



City of Del Mar Staff Report



TO: Honorable Mayor and City Council Members

FROM: Clem Brown, Environmental Sustainability/Special Projects Manager
Via Scott Huth, City Manager

DATE: March 4, 2019

SUBJECT: Adoption of an Ordinance (2nd Reading) to Regulate Plastic Straws and Stirrers

REQUESTED ACTION/RECOMMENDATION:

Staff requests that the City Council adopt the ordinance (Attachment A).

DISCUSSION/ANALYSIS:

On January 14, 2019, the City Council introduced an ordinance to prohibit the usage of plastic straws and stirrers, and to prohibit the distribution of paper, biodegradable or reusable straws unless requested by the customer as part of the City's ongoing efforts to reduce plastic pollution that is harmful to the environment.

Plastic straws are among the top ten items removed from beaches during clean-ups, and are a considerable danger to the oceans. Reducing plastic waste will also help the City meet its Climate Action Plan (CAP) goals, as sending waste to landfills is energy intensive.

All plastics photodegrade and remain in the environment for hundreds of years. Small pieces end up on the beach and in the ocean and further degrade into smaller pieces that are ultimately ingested by marine life, sometimes with fatal results, and become a human health risk as it enters the food chain. Degrading plastic in landfills can leach chemicals into groundwater that can be a source of drinking water.

Furthermore, recent policy changes in China have significantly disrupted plastic recycling markets in the United States. As China continues to limit the type and amount of plastic it accepts from the United States for recycling, it is increasingly important that Del Mar take proactive steps to reduce its use of all plastic materials. Additionally, customers are often given straws whether they want them or not, which contributes to unnecessary waste.

FISCAL IMPACT:

City Council Action:

To the extent that the City purchases plastic straws and stirrers for City facilities, City managed concessions, City sponsored events, or City permitted events, the City would be prohibited from doing so and would incur additional costs, if any, to replace those items with paper, biodegradable or reusable straws. In addition, the City will need to expend some staff time to coordinate the education and outreach efforts with the SAB to the impacted restaurants prior to the ordinance going into effect. Finally, the City may sustain additional costs to enforce the ordinance; however, these potential fiscal impacts may be offset, in whole or in part, by any administrative fines collected.

ENVIRONMENTAL IMPACT:

The proposed ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken “to assure the maintenance, restoration, enhancement and protection of the environment” and pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

Adoption of the proposed ordinance is a priority project in the City Council’s goals and priorities work plan for Fiscal Year 2018-2019.

ATTACHMENTS:

Attachment A – Proposed Ordinance

ORDINANCE No. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA ADDING CHAPTER 11.44 TO THE DEL MAR MUNICIPAL CODE PROHIBITING THE USAGE OF PLASTIC STRAWS AND STIRRERS, AND PROHIBITING THE DISTRIBUTION OF PAPER, BIODEGRADABLE OR REUSABLE STRAWS UNLESS REQUESTED BY CUSTOMER

WHEREAS, the City of Del Mar is committed to the goal of implementing zero waste strategies as prescribed in its adopted Climate Action Plan; and

WHEREAS, one goal of the Climate Action Plan is to develop a zero waste policy; and

WHEREAS, the City desires to conserve resources and reduce greenhouse gas (GHG) emissions, waste, litter, and pollution to help achieve its Climate Action Plan goals; and

WHEREAS, eliminating the distribution of plastic straws and stirrers provided to customers reduces the amount of plastic that can end up in our environment through litter, windblown debris, and overflowing trash cans; and

WHEREAS, discarded plastic straws and stirrers blown into the ocean can be consumed by fish and other marine life, which can kill or maim them; furthermore, ingested plastic by fish can then enter the human food supply when these fish are consumed; and

WHEREAS, plastic never degrades but stays in the environment forever; and

WHEREAS, zero waste is a goal of our Climate Action Plan, and thus even paper or biodegradable straws will create waste going to the landfill; and

WHEREAS, the City wishes to increase awareness in our community of the simple decisions we can all make to reduce waste; and

WHEREAS, to allow customers to make a choice regarding whether or not they want a straw for their beverage.

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

SECTION ONE:

Section 11.44.010 of the Del Mar Municipal Code is hereby added as follows:

11.44.010 Purpose and Intent. The purpose of this ordinance is to protect the health, safety and general welfare of the City of Del Mar residents and visitors; conserve natural resources, reduce beach litter and marine pollution, protect local wildlife, and to increase awareness in our citizens of what they can do to reduce waste.

SECTION TWO:

Section 11.44.020 of the Del Mar Municipal Code is hereby added as follows:

11.44.020 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:

"Plastic Straw" means a tube made of plastic for transferring a beverage from its container to the mouth of the drinker.

"Paper or biodegradable straw" means a tube made of paper or of biodegradable material for transferring a beverage from its container to the mouth of the drinker.

"Reusable straw" means a tube made of metal or other durable material that will be used repeatedly for transferring a beverage from its container to the mouth of the drinker.

"Person" means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.

"Prepared Food" means food or beverage prepared for consumption on the Restaurant's premises, using any cooking or food preparation technique.

"Restaurant" means any vendor located or providing food within the City of Del Mar which provides Prepared Food for public consumption on or off its premises.

"Single-Use" means a product that is designed to be only used one time in its same form by the customer, food vendor or other entity.

SECTION THREE:

Section 11.44.030 of the Del Mar Municipal Code is hereby added as follows:

11.44.030 Straws Upon Request Only. Six months after the effective date of this ordinance by the City Council, Restaurants shall not provide plastic straws or stirrers to their customers, and if customers request a straw, they will be provided with a paper, biodegradable or reusable straw.

SECTION FOUR:

Section 11.44.040 of the Del Mar Municipal Code is hereby added as follows:

11.44.040 Exemptions.

- A. Restaurants that are obligated to purchase or have purchased Plastic Straws under a contract entered into within the year prior to the effective date of the ordinance codified in this chapter are exempt from the provisions of this chapter for six months following its operative date.

- B. Undue Hardship. The City Manager, or designee, may exempt any Restaurant 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 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 Restaurant or individual where there are no reasonable alternatives to Plastic Straws and compliance with this chapter would cause significant economic hardship to that Restaurant or individual;

 - b. Situations where no reasonably feasible available alternatives exist to the use of Plastic Straws.

 - 3. A Restaurant 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 amount sufficient to cover the costs of processing the exemption application.

- C. This chapter does not apply to activities on the property of the 22nd 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 FIVE:

Section 11.44.050 of the Del Mar Municipal Code is hereby added as follows:

11.44.050 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.
- E. 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.
- F. Administrative enforcement of this chapter shall proceed pursuant to Chapter 1.10 of the Del Mar Municipal Code.
- G. 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 SIX:

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the

requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308, as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION SEVEN:

Section 7: Operative Date

- A. This chapter shall become operative as to all Restaurants six months after the effective date of the this ordinance.

SECTION EIGHT:

This Ordinance was introduced by the City Council on January 14, 2019.

SECTION NINE:

The City Clerk is direct to prepare and have publish a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

SECTION TEN:

If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

SECTION ELEVEN:

Upon adoption, the Ordinance will take effect and be in force 30 days from the date of City Council adoption (“Effective Date”).

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the _____ day of _____ 2019.

David Drucker, Mayor
City of Del Mar

APPROVED AS TO FORM:

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, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No._____, 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 ___ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ashley Jones, Administrative Services
Director/City Clerk
City of Del Mar