

ORDINANCE No. \_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA ADDING CHAPTER 11.48 TO THE DEL MAR MUNICIPAL CODE PROHIBITING THE USE, SALE AND DISTRIBUTION OF BALLOONS FILLED WITH A GAS LIGHTER THAN AIR

WHEREAS, the City of Del Mar, California ("City") aims to be a leader in sustainability and take action to protect our natural resources, divert waste from landfills, reduce greenhouse gas emissions, and increase City cleanliness and quality of life by reducing litter on City beaches and public areas; and

WHEREAS, the City has been a leader in implementing local regulations to decrease litter and pollution by prohibiting the use of expanded polystyrene and non-recyclable plastic disposable food service ware, plastic straws and stirrers, prohibiting the distribution of paper, biodegradable or reusable straws unless requested by customers, and single-use plastic carry-out bags; and

WHEREAS, State law currently prohibits the outdoor release of any balloon constructed of electrically conductive material (e.g., foil or "Mylar") that is filled with a gas lighter than air as part of a public or civic event, promotional activity or product advertisement, and places certain requirements on the condition of sale for such balloons (California Penal Code Section 653.1 and Business and Professions Code Section 22942); and

WHEREAS, State law does not address the release of other common balloon materials, such as latex balloons, that have detrimental effects on wildlife and the environment; and

WHEREAS, the City of Del Mar desires to implement additional measures to minimize the existence of balloons filled with a gas lighter than air within the City and mitigate the dangerous impacts from these balloons coming into contact with ocean life, animals and power lines; and

WHEREAS, balloons can be damaging to ecosystems and wildlife when released into the air or not disposed of properly, as they are not biodegradable; and

WHEREAS, the Ocean Conservancy lists balloons as the second most dangerous debris item since they are frequently mistaken as food by birds, mammals, and marine life; and

WHEREAS, balloons are the most common form of floating garbage within 200 miles of American shorelines, and beach litter surveys have shown that the number of balloons and balloon pieces found on beaches has tripled in the past 10 years; and

WHEREAS, balloon debris persists despite laws and regulations that prohibit littering, which contributes to dirty beaches, parks and communities, creates added costs to City budgets and discourages tourism; and

WHEREAS, balloons made of metalized or foil materials that conduct electricity, including Mylar, also pose a safety hazard when released as they can cause power outages, explosions, downed power lines, and damaged infrastructure when coming near or into direct contact with high-voltage power lines, resulting in costly repairs and/or hours of power outages affecting City residents and businesses; and

WHEREAS, over the past five years, Mylar balloons have been identified as the cause of more than 520 power outages and 18 dangerous fire ignitions in the San Diego region's electrical system; and

WHEREAS, the most effective way to reduce balloon debris in the City's waterways, decrease litter and pollution and protect the environment, marine life, human health and the City's infrastructure, is to prohibit the use, sale and distribution of balloons filled with a gas lighter than air.

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

**SECTION ONE:**

Chapter 11.48 of the Del Mar Municipal Code is hereby added as follows:

**Chapter 11.48 PROHIBITING THE USE, SALE AND DISTRIBUTION OF BALLOONS FILLED WITH A GAS LIGHTER THAN AIR**

**11.48.010 Purpose and Intent.**

The purpose of this Chapter is to establish standards and procedures for environmental waste and litter reduction measures and promote environmentally sustainable practices throughout the City by prohibiting the use, sale and distribution of balloons filled with a gas lighter than air. In enacting this Chapter, it is the City's intent to further current prohibitions and regulations relating to balloons under State law and to protect the City's residents, businesses, animals, and infrastructure from damage caused by balloons. Nothing in this Chapter is intended to or shall be interpreted as conflicting with any federal or state law or regulation.

**11.48.020 Definitions.**

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

*Balloon* means a flexible bag, including but not limited to, those made from rubber, latex, polychloroprene (neoprene), Mylar, or nylon fabric, that is designed to be inflated with a

gas lighter than air, causing it to float, or designed to be filled with fluid. A balloon may be used for decorative, toy or entertainment purposes. Balloons used for medical, industrial or scientific purposes are not subject to the provisions of this Chapter.

*City-Sponsored Event* means any event, activity or meeting organized, sponsored, permitted, in whole or in part, by the City or any department of the City. This includes events at rented or borrowed City Facilities, City Parks, City Beaches and City co-sponsored events.

*Gas Lighter Than Air* means a gas that has a lower density than normal atmospheric gases and rises above them as a result, including, but are not limited to, helium, hydrogen, methane, oxygen, and nitrogen.

*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 or group, however organized.

#### **11.48.030 Prohibition on the Use, Sale and Distribution of Balloons.**

- A. No Person, including, but not limited to, a balloon wholesaler, retailer or third-party vendor, shall use, sell or distribute any type of Balloon inflated with any Gas Lighter Than Air within the City, either as a separate item or included in a packaged product set, including at any City Facility, City Park, City Beach or at a City-Sponsored Event.
- B. No Person shall dispose of any Balloon inflated with any Gas Lighter Than Air within the City in any manner, including release outdoors into the air, other than in a trash container.
- C. This Section shall not apply to manned hot air balloons, or to balloons used in governmental or scientific research purposes.

#### **11.48.040 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 commercial business, City Facility, City Park, City Beach or City-Sponsored Event 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, 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 TWO:**

The action being considered by the City Council 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. This action further strengthens the City's regulations regarding the use of expanded polystyrene products, plastic straws/stirrers, and non-recyclable plastic disposable food service ware that harm the environment. Further, the action is exempt from CEQA pursuant to Section 15061(b)(3) because in can be seen with certainty that the there is no possibility that the activity in question may have a significant effect on the environment.

**SECTION THREE:**

This Ordinance was introduced by the City Council on **November 13, 2023.**

**SECTION FOUR:**

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 15 days following adoption indicating votes cast.

**SECTION FIVE:**

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 SIX:**

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 15 days following adoption indicating votes cast.

**SECTION SEVEN:**

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 4<sup>th</sup> day of December 2023.

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Tracy Martinez, 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, SARAH KRIETOR, Administrative Services Manager/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 4<sup>th</sup> day of December 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Sarah Krietor, Administrative Services  
Manager/City Clerk  
City of Del Mar