



STAFF REPORT

CITY OF SOLANA BEACH

TO: Honorable Mayor and City Councilmembers
FROM: Gregory Wade, City Manager
MEETING DATE: May 11, 2022
ORIGINATING DEPT: City Manager's Department/City Attorney's Office
SUBJECT: **Adopt Ordinance 523 – Amending Title 5 and Adding Chapter 5.07 to the Solana Beach Municipal Code to Regulate the Use, Sale and Distribution of Balloons Filled with Gas Lighter than Air**

BACKGROUND:

Lighter than air balloons are sold in several retail establishments in Solana Beach and pose multiple threats to animals, humans, and the environment. Plastic pollution from improperly disposed of and/or deteriorating balloons directly impacts the environment, wildlife, domesticated animals, and human health, and indirectly impacts the City's economy when it becomes beach litter. Lighter than air balloons are also a menace to utilities and fire departments, and when filled with helium, they threaten to deplete a precious, non-renewable resource important to science, industry and medicine.

On April 27, 2022, the City Council introduced Ordinance 523 (Attachment 1) amending Title 5 and adding chapter 5.07 to the Solana Beach Municipal Code to regulate the use, sale and distribution of balloons filled with gas lighter than air.

The action before the City Council is to consider adoption of Ordinance 523.

DISCUSSION

Plastic pollution is a significant environmental challenge and microplastics have been found in our drinking water, food, and the air we breathe. While plastic pollution reduction efforts have focused on single-use plastic bags, bottles, utensils and straws, balloons have been largely overlooked. Latex and Mylar are the two types of balloons in general use. Mylar balloons are petroleum-based and not biodegradable, and while latex does biodegrade, the latex balloons contain petroleum-based additives and are not 100% biodegradable. Researchers have observed that latex balloons deteriorate slowly and

CITY COUNCIL ACTION:

retain their elasticity even after floating in the ocean for 12 months. The release of both of these types of balloons results in additional plastic pollution which negatively impacts the safety of our citizens, wildlife, oceans, coastlines, and communities.

Ordinance 523 has been developed to address the critical local and regional concerns with balloons, including plastic pollution, marine debris, marine life impacts, land animal and bird impacts, negative economic impacts, and wildfire dangers. The proposed Ordinance includes the following key provisions:

- 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 or City-Sponsored Event.
- 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.
- This Section shall not apply to manned hot air balloons, or to balloons used in governmental or scientific research.

CEQA COMPLIANCE STATEMENT:

The proposed City Council action does not constitute a “project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15308 because it is an activity undertaken to assure the maintenance, restoration, enhancement and protection of the environment and pursuant to Section 15601(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

FISCAL IMPACT:

There is no direct fiscal impact as a result of this item. However, implementation and enforcement of Ordinance 523, if adopted, would be the responsibility of City Staff.

WORK PLAN:

This item is included as an Uprioritized Item in the Environmental Sustainability section of the FY 2021/22 Work Plan.

OPTIONS:

- Adopt Ordinance 523 amending Title 5 and adding Chapter 5.07 to the Solana Beach Municipal Code to address the Use, Sale and Distribution of Balloons Filled with Gas Lighter than Air.
- Provide direction/feedback.

DEPARTMENT RECOMMENDATION:

Staff recommends the City Council adopt Ordinance 523 amending Title 5 and adding Chapter 5.07 to the Solana Beach Municipal Code to address the Use, Sale and Distribution of Balloons Filled with Gas Lighter than Air.

CITY MANAGER'S RECOMMENDATION:

Approve Department Recommendation



Gregory Wade, City Manager

Attachments:

1. Ordinance 523

ORDINANCE 523

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, ADDING CHAPTER 5.07 TO THE SOLANA BEACH MUNICIPAL CODE PROHIBITING THE USE, SALE AND DISTRIBUTION OF BALLOONS FILLED WITH A GAS LIGHTER THAN AIR

WHEREAS, State law currently prohibits the outdoor release of any balloon constructed of electrically conductive material that is filled with a gas lighter than air as part of a public or civic event, promotional activity or product advertisement (California Penal Code Section 653.1 and Business and Professions Code Section 22942); and

WHEREAS, State law further requires that an object of sufficient weight be affixed to each Mylar balloon at the time of sale or distribution to counter the lift capability of the balloon, and also requires the manufacturer's name to be printed on the balloon, along with a permanent warning notice regarding the conductivity and danger of Mylar balloons (California Penal Code Section 653.1 and Business and Professions Code Section 22942); and

WHEREAS, the City of Solana Beach 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. When balloons are ingested, they block the animals' digestive track, which leads to a loss of nutrition, internal injury, starvation, and death. Balloon ribbon is also hazardous because it can choke or entangle birds, mammals, and marine life in a manner that limits their mobility; 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 on City beaches is prolific 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 500 power outages 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; and

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

SECTION 1. All of the above recitals are true and correct.

SECTION 2. Chapter 5.07 of the Solana Beach Municipal Code is hereby added to read as follows:

5.07.010 Title.

This Chapter shall be known as the "Balloon Ordinance".

5.07.020 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.

5.07.030 Definitions

For purposes of this Chapter only, the terms below have the following meaning:

"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 water. 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 ordinance.

"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.

5.07.040 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 or 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 project.

5.07.050 Enforcement; Penalties.

A. Any violation of this Chapter shall be enforced through Chapters 1.16 and 1.18 of the Solana Beach Municipal Code.

B. Each violation of this Chapter shall be considered a separate offense.

C. The remedies and penalties provided in this Chapter are cumulative and not exclusive and nothing in this shall preclude the City from pursuing any other remedies. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulations or administrative procedure developed pursuant hereto.

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. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council

hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional to this end, the provisions of this Ordinance are declared severable.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall proceed with publication pursuant to the provisions of Government Code section 36933.

INTRODUCED AND FIRST READ this 27th day of April 2022, at a regular meeting of the City Council of the City of Solana Beach, California; AND

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the 11TH day of May 2022, by the following vote:

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

LESA HEEBNER, Mayor

APPROVED AS TO FORM:

ATTEST:

JOHANNA N. CANLAS, City Attorney

ANGELA IVEY, City Clerk