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ORDINANCE NO. 12-1332

**AN ORDINANCE OF THE CITY OF HERMOSA BEACH,
CALIFORNIA, ADDING CHAPTER 8.64 TO THE HERMOSA BEACH
MUNICIPAL CODE TO BAN POLYSTYRENE FOOD SERVICE WARE
AND AMENDING CHAPTER 1.10 TO MAKE VIOLATIONS OF
CHAPTER 8.64 SUBJECT TO ADMINISTRATIVE PENALTY
PROCEDURES**

The City Council of the City of Hermosa Beach does ordain as follows:

SECTION 1. A new Chapter 8.64 is added to Title 8 of the Hermosa Beach Municipal

Code to read as follows:

CHAPTER 8.64 BAN ON POLYSTYRENE FOOD SERVICE WARE

8.64.010 Purpose.

The purpose of this Chapter is to establish standards and procedures to reduce adverse environmental and public health impacts and promote environmentally sustainable practices in the City of Hermosa Beach by prohibiting the use of certain disposable polystyrene food containers.

A. Polystyrene Food Service Ware, 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. In the marine environment, this material breaks down into smaller pieces, which negatively impacts water quality and harms marine wildlife, which often mistakes polystyrene pieces for food.

B. Littered Polystyrene Food Service Ware, especially expanded foam, is difficult to clean up and may cumulatively result in increased litter. Reduction of polystyrene in the environment will advance compliance with federal, state and city clean water mandates including compliance with Total Maximum Daily Loads and other requirements of the National Pollutant Discharge Elimination System.

1 C. Education about and reduction of food-soiled Polystyrene Food Service Ware, which
2 can be difficult to clean and recycle, may advance waste stream reduction and recycling efforts and
3 reduce the presence of this non-biodegradable material in landfills.

4 D. Polystyrene Food Service Ware has been shown to pose human health impacts to
5 workers and consumers and these impacts can be mitigated by reducing its use.

6
7 **8.64.020 Definitions.**

8 For purposes of this chapter, the following terms shall have the following meanings:

9 **“City Facility”** means any building, structure, property, park, open space, or vehicle,
10 owned or leased by the City of Hermosa Beach, or its agents, agencies, or departments.

11 **“City Contractor”** means any person that enters into a written contract or verbal
12 agreement to furnish products or services to or for the City of Hermosa Beach.

13 **“City-Sponsored Event”** means any event, activity or meeting organized or sponsored by
14 the City of Hermosa Beach or any department of the City of Hermosa Beach.

15 **“Disposable Food Service Ware”** or **“Disposables”** means single-use, disposable
16 products used for serving or transporting Prepared Food. This includes but is not limited to plates,
17 bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, or
18 any other container in or on which Prepared Foods are placed or packaged for consumption, but
19 excludes single-use disposable straws, cup lids, and utensils.

20 **“Food Provider”** means any Person or place that provides or sells Prepared Food within
21 the City of Hermosa Beach to the general public to be consumed on the premises or for take-away
22 consumption. Food Provider includes but is not limited to (1) a grocery store, supermarket,
23 restaurant, drive-thru, café, coffee shop, snack shop, public food market, farmers’ market,
24 convenience store, or similar fixed place where Prepared Food is available for sale on the premises
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1 or for take-away consumption, and (2) any mobile store, food vendor, caterer, food truck, vending
2 machine or similar mobile outlet. Food Provider also includes any organization, group or
3 individual that regularly provides Prepared Food to its members or the general public as a part of
4 its activities or services.

5 **“Person”** means any person, business, corporation, or event organizer or promoter; public,
6 nonprofit or private entity, agency or institution; or partnership, association or other organization
7 or group, however organized.

8 **“Polystyrene”** means a thermoplastic petrochemical material utilizing the styrene
9 monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by
10 any number of techniques, including but not limited to fusion of polymer spheres (expandable
11 bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam
12 polystyrene), and clear or solid polystyrene (oriented polystyrene). The Recycle Code for
13 polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies
14 to all Polystyrene Food Service Ware, regardless of whether it exhibits a Recycle Code.
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17 **“Polystyrene Food Service Ware”** means Disposable Food Service Ware that contains or
18 utilizes Polystyrene.
19

20 **“Prepared Food”** means any food or beverage that is (1) ready to consume without any
21 further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a
22 Food Provider using any cooking, packaging or food preparation technique. Prepared Food may
23 be eaten either on or off the Food Provider’s premises. Prepared Food does not include (1) any
24 raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food
25 preparation, and (2) fresh produce provided for consumption without food preparation or
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1 repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food
2 markets, farmers' markets and other food vendors.

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

5 **8.64.030 Food Packaging Prohibitions.**

6 A. No Food Provider shall distribute or sell Prepared Food in any Polystyrene Food
7 Service Ware at any location within the City of Hermosa Beach. Food Providers that distribute
8 Prepared Food in Disposable Food Service Ware shall (1) distribute only Disposables that exhibit
9 a Recycle Code other than No. 6 or PS, or (2) maintain documentation onsite of the composition
10 of the Disposable Food Service Ware. Documentation may include information from the supplier,
11 manufacturer, or bulk packaging for the Disposables, and any other relevant information
12 demonstrating that the disposable material is not polystyrene.
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15 B. No Person shall distribute or sell Prepared Food in any Polystyrene Food Service Ware
16 at City Facilities that have been rented, leased or are otherwise being used with permission of the
17 City. This Subsection is limited to use of City facilities for which a Person has entered into an
18 agreement with the City to rent, lease or otherwise occupy a City facility. All facility rental
19 agreements for any City facility shall include a provision requiring contracting parties to assume
20 responsibility for preventing the utilization and/or distribution of Polystyrene Food Service Ware
21 while using City facilities. The facility rental agreement shall indicate that the violating
22 contractor's security deposit will be forfeited if the City Manager or his/her designee determines
23 that Polystyrene Food Service Ware was used in violation of the rental agreement.
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26 C. No Person shall use or distribute Polystyrene Food Service Ware at City-sponsored
27 events, City-managed concessions and City meetings open to the public. This subsection shall
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1 apply to the function organizers, agents of the organizers, City Contractors, Food Providers and
2 any other Person that enters into an agreement with one or more of the function sponsors to sell or
3 distribute Prepared Food or otherwise provide a service related to the function.

4 D. The City of Hermosa Beach, its Departments, and its City Contractors, agents, and
5 employees acting in their official capacity, shall not purchase or acquire Polystyrene Food Service
6 Ware, or distribute it for public use.

7
8 **8.64.040 Exemptions.**

9 A. Food prepared or packaged outside the City of Hermosa Beach is exempt from the
10 provisions of this Chapter, provided such food is not altered, packaged or repackaged within the
11 City of Hermosa Beach limits unless otherwise stated.

12
13 B. Food provided by the Hermosa Beach School District under its official Food Service
14 program.

15 C. Coolers and ice chests made of Polystyrene intended for reuse are exempt from the
16 provisions of this Chapter.

17
18 D. The City Manager or his/her designee may exempt any Person from Section 8.64.030
19 following the operative date of this ordinance, as follows:

20 1. A request for an exemption shall be filed in writing with the City Manager or
21 his/her designee and shall include documentation of the reason for the claimed exemption and any
22 other information necessary for the City to make its decision. The City may require the applicant
23 to provide additional information as necessary to make the required determinations.

24
25 2. The City Manager or his/her designee may approve the exemption for a maximum
26 of one (1) year, with or without conditions, upon finding that compliance would create an undue
27 hardship. Undue hardship shall be construed to include but not be limited to situations where:
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1 a. There are no reasonable alternatives to Polystyrene Food Service Ware for
2 reasons that are unique to the applicant; or

3 b. Compliance with the requirements of this Chapter would deprive a person of a
4 legally protected right. The exemption may be extended for additional terms of up to one (1) year
5 each, upon a showing of the continuation of the legal right.
6

7 3. The City Manager's written decision on the exemption is effective within ten (10)
8 days of the decision. Decisions of the City Manager may be appealed to the City Council.
9 Appeals shall be filed in writing with the City Clerk within ten (10) days of the decision and shall
10 be accompanied by a fee set by resolution of the City Council. Notice of hearing shall be given to
11 the applicant at least ten (10) days prior to the hearing. The City Council shall make its decision
12 within sixty (60) days of receiving the appeal.
13

14 E. Section 8.64.030 shall not apply to individuals bringing food for personal consumption
15 at City Facilities, including but not limited to City parks and the beach, provided the facility is
16 being used for individual recreation or similar purposes and such facility use is not part of a larger
17 organized event that is otherwise governed by that Section.
18

19 F. Food Providers that are obligated to purchase or have purchased Polystyrene Food
20 Service Ware under a contract entered into within the year prior to the operative date of this
21 ordinance are exempt from the provisions of this Chapter for six (6) months year following its
22 operative date.
23

24 **8.64.050 Enforcement and Compliance.**

25 A. This Chapter shall be enforced by the City Manager or his/her designee. Nothing in this
26 Chapter shall be construed to create a private cause of action. The City Manager, or his/her
27 designee, is authorized to promulgate regulations and to take any and all other actions reasonable
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1 and necessary to enforce this Chapter including, but not limited to, inspecting any Food Provider's
2 premises and requiring documentation of the composition of Polystyrene Food Service Ware
3 material to verify compliance.

4 B. Violations of the provisions of this Chapter are subject to the administrative penalty
5 provisions of Chapter 1.10.

6 C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this
7 Chapter.
8

9 D. The remedies and penalties provided in this section are cumulative and not exclusive of
10 one another.

11 E. All Food Providers required under this Code to have a business license shall certify
12 compliance with this Chapter on the annual business license renewal application.
13

14 **SECTION 2.** Section 1.10.040 of the Hermosa Beach Municipal Code is hereby amended
15 to add subparagraph (A)(19) to read as follows:

16 **19. Chapter 8.64: Ban on Polystyrene Food Service Ware.**

17 **SECTION 3.** This Ordinance shall become operative and be in full force and in effect
18 from and after one hundred eighty (180) days of its final passage and adoption, which will be
19 March 10, 2013.
20

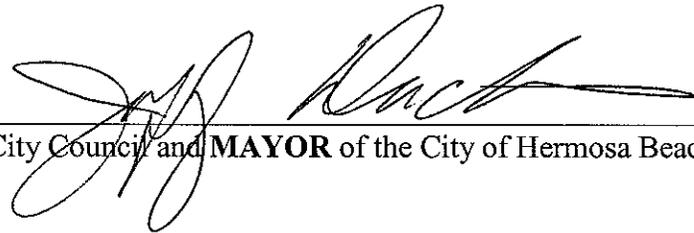
21 **SECTION 4.** Prior to the expiration of fifteen (15) days after the date of its adoption, the
22 City Clerk shall cause this Ordinance to be published in the Easy Reader, a weekly newspaper of
23 general circulation published and circulated, in the City of Hermosa Beach in the manner provided
24 by law.
25

26 **SECTION 5.** The City Clerk shall certify to the passage and adoption of this Ordinance,
27 shall enter the same in the book of original Ordinances of said city, and shall make minutes of the
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1 passage and adoption thereof in the records of the proceedings of the City Council at which the
2 same is passed and adopted.

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4 **PASSED, APPROVED and ADOPTED** this 11th day of September, 2012 by the following vote:

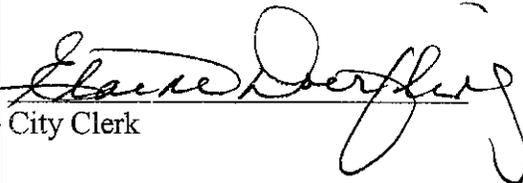
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6 AYES: Fishman, Tucker, Mayor Duclos
7 NOES: Bobko, DiVirgilio
8 ABSENT: None
9 ABSTAIN: None

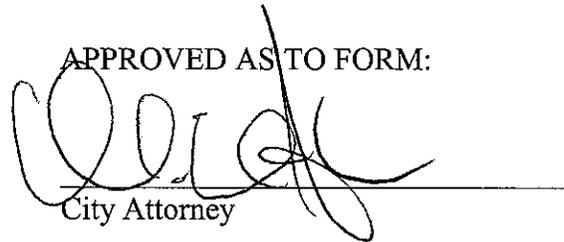
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PRESIDENT of the City Council and **MAYOR** of the City of Hermosa Beach, California

12
13 ATTEST:

APPROVED AS TO FORM:

14
15 
16 City Clerk


City Attorney

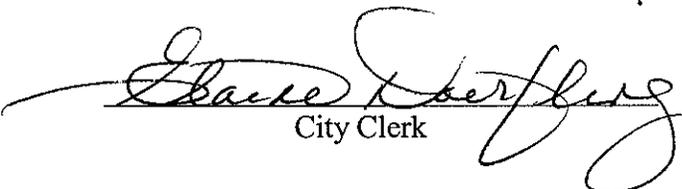
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF HERMOSA BEACH

I, Elaine Doerfling, City Clerk of the City of Hermosa Beach, California, do hereby certify that the foregoing Ordinance No. 12-1332 was duly and regularly passed, approved and adopted by the City Council of the City of Hermosa Beach at a regular meeting held at the regular meeting place thereof on the 11th day of September, 2012, and said ordinance will be published in the Easy Reader newspaper on September 20, 2012.

The vote was as follows:

AYES:	Tucker, Fishman, Mayor Duclos
NOES:	Bobko, DiVirgilio
ABSENT:	None
ABSTAIN:	None

DATED: September 11, 2012


City Clerk