

ORDINANCE NO. 13-0009

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH  
AMENDING CHAPTER 5.80 OF TITLE 5 OF THE MANHATTAN  
BEACH MUNICIPAL CODE TO PROHIBIT THE DISTRIBUTION  
OR SALE OF PREPARED FOOD IN ANY POLYSTYRENE  
FOOD SERVICE WARE

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 (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 City Council hereby amends Chapter 5.80 of Title 5 of the Manhattan Beach Municipal Code in its entirety to read as follows:

"CHAPTER 5.80 - PROHIBITION ON THE DISTRIBUTION OR SALE OF PREPARED FOOD  
IN POLYSTYRENE FOOD SERVICE WARE.

5.80.010 - Purpose.

The purpose of this chapter is to regulate the use of polystyrene food packaging in order to protect the health of Manhattan Beach citizens 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:

"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.

"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, or any other container in or on which Prepared Foods are placed or packaged for consumption. This definition excludes single-use disposable straws, plastic carry-out bags, cup lids, and utensils.

"Food Provider" means any Person or place that provides or sells Prepared 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, café, coffee shop, snack shop, public food market, farmers' market, convenience store, or similar fixed place where Prepared 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 to its members or the general public as a part of its activities or 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.

"Polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to 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 molding, or extrusion-blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The Recycle 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 Code.

"Polystyrene Food Service Ware" means Disposable Food Service Ware that contains or utilizes Polystyrene.

"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.

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

5.80.030 - Prohibition against use of polystyrene food service ware.

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

B. Food Providers that distribute Prepared Food in Disposable Food Service Ware shall (1) distribute only Disposables that exhibit a Recycle 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 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.

D. 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 and any other Person that enters into an agreement with one or more of the function sponsors to sell or distribute Prepared Food or otherwise provide a service related to the function.

E. 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.

F. All Food Providers required by this Code to have a business license shall certify compliance with this chapter on the annual business license renewal application.

#### 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. Food provided by the Manhattan Beach Unified School District under its official food service program.
3. Coolers and ice chests made of Polystyrene intended for reuse.
4. 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 5.83.030.

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 5.83.030 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.

5.80.050 – Infraction.

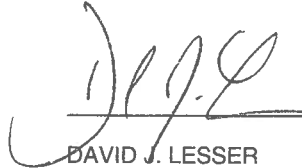
In addition to any other applicable civil or criminal penalty, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable pursuant to the penalty provisions set forth in Chapter 1.04 of this Code."

SECTION 3. 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 4. 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.

PASSED, APPROVED AND ADOPTED this 10th day of September, 2013.

AYES Powell, Howorth and Mayor Lesser:  
NOES: Burton  
ABSENT: None  
ABSTAIN: D'Errico

  
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DAVID J. LESSER  
Mayor of the City of Manhattan Beach, California

ATTEST:

  
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LIZA TAMURA  
City Clerk