

**DATE: 2/26/19**

**TO: Anne McIntosh, Community Development Director**

**FROM: Tim James, California Grocers Association**

**RE: Information Regarding Impacts of Proposed Meat Tray Regulation**

**Grocery Food Packaging is Different**

Most believe food packaging is only used for minutes or hours at the most. However, food packaging which is discarded quickly comes from restaurants and similar food retailers for food or beverages that are consumed immediately. Restaurant-style food packaging is designed primarily for convenience and not for long-term food safety or quality, unlike grocery food products. Food packaging for grocery items is used significantly longer and must keep food both safe and fresh for extended periods of time.

The grocery industry uses food packaging in an entirely different manner and for very different reasons than all other food retailers. Food packaging by grocers is used for days, weeks, even months both in store and at home with consumers. Raw meat items can be offered for sale for a week or more in-store and then remain in its packaging by the consumer for additional days, weeks or even months depending if the items are refrigerated or frozen.

When making food packaging decisions Grocers must first consider product safety. This means using food packaging which can guarantee the food product will not become adulterated or impacted in any by exposure to contaminants, which includes oxygen for raw meat products. Using safe food packaging for raw meats prevents adulteration which could lead to consumer illness.

The second consideration for grocers when choosing food packaging is ensuring the quality and freshness of the product. Food products that do not remain fresh for the greatest amount of time will very likely become food waste. Food waste due to improper packaging would add to increased trash and wasted resources. Food waste reduction has become a regulatory priority in California making food freshness and quality a top sustainability priority.

Grocery food packaging is specifically chosen to prevent illness and reduce food waste over extended periods of time. It is important Grocers have numerous food packaging options, especially for raw meat products, to ensure safety and reduce food waste. Manhattan Beach must remember the unique use of food packaging by grocers when regulating raw meat options.

**Considerations for Meat Packaging**

Raw meat products are considered a “Potentially Hazardous Food” by California Health and Safety Code (Cal-Code). Raw meat products have received this designation since it requires time, temperature and exposure controls to avoid adulteration, meaning it would become

impure or injurious to health. With potential hazards likely if raw meat is mishandled, great care must be taken throughout the supply chain, at grocery stores, and by consumers after purchase.

It is important to recognize Cal-Code creates requirements for the safe handling of food. Cal-Code intentionally does not prescribe or prohibit specific product uses in order to maximize the most amount of options for the safest handling and retailing of food products.

As grocers we take our moral and legal responsibility to provide safe and fresh meat products to our consumers very seriously. This is why grocers have chosen specific processes and packaging for each individual item. Considerations when choosing packaging include ability to hold up through the packaging process, withstand handling by store staff and consumers, maintaining integrity when at cold holding or freezing temperatures for long periods of time, prevent release and intrusion of gases and moisture, and prevent leakage of liquids.

### **Meat Packaging Types**

Raw meats for sale to consumers are either packaged in-store or at a manufacturing facility. Both options have their benefits and challenges which vary by specific meat type and product. In both circumstances the considerations vary slightly, but largely remain the same due to the same general handling requirements and safety and quality issues.

Meat products prepared and packaged at a manufacturing facility, usually for national distribution, have greater options due the size of the facility and space available for the equipment, which is not available inside even the largest of grocery stores. In most cases, foam trays are still utilized due to their superior performance across the board compared to other packaging types.

There are some meat products that will maintain their safety and quality in hard, rigid plastic trays with a heat-sealed film covering the top. These tray types and sealing processes require large and complicated equipment which would physically not fit inside a grocery store. It is important to note that not all meat products are able to be packaged in hard, rigid plastic containers due to manufacturing limitations.

It is important to note that the national distributors providing products to Manhattan Beach stores are not easily able to adjust their supply and distribution chain solely for small municipalities or a few stores. Supply chain difficulties mean scores of products may no longer be available in Manhattan Beach stores once the ordinance goes into effect. Malibu is currently experiencing this scenario and is being addressed through feasibility-waivers included in their ordinance.

The in-store packaging of meat products is the preferred process for meat packaging for several reasons, among which includes better quality control of the product by the store and ability to offer specific cuts and sizes for consumers of that store to minimize waste. In-store packaging of meat, which occurs at all Manhattan Beach full-service grocers, includes breaking down large

pieces of meat, known as primal cuts, and utilizing skilled workers to butcher and package meat products. This process includes safety advantages since there is minimal exposure for the finished product and an ability to make adjustments in cuts and products offered can be made quickly meet consumer demand ensuring the sale of the product and minimizing food waste.

### **Proper Disposal**

The best performing alternative to polystyrene foam meat trays in nearly every case is a compostable foam tray even though they are more brittle at cold temperatures, break more often during the packaging process, and could prematurely begin to break down compromising food safety.

Unfortunately, Manhattan Beach has no proper disposal for compostable materials. It is also unclear if Manhattan Beach is developing options to provide composting services for residents. Pushing the grocery industry to use compostable meat trays will result in no gain in waste disposal as they will need to be placed in the trash. The reality of this ordinance is Manhattan Beach will simply be mandating a switch from one piece of trash for another piece of trash.

San Francisco and several other California jurisdictions have made the commitment to curbside composting for its residents. In these jurisdictions it makes sense from a waste and sustainability perspective to move towards compostable packaging. It should also be noted these jurisdictions provide significant implementation periods and feasibility-based waivers.

Specific to the composting process it should be noted that any compostable products as marine debris or litter will not compost. Composting is a specific ASTM regulated process that involves significant temperatures and moisture in a controlled commercial process. Compostable products will also not compost in landfill environments.

### **Comparison to other Jurisdictions**

While the proposed Manhattan Beach ordinance appears to be consistent with other ordinances there are several significant differences when compared directly. We fully appreciate the comparison to the Malibu ordinance, but the proposed ordinance does not contain the same requirements regarding implementation.

All other jurisdictions mentioned in comparison to the proposed ordinance allowed for a longer implementation period than the proposed Manhattan Beach ordinance, as well as options for feasibility-hardship waivers. Malibu's ordinance is just going into full effect, as of January 2019, and has revealed significant barriers to implementation, and San Diego's meat tray ban is not yet in effect. A detailed comparison regarding ordinance implementation is attached to this document

- **San Francisco:** SF passed its ordinance in 2016, provided a 12-month implementation period, as well as an additional 12-month waiver for raw meat trays (two years total). The city also has a curbside composting program for new compostable trays, which are the closest in performance to expanded

polystyrene trays. Finally, there is a regional manufacturer for alternate raw meat trays for meats packaged in-store, unlike in Southern California.

- **Malibu:** Malibu passed its ordinance in 2016, provided a 13-month implementation period, as well as an additional 12-month waiver for raw meat trays. Grocers have experienced difficulty reaching full compliance with the raw meat portion of the ordinance since going into effect in January 2019, including a 10-15% loss in sales, discontinuation of hundreds of products in local stores and the repackaging of non-compliant products in new trays once in-store. As such, an additional 12-month waiver is pending with the city for the product category until January 2020.
- **San Diego:** San Diego passed its ordinance in 2018 with a five-month implementation period and phased-in approach throughout 2019. However, the city is allowing for unlimited 24-month feasibility waivers, the first of which for raw meat trays is pending. Based on numerous meetings throughout the process with council and staff, we are confident that the waiver for raw meat trays will be approved. Upon approval of the pending waiver, expanded polystyrene meat trays will be allowed until 2021.

#### **Language Request for Manhattan Beach Meat Tray Ordinance**

We believe strongly the Manhattan Beach should include the same implementation timeline and waiver process utilized in the Malibu ordinance. This will provide necessary time to make the necessary adjustments to change packaging for items controlled by the store which can include exhausting current supplies, and upgrading both machinery and safety practices. It will also allow the necessary time to work with suppliers to minimize products becoming unavailable for sale or being repackaged.

It should be recognized that several Manhattan Beach grocers have not experienced this type of regulation previously and as such will require significant effort and time to comply. Furthermore, as is currently being experienced in Malibu, there are not compliant solutions for all meat products yet. The opportunity for feasibility-based waivers will allow compliance with the bulk of the ordinance while not unnecessarily damaging grocers ability to sell products expected by consumers.

Below are the sections of the Malibu Municipal Code from the “Polystyrene Foam Food Packaging Ban” that should be included in the Manhattan Beach ordinance related to polystyrene meat trays with only appropriate technical changes.

#### **9.24.040 Other polystyrene foam products.**

D. After January 1, 2018, no person may sell, offer for sale, or otherwise distribute for compensation within the city, meat and fish trays or egg cartons made, in whole or in part, from polystyrene foam, or that are not compostable or recyclable, either as separate items or

as part of the sale of raw meat, fish, poultry, or eggs sold to consumers from a refrigerator case or similar retail appliance. (Ord. 412 § 1, 2016)

NOTE: For the Manhattan Beach ordinance the date of March 6, 2020 should be used for the language reflecting 9.24.040 D in the Malibu ordinance to achieve a one-year delayed implementation.

#### **9.24.050 Implementation.**

A. The city manager may waive the provisions of Sections [9.24.020](#), [9.24.030](#), [9.24.040](#), [9.24.045](#) if:

1. The applicant demonstrates a feasibility based hardship. The person seeking the waiver must demonstrate to the city manager's satisfaction that no reasonably feasible alternative exists to a specific non-compliant product.

2. The applicant demonstrates compliance is unreasonably financially prohibitive. The person seeking the exemption must demonstrate to the city manager's satisfaction that with respect to each specific non-compliant product, there is no suitable and reasonably affordable alternative product available.

3. Strict application of the specific requirement would create an undue hardship, or practical difficulty, not generally applicable to other persons in similar circumstances, and good cause is shown.

B. A person seeking a waiver under subsection A must submit a written application on a form approved by the city manager. The city manager may require the applicant to submit additional information or documentation to make a determination regarding the waiver requested. The city manager shall review requests for waivers on a case-by-case basis, and may grant the waiver in whole or in part, with or without conditions, for a period of up to twelve (12) months. An applicant for renewal of a waiver must apply for a new waiver period no later than sixty (60) days prior to the expiration of the then-current period to preserve a continuous waiver status. The city manager shall review each application anew and base his or her determination on the most current information available. In no case shall a waiver be retroactive or continue past January 1, 2020.

C. Any determination made by the city manager pursuant to this section shall be appealable to the city council. Any appeal must be in writing, filed with the city within five calendar days of the at-issue city manager decision, and shall specifically set forth the grounds for the appeal. (Ord. 432 § 5, 2018; Ord. 412 § 1, 2016)

NOTE: For the Manhattan Beach ordinance the date of March 6, 2022 should be used for the language reflecting 9.24.050 c in the Malibu ordinance to match the date which no waiver can extend past.