



STAFF REPORT
CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ANDY HALL, CITY MANAGER *AH*
MEETING DATE: MAY 1, 2019 *CH*
ORIGINATING DEPT.: CITY MANAGER'S OFFICE
SUBJECT: INTRODUCTION OF ORDINANCE NO. 2019-1181, AMENDING CHAPTER 16.16 OF THE IMPERIAL BEACH MUNICIPAL CODE REGARDING A PROHIBITION ON PLASTIC FOOD PACKAGING AND OTHER PLASTIC MATERIALS IN FURTHERANCE OF PROTECTING THE MARINE ENVIRONMENT

EXECUTIVE SUMMARY:

In 2017, the City Council introduced the Marine Protection Ordinance (IBMC Chapter 16.16) that prohibits any person, business or other establishment from dispensing prepared foods in a disposable container made from expanded polystyrene or any other non-recyclable plastic container. As part of the City's ongoing efforts to reduce or limit products that are harmful to the environment, staff recommends amending the Marine Protection Ordinance to include a larger selection of single use plastic products that end up as litter on the beach.

At the April 17th City Council meeting, direction was given for staff to look into additional issues.

FISCAL ANALYSIS:

Minimal fiscal impact is anticipated. The prohibitions that are effective in the Marine Protection Ordinance also apply to City facilities, City-managed concessions, City-sponsored events, and City permitted events. In addition, the City may sustain additional costs to implement and enforce the Ordinance if additional code enforcement efforts are needed to achieve compliance.

RECOMMENDATION:

Staff recommends introduction of Ordinance No. 2019-1181 by title only and waive further reading of the Ordinance, to amend Chapter 16.16 of the Imperial Beach Municipal Code regarding a prohibition on plastic food packaging and other plastic materials in furtherance of protecting the marine environment.

OPTIONS:

- Introduce Ordinance 2019-1181 by title only and establish May 15, 2019 as the date for adoption.
- Provide modifications to staff and introduce Ordinance 2019-1181 by title only and establish

May 15, 2019 as the date for adoption.

- Continue the item and provide further direction to the City Manager.
- Deny the recommendation of staff.

BACKGROUND:

The City of Imperial Beach is a coastal community which strives to protect and improve the environment in many ways. Refuse found and collected along San Diego County coasts is primarily comprised of plastics. Regulating the use of single-use disposable items within the City will reduce the amount of plastics that enter the environment and the ocean. With the implementation of this Chapter, the City has the opportunity to reduce the amount of plastics that end up in the ocean and set an example for other Cities to follow. The goal is to eventually eliminate single-use products that are not compostable within the City. To that end, residents, visitors, and businesses in the City are encouraged to minimize the use and sale of single-use products, which include, but are not limited to, single use beverage bottles, miniature beverage bottles, non-biodegradable cigarette filters, balloons, and unnecessary plastic product packaging.

The purpose of the Marine Protection Ordinance is to encourage the use of ocean-friendly products that do not have a detrimental effect on the natural environment or character of the community. In 2017, the City Council introduced the Marine Protection Ordinance (IBMC Chapter 16.16) that prohibits any person, business or other establishment from dispensing prepared foods in a disposable container made from polystyrene or any other non-recyclable plastic container. Most businesses in the City made the transition to a new and more sustainable material for dispensing prepared foods without the need for enforcement from the City. It is important that the businesses that operate in the City conduct commercial activities in a manner that have the least impact on the beach and protect the natural environment.

As part of the City's ongoing efforts to reduce or limit products that are harmful to the environment, staff recommends amending the Marine Protection Ordinance to include a larger selection of single use products that end up as litter on the beach. The proposed update to the Imperial Beach Marine Protection Ordinance includes the following elements:

- Expands prohibition on the sale of polystyrene products;
- Prohibits the sale and use of food service containers made from any materials that are not biodegradable, compostable, or recyclable;
- Prohibits the sale and use of plastic beverage straws, stirrers, and cutlery;
- Expands prohibition on single-use plastic carryout bags as it pertains to City facilities, City-managed concessions, and City-sponsored events.
- Sets an aspirational goal for residents, visitors, and businesses in the City to minimize the use and sale of single-use products, which include, but are not limited to, single use beverage bottles, miniature beverage bottles, non-biodegradable cigarette filters, balloons, and unnecessary plastic product packaging.

The proposed changes to the Marine Protection Ordinance are consistent with the City's draft Climate Action Plan policies and consistent with statewide solid waste reduction efforts that expand recycling programs and divert organic materials from landfills. With the implementation of this Chapter, the City has the opportunity to reduce the amount of plastics that end up in the environment and help the City achieve its greenhouse gas emission reduction targets. The proposed regulations are similar to those adopted in other communities

in the state, which have been implemented with the support of environmental protection organizations and the general public.

The City plans to educate and enforce the changes in the Marine Protection Ordinance as part of the City's existing Commercial Storm Water Inspection Program, annual Business license renewal process, and normal code enforcement activities. The effective date to implement the new requirements in the Marine Protection Ordinance is November 15, 2019. As part of the ordinance, the City Manager is also authorized to work with local businesses and to provide waivers from enforcement so that there is a smooth transition to alternative products and minimal disruption to business activities.

Staff revised the Marine Protection Ordinance pursuant to Council direction at the April 17, 2019 Council meeting as follows:

- Added delayed implementation dates as it pertains to special events;
- Changed the implementation dates throughout from October 31 to November 15 to allow for 6 months for affected businesses to transition to the new regulations;
- Addition to Section 16.16.080 to provide for City education for businesses at the business license application/renewal process; and
- Revised the definition section and Section 16.16.070 to: (1) clarify the definition of single-use carryout bags; (2) provide for stricter requirements than state law as it applies to City facilities, City-sponsored events and City-managed concessions; and (3) to encourage a stricter application of laws related to single-use carryout bags as it relates to IB businesses.

ENVIRONMENTAL DETERMINATION:

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.

Attachments:

1. Draft Ordinance 2019-1181

ORDINANCE NO. 2019-1181

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING CHAPTER 16.16 OF THE IMPERIAL BEACH MUNICIPAL CODE REGARDING A PROHIBITION ON PLASTIC FOOD PACKAGING AND OTHER PLASTIC MATERIALS IN FURTHERANCE OF PROTECTING THE MARINE ENVIRONMENT

WHEREAS, the City has engaged in ongoing efforts to reduce or limit products that are harmful to the environment; and

WHEREAS, this Ordinance aims to support the City's Mission Statement to maintain and enhance Imperial Beach as a "Classic Southern California" beach-oriented community with a safe, small town, family atmosphere, rich in natural and cultural resources; and

WHEREAS, the purpose of this Ordinance is to encourage the use of ocean-friendly products that do not have a detrimental effect on the natural environment or character of the community; and

WHEREAS, similarly, the purpose of this ordinance is to encourage the development of positive business activities that enhance the City's Mission Statement. Businesses that operate in the City are expected to conduct commercial activities in a manner that have the least impact on the beach and protect the natural environment; and

WHEREAS, plastic products photodegrade, which means they break up into smaller pieces when exposed to sunlight, and these smaller pieces persist in the marine environment for hundreds of years. The plastic breaks up into smaller and smaller pieces that can then enter the food chain by animals believing the pieces are food. Plastics also leech chemicals wherever they end up, including into soils and into the water; and

WHEREAS, polystyrene is particularly harmful to the environment because it is frequently used for single-use purposes. A website by Californians Against Waste estimates that 377,579 tons of expanded polystyrene are produced in California and that 154,808 tons of that type of polystyrene are made specifically for food service packaging that ends up in the landfill. Either these products are immediately disposed of after a single use, or they are dispersed into the environment either intentionally or accidentally from being blown by the wind or falling out of trash receptacles, for example; and

WHEREAS, approximately 80% of all refuse that ends up in the oceans comes from the land; and

WHEREAS, refuse found and collected along San Diego County coasts is primarily comprised of plastics. San Diego Coastkeeper reports that in 2014, 46% of

debris collected was plastic. Many of the plastics collected were pieces less than one inch in diameter, and much of it was nonrecyclable expanded polystyrene foam; and

WHEREAS, the U.S. Department of Health and Human Services' 13th Report on Carcinogens concludes that styrene "is reasonably anticipated to be a human carcinogen"; and

WHEREAS, there are few facilities in the State of California that recycle polystyrene and they are able to do so only if there is a demand and the product is wiped clean of all food debris; and

WHEREAS, the California Coastal Commission has developed "A Plan of Action from The Plastic Debris Project" in 2006, which was funded by the State Water Resources Control Board, and that Plan recommends that local government impose limits, bans, and prohibitions on materials that more commonly become litter and marine debris, including polystyrene, grocery bags, and other single-use disposable items; and

WHEREAS, the City Council finds that because the City of Imperial Beach is a coastal community, the City has the opportunity to reduce the amount of plastics that end up in the ocean and has its police powers to assist with that goal; and

WHEREAS, the City Council finds that regulating the use and sale of polystyrene, grocery bags, and other single-use disposable items within the City will reduce the amount of plastics that enter the environment and the ocean; and

WHEREAS, the regulation of single-use disposable items within the City is an action that reduces the amount of anthropogenic debris that ends up on the beach; and

WHEREAS, additionally residents, visitors, and businesses in the City are encouraged to minimize the use and sale of single-use products, which include single use beverage bottles, miniature beverage bottles, non-biodegradable cigarette filters, balloons, and unnecessary plastic product packaging; and

WHEREAS, the City finds that off-shore oil drilling activities additionally pose a hazard to the environment and the ocean which is so precious to the City and its residents; and

WHEREAS, the City of Imperial Beach previously took action in 2017 to prohibit the use of polystyrene by food vendors and the use of polystyrene packaging materials by businesses and vendors in the City by approving Ordinance 2017-1171 which provided an amortization period for the impacted businesses which period has since passed; and

WHEREAS, this Ordinance amends the current Chapter 16.16 to provide for expanded prohibitions on the use of single-use materials that pollute the environment

and ocean. No additional amortization period for polystyrene use is necessary because its use has already been prohibited in the City of Imperial Beach.

NOW, THEREFORE, the City Council of the City of Imperial Beach does ordain as follows:

Section 1. The above-listed findings are true and correct and incorporated herein as findings.

Section 2. Chapter 16.16 of the Imperial Beach Municipal Code is hereby amended to read as follows (the ~~strikethrough~~ text represents deleted language and the underlined text represents new language):

Chapter 16.16. IMPERIAL BEACH MARINE AND BEACH PROTECTION

16.16.010. Definitions.

- ~~— A. "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.~~
- ~~— B. "City facilities" refers to buildings and structures owned or leased by the City of Imperial Beach.~~
- ~~— C. "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.~~
- ~~— D. "Disposable food service container" 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, bowls, trays and hinged or lidded containers. 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.~~
- ~~— E. "Expanded polystyrene (EPS)" means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam.~~
- ~~— F. "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, drive-through, 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.~~
- ~~— G. "Non-recyclable plastic" refers to any plastic that cannot be feasibly recycled by a municipal recycling program in the State of California, including polystyrene and expanded polystyrene.~~
- ~~— H. "Polystyrene" means and includes expanded polystyrene that 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 that is known as "oriented polystyrene."

— I. — "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, or (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.

— J. — "Recyclable plastic" means any plastic that can be feasibly recycled by a municipal recycling program in the State of California.

— K. — "Restaurant" means any person or establishment doing business within the City of Imperial Beach that provides prepared food or beverages for consumption on or off its premises such as a restaurant, café, bakery, grocery or convenience store food counter or delicatessen, or catering truck vehicle. (Ord. 2017-1171 § 2)

-

16.16.020. Prohibition on the use of non-recyclable plastic disposable food service containers.

— A. — Except as provided in Section 16.16.030, food providers are prohibited from dispensing prepared food to customers in disposable food service containers made from expanded polystyrene.

— B. — Except as provided in Section 16.16.030, food providers are prohibited from dispensing prepared food to customers in disposable food service containers made from non-recyclable plastic.

— C. — All City facilities, City-managed concessions, City-sponsored events, and City-permitted events are prohibited from using disposable food service containers made from expanded polystyrene or non-recyclable plastic. (Ord. 2017-1171 § 2)

-

16.16.025. Prohibition on expanded polystyrene packaging materials.

— No business or vendor in the City of Imperial Beach 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. (Ord. 2017-1171 § 2)

-

16.16.030. Exemptions.

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

~~— 1. Prepared Foods prepared or packaged outside the City of Imperial Beach. Purveyors of food prepared or packaged outside the City of Imperial Beach are encouraged to follow the provisions of this section.~~

~~— 2. Products, equipment, or other items prepared or packaged outside the City of Imperial Beach.~~

~~— B. Undue Hardship. The City Manager or designee may exempt a food provider from the requirements of this ordinance for a one-year period, upon showing by the food provider that the conditions of this ordinance would cause undue hardship.~~

~~— 1. An "undue hardship" shall be found in:~~

~~— a. Situations unique to the 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.~~

~~— 2. 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.~~

~~— 3. 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 Manager may require the applicant to provide additional information to permit the City Manager to determine facts regarding the exemption application.~~

~~— 4. The City Manager may approve the exemption application, in whole or in part, with or without conditions.~~

~~— 5. Exemption decisions are effective immediately and final and are not appealable.~~

~~— 6. 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. (Ord. 2017-1171 § 2)~~

~~-~~

16.16.040. Enforcement and 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's premises to verify compliance.~~

~~— B. Any person violating this chapter shall be guilty of an infraction, which shall be punishable by a fine in accordance with Chapter 1.12 of the Imperial Beach Municipal Code, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment in the County Jail for a period not exceeding six months or by both such fine and imprisonment. In addition to criminal fines, any person~~

~~violating this chapter shall also be subject to civil penalties or administrative fines or both under Chapters 1.12 and 1.22 of the Imperial Beach Municipal Code.~~

~~— C. — The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.~~

~~— D. — Administrative enforcement of this chapter shall proceed pursuant to Chapter 1.22 of the Imperial Beach Municipal Code.~~

~~— E. — Each violation of this chapter shall be considered a separate offense.~~

~~— F. — 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.~~

~~— 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. (Ord. 2017-1171 § 2)~~

16.16.050. Operative dates.

~~— A. — Chapter 16.16 shall become operative as to all food providers, businesses and vendors six months after adoption by the City Council.~~

~~— B. — Within thirty days after its adoption, Chapter 16.16 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.~~

Chapter 16.16 PROHIBITION ON PLASTIC FOOD PACKAGING AND OTHER PLASTIC MATERIALS

16.16.010. Purpose.

The City of Imperial Beach is a coastal community which strives to protect and improve the environment in many ways. Refuse found and collected along San Diego County coasts is primarily comprised of plastics. Regulating the use of single-use disposable items within the City will reduce the amount of plastics that enter the environment and the ocean. With the implementation of this Chapter, the City has the opportunity to reduce the amount of plastics that end up in the ocean. The goal is to eventually eliminate single-use products that are not compostable within the City. To that end, residents, visitors, and businesses in the City are encouraged to minimize the use and sale of single-use products, which include, but are not limited to, single use beverage bottles, miniature beverage bottles, non-biodegradable cigarette filters, balloons, and unnecessary plastic product packaging.

16.16.020. Definitions.

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

“Beverage provider” means any business, organization, entity, group, or individual located in the city of Imperial Beach that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption.

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

“City facility” means any building, structure, park or vehicle owned and operated by the city of Imperial Beach.

“City facility food provider” means an entity that provides, but does not sell, prepared food at any city facility.

“City manager” means the city manager and/or designees.

“City-sponsored event” means any event organized or sponsored by the city of Imperial Beach or any department of the city of Imperial Beach.

“Commercial business” means all non-residential facilities engaged in business or commerce, whether for profit or not-for-profit, or publicly or privately owned.

“Compostable” means material that can be broken down into, or otherwise become part of usable compost in a safe and timely manner.

“Customer” means any person obtaining food or beverages from a restaurant or retail food vendor.

“Distribute” means the sale, offer for sale, or other transfer of possession of an item for compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of possession of another item for compensation.

“Egg carton” means a carton for raw eggs sold to consumers from a refrigerator case or similar appliance.

“Food packaging” means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are made from polystyrene foam, on or in which any foods or beverages are placed or packaged on a restaurant’s or retail food vendor’s premises.

“Food service container” means all 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 containers, bowls, plates, trays, cups, lids, and other like items that are designed for one-time use for prepared foods, including, without limitation, service containers for takeout foods and/or leftovers from partially consumed meals prepared by food vendors. The term “food service container” does not include items composed of metal foil or metal foil-faced papers used to wrap hot foods.

“Food vendor” means any restaurant or retail food vendor located or operating within the city.

“Meat and fish tray” means any tray for raw meat, fish, or poultry sold to consumers from a refrigerator case or similar retail appliance.

“Packing material” means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage.

“Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.

“Plastic beverage straw” means any straw or tube made predominantly of plastic derived from either petroleum or non-biodegradable polymer, used for transferring a beverage from its container to the mouth of the drinker.

“Plastic cutlery” means any utensil, such as a fork, spoon, spork, or knife, made predominantly of plastic derived from either petroleum or non-biodegradable polymer.

“Plastic stirrer” means a device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from either petroleum or non-biodegradable polymer.

“Polystyrene” means blown polystyrene and expanded and extruded foams which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion polymer spheres (expanded bead polystyrene), injection molding, foam-molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.

“Prepared food” means food or beverages which are served on the food vendor’s premises and are prepared on the food vendor’s premises or within the city of Imperial Beach by packaging, cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared food does not include any uncooked meat or eggs. Prepared food may be eaten either on or off the premises.

“Recyclable” means material that can be sorted, cleansed, and reconstituted using the city’s available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

“Restaurant” means any establishment located within the city that sells prepared food for consumption on, near, or off its premises. The term includes a restaurant operating from a temporary facility, cart, vehicle, or mobile unit.

“Retail food vendor” or “vendor” means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, located within the city of Imperial Beach, which provides prepared food.

“Single-use plastic carryout bag” has the same meaning as a single-use carryout bag as defined in Section 42280 of the California Public Resources Code, as may be amended from time to time. Single-use plastic carryout bags do not include produce bags that are provided to a customer for use within a business to assist in the collection and transport of products such as produce, bulk items, meat, poultry, dry cleaning, or laundry.

16.16.030. Sale or distribution of non-compliant food service containers prohibited.

A. Effective November 15, 2019, no person may sell, offer for sale, or otherwise distribute within the city:

1. Any food service container that is not biodegradable, compostable or recyclable.

2. Any food service container made, in whole or in part, from polystyrene.

16.16.040. Use of non-compliant food service containers prohibited.

A. Food vendors may not sell, offer for sale, or otherwise distribute prepared food:

1. In food service containers made, in whole or part, from polystyrene; or

2. In food service containers that are not biodegradable, compostable or recyclable. This prohibition will take effect November 15, 2019.

B. City facility food providers may not provide prepared food to city facilities:

1. In food service containers made, in whole or part, from polystyrene; or

2. In food service containers that are not biodegradable, compostable or recyclable.

C. City departments may not purchase, acquire, or use food service containers for prepared food:

1. Where the food service container is made, in whole or in part, from polystyrene;

2. Where the food service container is not biodegradable, compostable or recyclable.

D. Effective November 15, 2019, city contractors and lessees may not use food service containers for prepared foods within city facilities while performing under a city contract or lease:

1. Where the food service container is made, in whole or in part, from polystyrene;

2. Where the food service container is not biodegradable, compostable or recyclable.

E. Effective November 15, 2019, the use or distribution of non-compliant food service containers at special events sponsored or co-sponsored by the city of Imperial Beach shall be prohibited. This prohibition shall apply to the event organizers, agents of the event organizers, event food vendors and any other party (including non-profit organizations) who enter into an agreement with one or more of the co-sponsors of the event to sell prepared food at the event or otherwise provide an event related service.

F. Effective November 15, 2019, all facilities rental agreements for any city owned property or facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of non-compliant food service containers. The facility rental agreement shall indicate that the violating contractor's security deposit will be forfeited if the city manager determines that non-compliant food service container was utilized in the violation of the rental agreement.

G. It shall not be a violation of this section to sell, offer for sell, or otherwise distribute prepared food packaged in food service containers otherwise prohibited by subsections A through D where:

1. The prepared food is packaged outside the city and is sold or otherwise provided to the consumer in the same food service container in which it is originally packaged. Businesses packaging prepared food outside the city are encouraged to use food service containers that are biodegradable, compostable or recyclable and are not made, in whole or in part, from polystyrene.
2. The city manager determines that there is no reasonable alternative available.

16.16.050. Other polystyrene products.

A. Effective November 15, 2019, no person may sell, offer for sale, or otherwise distribute within the city the following materials if they are made in whole or in part from polystyrene, unless they are wholly encapsulated or encased within a more durable material:

1. Packing materials, including shipping boxes and packing peanuts;
2. Coolers, ice chests, or similar containers; or
3. Pool or beach toys.

B. No commercial business in the city 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.

C. Effective November 15, 2019, no polystyrene foam product listed in subsection A shall be allowed on any beach within the city.

D. For purposes of subsection (A)(1), distribution of packing materials shall include using such materials to hold, cushion, or protect items to be packed in a container for shipping, transport, or storage, for compensation, where the packing takes place within the city. But it shall not include:

1. Receiving shipments within the city that include polystyrene foam, or some other non-compostable and non-recyclable product, used as packing material;
2. Re-using packing materials for shipping, transport, or storage within the same distribution system, where the packing materials are not sent to a consumer or end user;
3. Donating used packing materials to another person, where the donor receives nothing of value for the donated packing materials; or
4. Using packing materials donated under subsection (C)(3) for shipping, transport, or storage, where the person using the packing materials receives nothing of value for the donated packing materials.

E. Effective November 15, 2019, 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, or that are not biodegradable, 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.

16.16.060. Sale and commercial distribution of plastic beverage straws, stirrers, and cutlery prohibited.

A. Effective November 15, 2019, no food vendor or restaurant, shall use, provide, distribute, or sell plastic beverage straws, plastic stirrers, or plastic cutlery that are not biodegradable, compostable, or recyclable.

B. Nothing in this section precludes food vendors or restaurants from using or making non-plastic alternatives, such as those made from paper, sugar cane, or bamboo, available to customers.

C. Effective November 15, 2019, no person shall distribute plastic beverage straws, plastic stirrers, or plastic cutlery at any city facility or any city-sponsored event.

D. It shall not be a violation of this section to sell, provide, distribute, or use plastic beverage straws, plastic stirrers, or plastic cutlery when:

1. Needed by customers due to medical or physical conditions.
2. The city manager determines that there is no reasonable alternative available.

16.16.070. Prohibition on single-use plastic carryout bags.

A. Effective November 15, 2019, no person shall distribute a single-use carryout bag at City facilities, City-managed concessions, or City-sponsored events.

B. Commercial businesses, retail food vendors and restaurants in the city of Imperial Beach are encouraged not to provide a single-use plastic carryout bag to a customer at a point of sale or other location for the purpose of transporting food or merchandise out of the store.

C. This section is meant to work in conjunction with State law related to single-use carryout bags and any stores already in compliance with State law related to single-use carryout bags shall continue to follow State law on this matter.

16.16.080 Implementation.

A. The city manager may waive the provisions of Sections 16.16.030., 16.16.040., 16.16.050., and 16.16.060. 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; or

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; or

3. The applicant demonstrates that 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. Waiver determinations are effective immediately, final and not appealable. The city council may by resolution establish a fee for waiver determinations in an amount sufficient to cover the costs to administer the application.

C. The city shall provide information about this chapter to new businesses and existing businesses during the business license application or business license renewal process.

16.16.090 Enforcement and penalties.

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 the premises of any commercial business, retail food vendor, or restaurant to verify compliance.

B. Any person violating this chapter shall be guilty of an infraction, which shall be punishable by a fine in accordance with Chapter 1.12 of the Imperial Beach Municipal Code, or a misdemeanor, which shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment in the County Jail for a period not exceeding six months or by both such fine and imprisonment. In addition to criminal fines, any person violating this chapter shall also be subject to civil penalties or administrative fines or both under Chapters 1.12 and 1.22 of the Imperial Beach Municipal Code.

C. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

D. Administrative enforcement of this chapter shall proceed pursuant to Chapter 1.22 of the Imperial Beach Municipal Code.

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

F. 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.

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 3. The City Council finds that this 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.

Section 4. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. This Ordinance shall take effect thirty (30) days after passage.

Section 6. The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within fifteen (15) days following adoption indicating votes cast.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach, California, on the 1st day of May, 2019; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Imperial Beach, California, on the 15th day of May, 2019, by the following vote:

AYES: Councilmembers –
NOES: Councilmembers –
ABSTAIN: Councilmembers –
ABSENT: Councilmembers –

Serge Dedina, Mayor

ATTEST:

Jacqueline Kelly, City Clerk

APPROVED AS TO FORM:

Jennifer M. Lyon, City Attorney

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be an exact copy of Ordinance No. 2019-1181, "AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING CHAPTER 16.16 OF THE IMPERIAL BEACH MUNICIPAL CODE REGARDING A PROHIBITION ON PLASTIC FOOD PACKAGING AND OTHER PLASTIC MATERIALS IN FURTHERANCE OF PROTECTING THE MARINE ENVIRONMENT."

JACQUELINE KELLY, CITY CLERK

DATE