

ORDINANCE NO. 944

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA ADDING CHAPTER 11.40 TO THE DEL MAR MUNICIPAL CODE TO REGULATE AND PROHIBIT THE USE OF EXPANDED POLYSTYRENE AND NON-RECYCLABLE PLASTIC DISPOSABLE FOOD SERVICE WARE

WHEREAS, the City Council finds that polystyrene and non-recyclable plastic disposable food service ware constitutes a significant adverse environmental impact in that solid waste that is non-degradable or non-recyclable poses an acute problem for any program of integrated waste management; and

WHEREAS, such waste covers the City's streets, parks, public spaces and opens spaces; it clogs storm drains, arch culverts and catch basins thereby significantly increasing the time and expense to public works maintenance crews during storm events and enters the marine and natural environment and is damaging to the environment and marine wildlife; and

WHEREAS, products which are degradable or recyclable offer environmentally sound alternatives to non-degradable and non-recyclable products which are in current use; and

WHEREAS, recycling of products reduces costly waste of natural resources and energy used in the production of new products as well as costly disposal of waste in landfills; and

WHEREAS, the City Council of the City of Del Mar conducted a noticed public hearing regarding the initial proposed ordinance at their regularly scheduled meeting on November 19, 2018. The public hearing was advertised pursuant to applicable law and testimony was invited and received; and

WHEREAS, the proposed ordinance is exempt from review under the California Environmental Quality Act (CEQA) based upon the common sense exemption under 14 CCR 15061 (b)(3) and the reasoning in the California Supreme Court case Save the Plastic Bag Coalition v. City of Manhattan Beach, 52 Cal. 4<sup>th</sup> 155 (2011); and

WHEREAS, the proposed ordinance does not preempt compliance with the California Retail Food Code or any other state or federal law; and

WHEREAS, the City Council desires to add Chapter 11.40 to the Del Mar Municipal Code ("DMMC"), entitled Use Of Expanded Polystyrene and Non-Recyclable Plastic Disposable Food Service Ware to regulate and prohibit such use in the City of Del Mar.

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NOW, THEREFORE, the City Council of the City of Del Mar hereby ordains as follows:

SECTION ONE:

Section 11.40.010 of the Del Mar Municipal Code is hereby added as follows:

11.40.010 Purpose and Intent. The purpose of this chapter is to establish standards and procedures for environmental waste and litter reduction measures, plan and promote environmentally sustainable practices throughout the City by prohibiting the use of expanded polystyrene and non-recyclable plastic disposable food service ware by food providers, businesses and vendors within the City of Del Mar.

SECTION TWO:

Section 11.40.020 of the Del Mar Municipal Code is hereby added as follows:

11.40.020 Definitions. The following definitions shall be applicable when the following words or phrases are used hereafter in this ordinance, whether or not these words or phrases are capitalized:

"Biodegradable" refers to the ability of a material to decompose into elements normally found in nature within a reasonably short period of time after disposal.

"City" means the City of Del Mar.

"City contractor" means any Person that enters into an agreement with the City to furnish products or services to or for the City.

"City facility" means any building, structure, property, park, open space, or vehicle, owned, leased or operated by the City, its agents, agencies, departments or franchisees.

"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.

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"Customer" means any person obtaining prepared food from a restaurant or retail food vendor.

"Disposable food service ware" or "disposables" means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups or drinkware, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, hinged or lidded containers or any other container in or on which prepared foods are placed or packaged for consumption. This does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

"Event" means an organized recreational activity that includes 25 or more participants.

"Expanded polystyrene" (EPS) means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam. EPS is sometimes called "Styrofoam," a Dow Chemical Co. trademark form of polystyrene foam insulation.

"Food provider" means any person or establishment 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, delicatessen, restaurant, café, cafeteria, 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.

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"Non-recyclable plastic" refers to any plastic which cannot be feasibly recycled by a municipal recycling program in the state of California, including polystyrene and expanded polystyrene.

"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 group, however organized.

"Polystyrene" means and includes expanded polystyrene which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes clear or solid polystyrene which is known as "oriented 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. For purposes of this chapter, 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.

"Recyclable plastic" means any plastic which can be feasibly recycled by a municipal recycling program in the state of California.

"Restaurant" means any person or establishment doing business within the City of Del Mar that provides prepared food or

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beverages for consumption on or off its premises such as a restaurant, cafe, bakery, grocery or convenience store food counter or delicatessen, or catering truck vehicle.

SECTION THREE:

Section 11.40.030 of the Del Mar Municipal Code is hereby added as follows:

11.40.030 Prohibition On Use Of Non-recyclable Plastic Disposable Food Service Ware

A. Except as provided in DMMC Section 11.40.050 food providers are prohibited from dispensing prepared food to customers in disposable food service ware made from expanded polystyrene (EPS).

B. Except as provided in DMMC Section 11. .050 food providers are prohibited from dispensing prepared food to customers in disposable food service ware made from non-recyclable plastic.

C. All City facilities, City-managed concessions, City-sponsored and co-sponsored events, and City-permitted events are prohibited from using disposable food service ware made from expanded polystyrene or non-recyclable plastic within the City.

SECTION FOUR:

Section 11.40.040 of the Del Mar Municipal Code is hereby added as follows:

11.40.040 Prohibition On Expanded Polystyrene Packing Materials No business or vendor in the City, unless exempt pursuant to Section 11. .050, shall use expanded polystyrene loose-fill packaging and cushioning material, such as foam peanuts, packing peanuts, foam popcorn or packing noodles, in the packaging of products, equipment or other items.

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SECTION FIVE:

Section 11.40.050 of the Del Mar Municipal Code is hereby added as follows:

11.40.050 Exemptions

A. Automatic Exemptions. The following uses are exempt from the provisions of this chapter:

1. Food prepared or packaged outside the City, provided such food is not altered, packaged or repackaged within the City limits. Purveyors of food prepared or packaged outside the City are encouraged to follow the provisions of this section.

2. Products, equipment, or other items prepared or packaged outside the city of Del Mar.

3. Polystyrene coolers and ice chests or other food containers intended for reuse.

B. Food providers that are obligated to purchase or have purchased EPS food service ware under a contract entered into with the year prior to the operative date of the ordinance codified in this chapter are exempt from the provisions of this chapter for six months following its operative date.

C. Undue Hardship. The City Manager, or designee, may exempt any food provider or person from the requirements of this chapter for a one-year period, upon written request by applicant that the conditions of this chapter would cause undue hardship following the operative date of the ordinance codified in this chapter, as follows:

1. A request for an exemption shall be filed in writing with the City Manager or designee and shall include documentation of the reason for the claimed exemption and any other information necessary for the City to make its

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decision. An exemption application shall include all information necessary for the City to make its decision, including, but not limited to, documentation showing the factual support for the claimed exemption. The City may require the applicant to provide additional information as necessary to make the required determinations.

2. The City Manager or designee may approve the exemption application for one year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include, but not limited to, situations where:

a. Situations unique to the food provider or non-food provider where there are no reasonable alternatives to expanded polystyrene or non-recyclable plastic disposable food service containers and compliance with this chapter would cause significant economic hardship to that food provider;

b. Situations where no reasonably feasible available alternatives exist to a specific and necessary expanded polystyrene or non-recyclable plastic disposable food service container.

3. A food provider granted an exemption by the city must reapply prior to the end of the one-year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

4. Exemption decisions by the City Manager or designee are effective immediately and final and are not appealable.

5. The City Council may by resolution establish a fee for exemption applications. The application fee shall be an

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amount sufficient to cover the costs of processing the exemption application.

D. This chapter does not apply to activities on the property of the 22<sup>nd</sup> District Agricultural Association (Fairgrounds) lying within the City of Del Mar boundaries, although the City encourages the Fairgrounds to impose similar requirements on all its facilities.

SECTION SIX:

Section 11.40.060 of the Del Mar Municipal Code is hereby added as follows:

11.40.060 Enforcement and Administrative Remedies

A. The City Manager, or designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this chapter, including, but not limited to, inspecting any food provider and commercial business premises to verify compliance.

B. Any violation of this chapter shall be enforced through the administrative citation program set forth in Chapter 1.10 of the Del Mar Municipal Code.

C. Each violation of this chapter shall be considered a separate offense.

D. The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this chapter shall preclude any person from pursuing any other remedies provided by law. The City Attorney may seek legal, injunctive, or other equitable relief to enforce the provisions of this chapter and any regulations or administrative procedure developed pursuant hereto.



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In addition to any other applicable civil or criminal penalty, any person convicted of a violation of this chapter shall be guilty of an infraction, which shall be punishable by a fine not exceeding \$250.00, or a misdemeanor, which shall be punishable by a fine not exceeding \$1,000.00, or by imprisonment in the county jail for a period not exceeding six months or by both such fine and imprisonment.

E. Administrative enforcement of this chapter shall proceed pursuant to Chapter 1.10 of the DMMC.

F. Notwithstanding any other provision of this chapter, this chapter may be enforced through any remedy as provided for in this section upon its effective date.

SECTION SEVEN:

Section 7: Operative Dates

A. This chapter shall become operative as to all food providers, businesses and vendors six months after adoption by the city council.

B. Within 30 days after its adoption, this chapter shall become effective for the City such that no city facilities, city-managed concessions, city-sponsored events or city-permitted events shall distribute or utilize disposable food service containers containing expanded polystyrene or non-recyclable plastic.

SECTION EIGHT:

Section 8. Within fifteen (15) days after its adoption, the City Clerk of the City of Del Mar shall cause this ordinance to be published pursuant to the provisions of Government Code Section 36933.

SECTION NINE: Severability

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If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this chapter is, for any reason, held to be invalid or unconstitutional by any court or competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter. The City Council hereby declares that it would have adopted the ordinance codified in this chapter and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this chapter irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional. To this end, the provisions of this chapter are declared severable.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the 3 day of December, 2018.

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DWIGHT WORDEN, Mayor  
City of Del Mar

APPROVED AS TO FORM:

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Leslie E. Devaney, City Attorney  
City of Del Mar

ATTEST AND CERTIFICATION

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
CITY OF DEL MAR

I, ASHLEY JONES, City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 844, which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 3 day of December, 2018, by the following vote:

AYES: Mayor Worden, Deputy Mayor Druker, Council Members Haviland,  
Parks and Sinnott  
NOES: None  
ABSENT: None  
ABSTAIN: None

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ASHLEY JONES, City Clerk  
City of Del Mar