

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

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. There are additional single-use plastic products that are harmful to the environment and are not regulated by Ordinance No. 13-0009 and Ordinance No. 14-0003. Moreover, even non-plastic single-use products are harmful to the environment if littered after their use. The additional regulations hereinafter will further serve the City's goal of reducing litter.

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 title of Manhattan Beach Municipal Code ("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."

SECTION 3. The City Council hereby amends Municipal Code Section 5.80.010 to read as follows:

"5.80.010 - Purpose.

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."

SECTION 4. The City Council hereby amends Municipal Code Section 5.80.020 to: (a) amend the definitions of (1) "Disposable Food Service Ware" or "Disposables," (2) "Food Provider," (3) "Polystyrene," and (4) "Prepared Food"; (b) change the title of "Recycle Code" to "Resin Code"; and (c) add definitions for the following terms: "Compostable," "Egg Carton," "Non-Plastic Marine Biodegradable," "Plastic Beverage Straw," "Plastic Stirrer," "Plastic Utensil," "Polystyrene Packing Product," "Raw Food," and "Raw Food Tray." The amended and new definitions follow. All other definitions remain unchanged. The City Clerk is hereby directed to insert such amended and new definitions in Section 5.80.020 in alphabetical order.

"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, consuming 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 container in or on which prepared foods and raw food 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 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 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 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 vegetable, fruit, or egg.

"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."

SECTION 5. The City Council hereby amends Subsections A, B and C of Municipal Code Section 5.80.030 to apply the regulations contained therein to the distribution or sale of "raw food" 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 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."

SECTION 6. The City Council hereby adds a new Section 5.80.037 to the Municipal Code 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.”

SECTION 7. The City Council hereby adds a new Section 5.80.038 to the Municipal Code to regulate use of polystyrene packing materials to read as follows:

“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 foam peanuts, packing peanuts, foam popcorn or packing noodles.”

SECTION 8. The City Council hereby adds a new Section 5.80.039 to the Municipal Code to regulate the use of polystyrene produce trays and egg cartons to read as follows:

“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.”

SECTION 9. 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."

SECTION 10. 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 11. 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 12. 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 _____, 2018.

AYES:

NOES:

ABSENT:

ABSTAIN:

AMY HOWORTH
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM

QUINN M. BARROW
City Attorney