

Agenda Report

May 9, 2016

TO: Honorable Mayor and City Council
THROUGH: Municipal Services Committee (December 8, 2015 and April 26, 2016)
FROM: Department of Public Works
SUBJECT: POLYSTYRENE FOOD PACKAGING ORDINANCE

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the Polystyrene Food Packaging Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061 (b) 3 (General Rule) and also under Section 15308 as an action by a regulatory agency (the City of Pasadena) for the protection of the environment; and
2. Direct the City Attorney to draft the Polystyrene Food Packaging Ordinance, to reduce and prevent polystyrene food packaging in the environment and promote environmentally sustainable practices in the City, within 60 days consistent with the provisions set forth herein.

MUNICIPAL SERVICES COMMITTEE RECOMMENDATION:

On December 8, 2015, staff presented the draft Polystyrene Ordinance to the Municipal Services Committee (MSC) and was directed to further explore the potential economic impacts on restaurants, especially small businesses that may be using polystyrene packaging, and the cumulative impacts of the pending minimum wage increase and the Affordable Care Act.

On April 26, 2016, staff returned to MSC with the requested additional information. MSC acknowledged the importance of an education and outreach campaign to the success of the ordinance and recommended that it be comprehensive in including residents as well as business owners. MSC voted to approve the Polystyrene Food Packaging Ordinance.

ENVIRONMENTAL ADVISORY COMMISSION RECOMMENDATION:

On October 20, 2015, Department of Public Works staff presented the draft Polystyrene Food Packaging Ordinance to the Environmental Advisory Commission (EAC). The EAC recommended some minor language edits (that were incorporated by staff) and voted unanimously to recommend that City Council approve the draft Polystyrene Food Packaging Ordinance.

EXECUTIVE SUMMARY:

The intent of the proposed Polystyrene Food Packaging Ordinance is to regulate the use of polystyrene food packaging in order to reduce and prevent the presence of this type of litter in the environment and promote environmentally sustainable practices in the City. Implementation of a polystyrene food packaging policy was identified as a top priority initiative during the development of the City's Zero Waste Strategic Plan. Staff developed the ordinance with input from members of the polystyrene working group. The ordinance would apply to grocery stores; restaurants; farmers' markets; convenience stores; food vendors; caterers; food trucks; groups or individuals that provide prepared foods to the general public; City facilities, operations, events and meetings; and all retailers selling food packaging. The unit cost increase to convert from polystyrene packaging to a comparable alternative product is anticipated to be about four cents.

The proposed ordinance would provide exemptions for food prepared or packaged outside of the City, coolers or ice chests wholly encapsulated with durable material, food brought to City facilities by individuals for personal consumption, emergency supplies and services, and food providers obligated to purchase or have purchased polystyrene food service ware under contract within a year prior to the ordinance. The Director of Public Works may also grant individual exemptions on a case by case basis. Additionally, the ordinance does not apply to uncooked meat, poultry, fish, eggs and fresh produce.

Food providers and retailers would have 12 months from the effective date of the ordinance to comply, which will provide sufficient time for affected parties to adjust to the requirements of the ordinance. City facilities, operations, events and meetings must comply immediately upon the effective date of the ordinance.

BACKGROUND:

Polystyrene foam, often referred to by its trade name Styrofoam, is a type of plastic that presents hazards when released into the environment. Styrofoam is manufactured by injecting air bubbles into molten plastic. The result is a lightweight material that holds temperatures well. It is commonly used for both hot and cold food, hence its use in cups for serving hot drinks and ice cream and for coolers used for recreational activities. In the environment, Styrofoam litter floats easily through gutters, storm drains, creeks and rivers, and into wetlands and the ocean. It never biodegrades; it merely breaks into

smaller and smaller particles and is ingested by wildlife. In landfills, polystyrene foam products take up space and do not degrade. By volume, the amount of space used up in landfills by all plastics is between 25 and 30 percent. According to the Los County Department of Public Works, polystyrene food packaging comprises 0.1 percent of the waste stream (by weight) but makes up about 17 percent of the litter stream.

On October 22, 2014, the City Council adopted the Zero Waste Strategic Plan that outlined 19 program initiatives to achieve the goal of sending zero waste to landfills by 2040. The Polystyrene Food Packaging Ordinance is an element of the Product and Disposal Ban Initiative and was identified as a high priority. Accordingly, Public Works staff committed to a goal of presenting a recommendation to City Council by December, 2015.

To develop an optimal recommendation on polystyrene packaging, staff formed a working group of community stakeholders potentially impacted by a polystyrene policy to develop a plan of action tailored to Pasadena. Active stakeholder members included representatives from the following organizations: Day One; the Playhouse District Association; the Old Pasadena Management District; the Pasadena Chamber of Commerce, DART Container Corporation, the California Grocers Association, Pasadena Health Department, the Environmental Advisory Commission, the Pasadena Convention Center, the Union Station Homeless Services, the Langham Hotel, the Arroyo Seco Foundation and the Rose Bowl Operating Company. The working group met from May through December 2015 to explore various aspects of the polystyrene issue and to develop a policy addressing the environmental challenges posed by this problematic material. Through this process the working group was presented with the following key facts:

- Polystyrene litter is an issue in the Arroyo Seco River that passes through Pasadena;
- Recycling polystyrene through the City's residential curbside program or through the City's 23 franchise haulers is not economically feasible due to the low quantity and poor quality of material, high processing cost, and low market value;
- Many non-polystyrene alternative food packaging options are available although at a higher cost;
- Information provided by Los Angeles County indicates that the potential economic impact on businesses is estimated to range from \$3,000 to \$5,000 per business annually;
- Several Pasadena restaurants have already switched to non-polystyrene alternative packaging;
- Over 90 California cities have adopted some form of a polystyrene ban;
- At two public meetings, attendees showed overwhelming support for a polystyrene ban; and
- A City facility ban of polystyrene food packaging was implemented on March 1, 2015

On September 24, 2015, the stakeholder working group voted in favor of recommending a polystyrene food packaging ban. A subcommittee of the stakeholder group worked with staff to develop the specifics of a draft ordinance, including definitions.

On December 8, 2015, staff presented the draft Polystyrene Ordinance to the Municipal Services Committee (MSC) and was directed to further explore the potential economic impacts on restaurants, especially small businesses that may be using polystyrene packaging, and the cumulative impacts of the pending minimum wage increase and the Affordable Care Act.

Staff conducted a telephone survey of over 100 Pasadena restaurants that have up to 20 employees, specifically seeking input from businesses that currently utilize polystyrene packaging in their operations. The survey response was approximately 23 percent. From the survey, information was gathered on issues such as types of food packaging utilized and suppliers used, monthly food packaging costs, and opinions concerning a potential polystyrene ban.

In addition to the telephone survey, staff conducted a price comparison in the field on polystyrene packaging versus available alternative packaging. The unit costs were determined to be three cents for polystyrene versus seven cents for a comparable alternative product. This equates to estimated annual costs of the following for businesses to convert to alternative packaging:

Restaurant Type	Annual Financial Impact
Primary Dine In	\$840 to \$2,400
Dine In and Takeout	\$3,200 to \$4,800
Primarily Takeout*	\$7,200 to \$16,800
Grocery/Retailers and others	Minimal
<i>*Includes mainly high volume, high sales "to go only" restaurants</i>	

According to data obtained from the City's Minimum Wage Ordinance webpage (also published in the *Pasadena Weekly*) as well as information from the Pasadena Chamber of Commerce's survey of local businesses, the majority of businesses plan to increase prices, reduce workforce and reduce employee hours in reaction to the minimum wage increase. This information is consistent with research conducted by the UC Berkeley Institute for Research on Labor and Employment.

Review of the Affordable Care Act impacts revealed that businesses that employ fewer than 50 employees are not subject to the fees and penalties. Since the majority of Pasadena restaurants employ fewer than 50 employees, the Affordable Care Act is anticipated to have minimal impact on local restaurants.

Definitions that will apply to the Ordinance:

- A. Applicant: any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who applies for a City of Pasadena Special Events permit or an exemption to the requirements of this chapter.
- B. City facility: any building, structure, property, park or open space owned, managed or leased by the City of Pasadena, its agents, agencies, or departments.
- C. City contractor: any person who enters into an agreement with the City to furnish products or services to or for the City.
- D. City-sponsored event: any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.
- E. Director: the Director of Public Works, who is hereby designated to issue a compliance order or an administrative citation to enforce this chapter pursuant to Chapters 1.25 or 1.26, respectively, of the Pasadena Municipal Code (PMC) or to grant an exemption to compliance with this ordinance.
- F. Disposable Food Service Ware or disposables: single-use, disposable products used for serving or transporting prepared food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, clamshells, condiment containers, cups or drink ware or any other container in or on which prepared foods are placed or packaged for consumption. This does not include straws, cup-lids, or utensils, nor does it include packaging for unprepared foods.
- G. Food provider: any person or place 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, restaurant, drive-thru, café, 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.
- H. Person: 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.
- I. Polystyrene: a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres

(expandable bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The recycle code for polystyrene is "6" or "PS", either alone or in combination with other letters. This definition applies to all polystyrene food service ware, regardless of whether it exhibits a recycle code.

- J. Polystyrene cooler: any cooler or ice chest made of polystyrene foam, where such foam is not fully encased in a durable material.
- K. Polystyrene food service ware: disposable food service ware that contains or utilizes polystyrene.
- L. Prepared food: 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. Prepared food does not include: (1) any raw uncooked meat, poultry, fish, or eggs, unless provided for consumption without further food preparation; and (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.
- M. Recycle code: a resin identification code placed on plastics to identify the material composition for separation of different types of plastics for recycling.
- N. Special Events: means events that are open to the general public and take place within the public right-of-way or are located within a park and/or are coordinated through the City of Pasadena's special event permit process.

Recommended Polystyrene Food Packaging Prohibitions

Staff and the polystyrene stakeholder working group subcommittee recommend the following prohibitions against distribution or sale of polystyrene food service ware:

- A. No food provider shall distribute or sell any polystyrene food service ware in conjunction with the sale of prepared food or beverages at any location within the City of Pasadena.
- B. Food providers that distribute prepared food or beverages in disposable food service ware shall: (1) distribute only disposables that exhibit a recycle code other than "6" or "PS"; and (2) maintain documentation about the composition of any disposable food service ware that does not exhibit a recycle code. Documentation may include information from the supplier, manufacturer, or bulk packaging for the disposables, and any other relevant information demonstrating that the disposable material is not polystyrene.

- C. No Person shall distribute or sell prepared food or beverages in any polystyrene food service ware at City facilities that have been rented, leased or are otherwise being used with permission of the City. This subsection is limited to use of City facilities for which a person has entered into an agreement with the City to rent, lease or otherwise occupy a City facility. All facility rental agreements for any City facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of polystyrene food service ware while using City facilities. The facility rental agreement shall indicate that a violating contractor's security deposit will be forfeited if the Director or his/her designee determines that polystyrene food service ware was used in violation of the rental agreement.
- D. No person shall use or distribute polystyrene food service ware at City-sponsored events, activities and City meetings open to the public. This subsection shall apply to the function organizers, agents of the organizers, City contractors, and food providers.
- E. The City, its departments, its city contractors, agents, and employees acting in their official capacity, shall not purchase, acquire or distribute for public use any polystyrene coolers or polystyrene food service ware including cup-lids, straws, or utensils.
- F. All food providers required to have a business license by PMC Chapter 5 shall certify compliance with this chapter on the annual business license renewal application.
- G. No person, vendor, business or event promoter may sell, rent or otherwise provide any polystyrene product which is not wholly encapsulated or encased within a more durable material, except as exempted herein. This specifically includes, but is not limited to, cups, plates, bowls, clamshells and other products primarily for food service use, as well as polystyrene coolers and ice chests.

Exemptions

Staff and the polystyrene stakeholder working group subcommittee recommend the following exemption from compliance with the ordinance:

- A. Food prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits.
- B. Coolers and ice chests, other than those defined as polystyrene coolers in this chapter.
- C. Food brought by individuals for personal consumption to City facilities, including but not limited to City parks, provided the City facility is being used for individual recreation or similar purposes and such facility use is not part of a larger organized event requiring a special event permit from the City.

- D. Emergency supplies and services.
- E. Food Providers that are obligated to purchase or have purchased Polystyrene Food Service Ware under a contract entered into within the year prior to the operative date of this ordinance are exempt from the provisions of this chapter for six months following its operative date.
- F. The Director or his/her designee may exempt any person from the ordinance following the operative date of this ordinance, as follows:
1. A request for an exemption shall be filed in writing with the Director or his/her designee and shall include documentation of the reason for the claimed exemption and any other information necessary for the Department to make its decision. The Department may require the applicant to provide additional information as necessary to make the required determination.
 2. The Director or his/her designee may grant an exemption for one year, with or without conditions, upon finding that compliance would create an undue hardship. Applications for exemption renewals will also be considered. Undue hardship shall be construed to include but not be limited to situations where:
 - a. There are no reasonable alternatives to polystyrene food service ware for reasons that are unique to the applicant; or
 - b. Compliance with the requirements of this chapter would deprive a person of a legally protected right.
 3. The Director's written decision on the exemption will go into effect within 10 days of the decision.
- G. Any person or entity aggrieved by any decision or finding under the provisions of the ordinance with respect to citations for violations or granting or denying an application for an exemption from compliance may file a letter of appeal with the Director. The City's standard appeal and hearing process will be followed.

Effective Date

1. No food provider shall distribute or utilize disposable food service wares containing polystyrene on or after 12 months following the adoption of the ordinance codified in this Chapter by the City Council.
2. No City facilities, City-contractors, City-sponsored events or City-permitted events shall distribute or utilize disposable food service ware containing polystyrene or non-recyclable plastic on or after the effective date of the ordinance codified in this Chapter.

Education and Enforcement

1. The Department of Public Works will be responsible for the administration and enforcement of the Polystyrene Food Packaging Ordinance.
2. The Department of Public Works will conduct education and outreach to the community and to potentially impacted businesses and organizations in advance of the effective date of the ordinance. Outreach will consist of letters to affected parties, communication with business districts and the Pasadena Chamber of Commerce, information in the City Manager's newsletters, press releases, workshops, informational flyers at City public counters, information on the City websites, advertisements and notices in local newspapers and publications and onsite technical assistance.
3. The Public Health Department will assist Public Works by identifying polystyrene use in food facilities during their routine inspections and forwarding information to Public Works staff.
4. A violation of the Polystyrene Food Packaging Ordinance shall be punishable under the administrative citation procedures set forth in Pasadena Municipal Code Chapters 1.25 and 1.26.
5. All fines collected pursuant to the Polystyrene Food Packaging Ordinance shall be deposited in the Refuse Fund to assist the Department of Public Works with its costs of implementing and enforcing the Ordinance.

COUNCIL POLICY CONSIDERATION:

This proposed ordinance amendment is consistent with the City Council's goal of increasing conservation and sustainability. It also supports the United Nations Urban Environmental Accords of 2005 Action 4 of achieving zero waste to landfills and incinerators by 2040. The proposed ordinance supports the Zero Waste Strategic Plan adopted by Council in October 2014. Implementation of Product and Disposal Bans is one of the 19 program initiatives in the Zero Waste Strategic Plan.

The ordinance also supports the City's adopted Green City Action Plan goals of reducing the volume of landfill waste, reducing the use of disposable product category, protecting the watershed, and helping to promote a clean and sustainable environment.

Additionally the ordinance supports the City's General Plan Goal number 10, which is to establish Pasadena as a leader on environmental stewardship efforts.

ENVIRONMENTAL ANALYSIS:

The adoption of this ordinance amendment is exempt from the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15061 (b) 3.

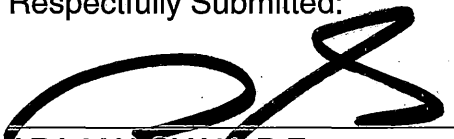
(General Rule). Since it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Additionally, this ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

FISCAL IMPACT:

Existing staff and budgeted resources will be utilized to the extent possible for providing technical assistance to impacted businesses and conducting community outreach and education. Staff anticipates spending up to \$5,000 of the FY2017 Waste Reduction/Recycling budget for print ads publicizing the ordinance and for printing flyers and other program materials to educate the business community and public about the new requirements and to develop information on available alternative packaging.

Enforcement will require the staff time of a Public Works Code Compliance Officer and the cost of this position will be partially offset by additional citation revenue. Any fines collected for violations of the Polystyrene Food Packaging Ordinance will be deposited in the Refuse Fund to offset a portion of the costs of implementing and enforcing the ordinance.

Respectfully Submitted:



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Approved by:



STEVE MERMELL
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