

Council Agenda Report

To: Mayor La Monte and the Honorable Members of the City Council

Prepared by: Heather Glaser, City Clerk

Approved by: Reva Feldman, City Manager 

Date prepared: November 15, 2016 Meeting date: November 28, 2016

Subject: Second Reading and Adoption of Ordinance No. 412

RECOMMENDED ACTION: Conduct second reading, unless waived, and adopt Ordinance No. 412 determining the project is categorically exempt from the California Environmental Quality Act and amending Malibu Municipal Code Chapter 9.24 to prohibit food packaging, containers and food service ware made from polystyrene foam or other materials that are non-recyclable and non-compostable and repealing Ordinance No. 286.

FISCAL IMPACT: None.

DISCUSSION: At the Regular City Council meeting on November 14, 2016, the City Council introduced on first reading Ordinance No. 412.

Ordinance No. 412 is presented to the City Council for adoption.

ATTACHMENTS: Ordinance No. 412

ORDINANCE NO. 412

AN ORDINANCE OF THE CITY OF MALIBU DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING MALIBU MUNICIPAL CODE CHAPTER 9.24 TO PROHIBIT FOOD PACKAGING, CONTAINERS AND FOOD SERVICE WARE MADE FROM POLYSTYRENE FOAM OR OTHER MATERIALS THAT ARE NON-RECYCLABLE AND NON-COMPOSTABLE AND REPEALING ORDINANCE NO. 286

The City Council of the City of Malibu does ordain as follows:

SECTION 1. Amendments

Title 9, Chapter 9.24 of the Malibu Municipal Code is hereby amended to read as follows:

“Chapter 9.24 Ban on Polystyrene Foam Food Packaging”

Section 9.24.010 Definitions

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

“ASTM Standard Specifications” means Standard Specifications for Compostable Plastics D6400 or Standard Specifications for Biodegradable Plastics D6868, as adopted or subsequently amended by the American Society for Testing and Materials (ASTM)

“City Facility” means any building, structure, park or vehicle owned and operated by the City of Malibu.

“City Facility Food Provider” means an entity that provides, but does not sell, Prepared Food at any City Facility.

“Compostable” means material that can be broken down into, or otherwise become part of usable compost in a safe and timely manner. “Compostable” also includes a plastic-like material if the material meets the ASTM Standard Specifications for compostability and the product is labelled in accordance with California Public Resources Code Section 42357 et seq. and Department of the Environment regulations for easy identification of Compostable products meeting ASTM Standard Specification for compostable plastics.

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

“City Manager” means the City Manager and/or his/her designees.

“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 Packager” means any person, located within the City of Malibu, who places meat, eggs, baked products, or other food in packaging materials for the purpose of retail sale of those products.

“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 Ware” means all containers, bowls, plates, trays, cups, lids, straws, forks, spoons, knives, napkins, and other like items that are designed for one-time use for prepared foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by food vendors. The term “Food Service Ware” does not include items composed of aluminium.

“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.

“Non-Profit Food Provider” means a recognized tax exempt organization which provides food as a part of its services.

“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.

“Polystyrene Foam” 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 Malibu 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", "Vendor" means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, located within the City of Malibu, which provides Prepared Food.

9.24.020 Sale or Distribution of Non-Compliant Food Service Ware Prohibited

- A. No person may sell, offer for sale, or otherwise Distribute within the City
 1. Any Food Service Ware that is not either Compostable or Recyclable.
 2. Any Food Service Ware made, in whole or in part, from Polystyrene Foam.
- B. The City shall maintain a list of acceptable Compostable or Recyclable Food Service Ware products.

9.24.030 Use of Non-Compliant Food Service Ware Prohibited.

- A. Food Vendors may not sell, offer for sale, or otherwise Distribute Prepared Food
 1. In Food Service Ware made, in whole or part, from Polystyrene Foam, or
 2. In Food Service Ware that is not Compostable or Recyclable.
- B. City Facility Food Providers may not provide Prepared Food to City Facilities
 1. In Food Service Ware made, in whole or part, from Polystyrene Foam, or
 2. In Food Service Ware that is not Compostable or Recyclable
- C. City Departments may not purchase, acquire, or use Food Service Ware for Prepared Food
 1. Where the Food Service Ware is made, in whole or in part, from Polystyrene Foam
 2. Where the Food Service Ware is not Compostable or Recyclable
- D. City contractors and lessees may not use Food Service Ware for Prepared Foods in City Facilities or while performing under a City contract or lease
 1. Where the Food Service Ware is made, in whole or in part, from Polystyrene Foam
 2. Where the Food Service Ware is not Compostable or Recyclable
- E. The use or distribution of Non-Compliant Food Service Ware at special events sponsored or co-sponsored by the City of Malibu 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. 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 Ware. 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 Ware was utilized in the violation of the rental agreement.
- G. It shall not be a violation of this section 9.24.030 to sell, provide, or purchase Prepared Food packaged in Food Service Ware otherwise prohibited by subsection (A) through (D) if the Prepared Food is packaged outside the City and is sold or otherwise provided to the consumer in the same Food Service Ware in which it is originally packaged. Businesses packaging Prepared Food outside the City are encouraged to use Food Service Ware that is compostable or Recyclable and is not made, in whole or in part, from Polystyrene Foam.

9.24.040 Other Polystyrene Foam Products

- A. 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 Foam, 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;
 - 3. Pool or beach toys; or
 - 4. Dock floats, mooring buoys, or anchor or navigational markers.
- B. No Polystyrene Foam product listed in Section 9.24.040(A) shall be allowed on any beach within the City.
- C. For purposes of Section 9.24.040(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 Section 9.24.040(C)(3) for shipping, transport, or storage, where the person using the Packing Materials receives nothing of value for the donated Packing Materials.
- D. After January 1, 2018, 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 Foam, or that are not 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.

9.24.050 Implementation

- A. The City Manager may waive the provisions of Sections 9.24.020, 9.24.030, 9.24.040 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.
 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.
 3. 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 9.24.050(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 12 months. An applicant for renewal of a waiver must apply for a new waiver period no later than 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. In no case shall a waiver be retroactive or continue past January 1, 2020.
- C. Any determination made by the City Manager pursuant to this section shall be appealable to the City Council. Any appeal must be in writing, filed with the City within five (5) calendar days of the at-issue City Manager decision, and shall specifically set forth the grounds for the appeal.

9.24.060 Enforcement and Penalties.

- A. The City Manager shall have primary responsibility for enforcement of this chapter. The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, inspecting any Vendor's premises to verify compliance.
- B. In addition to any criminal, civil or other legal remedy established by law that may be pursued to address violations of the municipal code, violations of the provisions of this chapter are subject to the administrative penalty provisions of Chapter 1.10.

- C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.
- D. The remedies and penalties provided in this section are cumulative and not exclusive of one another.

SECTION 2. Environmental Review.

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the 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.

SECTION 3. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

SECTION 4. The City Council hereby repeals Ordinance No. 286.

SECTION 5. The City Clerk shall certify the adoption of this ordinance.

PASSED, APPROVED AND ADOPTED this _____ day of November 2016.

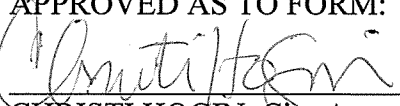
LOU LA MONTE, Mayor

ATTEST:

HEATHER GLASER, City Clerk

Date: _____

APPROVED AS TO FORM:



CHRISTI HOGIN, City Attorney