SINGLE-USE PLASTIC AND OTHER SINGLE-USE PRODUCTS".
2. Section 5.80.010 (Purpose) in Chapter 5.80 is amended to read: The purpose of this chapter is to regulate the use of certain polystyrene products, and single-use plastic, and other single-use products in order to protect the health of Manhattan Beach citizens and promote environmentally sustainable practices in the City.
3. The following definitions have been added or amended as follows:

"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.

"Disposable Food Service Ware" or "Disposables" means single-use, disposable products used for serving or transporting prepared food and raw food, 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 other container in or on which prepared foods and raw foods are placed or packaged for consumption.

"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~~ establishment that provides or sells prepared food or raw food 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 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 to its members or the general public as a part of its activities or services.

“Non-Plastic Marine Biodegradable” means products designed to biodegrade under the marine environmental conditions of aerobic marine waters or anaerobic marine sediments. Products must be manufactured so that the degradation of these materials will not diminish the value or utility of the marine resources and habitat.

“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~~ expanded polystyrene molding, or extrusion-blow molding (extruded ~~foam~~ polystyrene), and clear or solid polystyrene (oriented polystyrene). The ~~Recycle~~ 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 ~~Recycle~~ Resin Code.

"Polystyrene Packing Product" 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.~~

"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" includes vegetables, fruit, or eggs.

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

4. Subsections A, B, and C of Municipal Code Section 5.80.030 have been amended as follows:

"A. No food provider shall distribute or sell any polystyrene food service ware in conjunction with the sale of prepared food or raw food at any location within the City.

B. Food providers that distribute prepared food or raw food in disposable food service ware shall (1) distribute only disposables that exhibit a ~~Recycle~~ 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.

C. No Person shall distribute or sell prepared food or raw 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 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."

5. A new Section 5.80.037 has been added to regulate single-use straws, stirrers, and utensils to read as follows:

"5.80.037 Plastic Straws, Stirrers and Utensils Prohibition; "Upon-Request" Policy For Non-Plastic Single Use Straws, Stirrers and Utensils.

1. Prohibition on Single-Use Plastic. Food 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 marine biodegradable, made from non-plastic materials, such as paper, pasta, sugar cane, wood, or bamboo.
2. "Upon Request" Policy For Non-Plastic Single Use Straws, Stirrers and Utensils. No food provider shall provide non-plastic, single-use straws, utensils or stirrers, except upon the request of the customer."

6. A new Section 5.80.038 has been added to regulate the use and sale of polystyrene packing materials.

"5.80.038 - Prohibition against sale, distribution, or use of polystyrene packing materials.

No business or vendor in the City shall sell, distribute, or use polystyrene packing material, including but not limited to expanded polystyrene peanuts, packing peanuts, expanded polystyrene popcorn, or packing noodles."

7. A new Section 5.80.039 has been added to regulate the use of polystyrene raw food trays and egg cartons.

"5.80.039 – Prohibition against sale, distribution, and use of polystyrene produce trays and egg cartons.

No Person may sell, offer for sale, or otherwise distribute for compensation within the city produce trays or egg cartons made, in whole or in part, from polystyrene, either as separate items or as part of the sale of vegetables, fruit, or eggs sold to consumers."

8. Section 5.90.040, Exemptions, has been amended to replace the current Exemptions section as follows:

The City Council hereby amends Municipal Code Section 5.80.040 (Exemptions) to read as follows:

"5.80.040 - 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 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.
 4. Food providers that are obligated to purchase or have purchased single use plastic food service ware, plastic disposables, polystyrene egg cartons, polystyrene produce trays or polystyrene packing products under a contract entered into prior to June 30, 2018 may use existing stock until January 1, 2019.
- B. The City Manager or his/her designee may exempt any person from the requirements of Ordinance No. 18-0016, 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 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 Ordinance No. 18-0016 would deprive a person of a legally protected right. The 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 exemption is effective within 10 days of the decision.
- D. Decisions of the City Manager may be appealed by the Person applying for the 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."