

ORDINANCE NO. 14-0003

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH
AMENDING CHAPTER 5.80 OF TITLE 5 OF THE MANHATTAN
BEACH MUNICIPAL CODE REGARDING THE PROHIBITION
AGAINST THE SALE AND DISTRIBUTION OF CERTAIN
POLYSTYRENE PRODUCTS

WHEREAS, 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;

WHEREAS, littered polystyrene, especially expanded foam, is difficult to clean up and may cumulatively result in increased litter;

WHEREAS, polystyrene breaks down in the marine environment into smaller pieces, which negatively impacts water quality and harms marine wildlife that often mistake pieces of polystyrene for food;

WHEREAS, reduction of polystyrene in the environment will advance compliance with Federal, State and City clean water mandates, including compliance with the Total Maximum Daily Loads and other requirements of the National Pollutant Discharge Elimination System;

WHEREAS, 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; and

WHEREAS, polystyrene has been shown to pose human health impacts to workers and consumers and these impacts can be mitigated by reducing its use.

THE MANHATTAN BEACH CITY COUNCIL 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 (the City) for the protection of the environment because it will strengthen the City's regulations regarding the distribution and sale of polystyrene products. 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 title of Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code is hereby amended to read "PROHIBITION ON THE DISTRIBUTION AND SALE OF CERTAIN POLYSTYRENE PRODUCTS".

SECTION 3. The City Council hereby amends Section 5.80.010 (Purpose) in Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code to read as follows:

"5.80.010 - Purpose.

The purpose of this chapter is to regulate the use of polystyrene products *in* order to protect the health of Manhattan Beach citizens and promote environmentally sustainable practices in the City."

SECTION 4. The City Council hereby amends the definition of "Disposable Food Service Ware" or "Disposables" and adds a new definition of "Polystyrene Cooler" in Section 5.80.20 (Definitions) in Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code to read as follows, with all other definitions to remain unchanged:

" "Disposable Food Service Ware" or "Disposables" means single-use, disposable products used for serving or transporting Prepared Food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, straws, lids, utensils, or any other container in or on which Prepared Foods are placed or packaged for consumption."

"Polystyrene Cooler" means any cooler or ice chest made of polystyrene foam, where such foam is not fully encased in another material."

SECTION 5. The City Council hereby amends Municipal Code Section 5.80.030 by removing subsection (F) and amending subsection (A) to read as follows:

"A. No Food Provider shall distribute or sell any Polystyrene Food Service Ware in conjunction with the sale of Prepared Food at any location within the City."

SECTION 6. The City Council hereby adds a new Section 5.80.035 to Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code to read as follows:

"5.80.035 Prohibition *against* sale of polystyrene food service ware and polystyrene coolers.

No Person shall sell any Polystyrene Food Service Ware or Polystyrene Cooler at any location within the City."

SECTION 7. The City Council hereby amends Section 5.80.040 (Exemptions) *in* Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code 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.

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. 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 months following its operative date.

C. The City Manager or his/her designee may exempt any Person from section 5.80.30 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 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 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 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 10 days of the decision. 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."

SECTION 8. The City Council hereby adds a new Section 5.80.045 to Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code to read as follows:

"5.80.045 Certification of compliance.

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

SECTION 9. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 10. 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.

SECTION 11. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

PASSED, APPROVED AND ADOPTED this 1st of April, 2014.

AYES: Lesser, D'Errico, Burton, Powell and Mayor Howorth

NOES:

ABSENT:

ABSTAIN:



AMY THOMAS HOWORTH
Mayor

ATTEST:



LIZA TAMURA
City Clerk