



ADMINISTRATIVE REPORT

TO: CITY COUNCIL

FROM: SUSAN M. LOFTUS, CITY MANAGER

PREPARED BY: PUBLIC WORKS DEPARTMENT - ENGINEERING

MEETING DATE: MAY 6, 2013

SUBJECT: ORDINANCE ADOPTION – BANNING POLYSTYRENE FOOD CONTAINERS

RECOMMENDATION

Adopt an Ordinance adding Chapter 5.89, Polystyrene Based Disposable Food Service Ware, to the San Mateo Municipal Code Title 5 – Business License and Regulations Code.

BACKGROUND

On April 15, 2013, the City Council introduced the Polystyrene Ban for food containers. At this meeting, the City Council approved the Negative Declaration for the Polystyrene Ban, and introduced an ordinance to add Section 5.98 the San Mateo Municipal Code. The recommended action will adopt the proposed Municipal Code addition.

The ordinance will take effect 30 days after adoption.

BUDGET IMPACT

Adopting this ordinance will not have a material impact on the City's budget since San Mateo County would provide enforcement of the ordinance requirements.

ENVIRONMENTAL DETERMINATION

Preparation of an environmental impact assessment was required under the provisions of the California Environmental Quality Act (CEQA). The public review period for the Draft Negative Declaration began on March 15, 2013 and extended to April 3, 2013 (20 day public review period).

No comments on the Initial Study/Negative Declaration were received during the official public comment period, however on April 15, 2013, the City received a letter from the American Chemistry Council opposing the polystyrene ban, citing several concerns. Their opposition is listed below with staff's responses:

- *Establish recycling and composting standard for all materials.* Waste providers in San Mateo County do not currently recycle polystyrene. All polystyrene goes directly to landfill.
- *Polystyrene bans do not reduce litter.* While litter may or may not be reduced, banning polystyrene decreases the lifespan of litter.
- *Banning polystyrene negatively affects the environment because alternative materials generate more greenhouse gas emissions.* The County of San Mateo has stated that the study used for this claim was done in Seattle and "cannot be readily applied to San Mateo County."
- *Alternatives to polystyrene will cost businesses 2-3 times more than polystyrene.* The unit cost for alternative materials is often only \$0.01-\$0.02 more and in some cases can be less expensive.

NOTICE PROVIDED:

The noticing for the April 15, 2013 City Council meeting, where the proposed Municipal Code amendments were first introduced, satisfied all public noticing requirements to date.

ATTACHMENTS

Attachment 1 – Ordinance

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cc: Dean Peterson, Director Environmental Health, County of San Mateo

ORDINANCE NO. 2013-____

ADDING CHAPTER 5.89, “POLYSTYRENE BASED DISPOSABLE FOOD SERVICE WARE,” TO TITLE 5, “BUSINESS LICENSES AND REGULATIONS,” OF THE SAN MATEO MUNICIPAL CODE

WHEREAS, polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors operating in the City of San Mateo; and

WHEREAS, polystyrene, often referred to by the trademark “Styrofoam,” has also become a problematic environmental pollutant given its non-biodegradable and nearly non-reusable nature; and

WHEREAS, polystyrene-based, single-use food service ware constitutes a substantial portion of the litter within the City of San Mateo; and

WHEREAS, effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using compostable materials made from renewable resources such as paper, cardboard, corn starch, potato starch, and/or sugarcane; and

WHEREAS, the City wishes to restrict the use by food vendors of polystyrene-based disposable food service ware; and

WHEREAS, by adopting this Ordinance, the City is authorizing the County to enforce the City’s ordinance and retain collected fines;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SAN MATEO, CALIFORNIA, ORDAINS AS FOLLOWS:

Section 1. Chapter 5.89, “Polystyrene Based Disposable Food Service Ware” is added to Title 5, “Business Licenses and regulations,” of the San Mateo Municipal Code to read:

Chapter 5.89

POLYSTYRENE BASED DISPOSABLE FOOD SERVICE WARE

Section 5.89.010 Definitions.

Section 5.89.020 Prohibited use of polystyrene-based disposable food service ware.

Section 5.89.030 Exemptions.

Section 5.89.040 Violation.

Section 5.89.050 Authorization for County enforcement.

Section 5.89.060 Administrative fines.

5.89.010 DEFINITIONS. For the purposes of this chapter, the following terms have the following meanings:

- (a) **“Disposable food service ware”** 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, also known as clamshells. This does not include straws, utensils, or cup lids nor does it include disposable packaging for unprepared foods.

- (b) **“Food vendor”** means any vendor, business, organization, entity, group or individual, including a licensed retail food establishment that provides prepared food at a retail level.
- (c) **“Polystyrene-based”** means and includes expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and process 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 polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene(EPS)), and clear or solid polystyrene known as oriented polystyrene.
- (d) **“Prepackaged food”** means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source.
- (e) **“Prepared food”** means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared. Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.

5.89.020 PROHIBITED USE OF POLYSTYRENE-BASED DISPOSABLE FOOD SERVICE WARE. No vendor shall use polystyrene-based disposable food service ware when providing prepared food.

5.89.030 EXEMPTIONS.

- (a) Automatic Exemptions. The following uses are exempt from the provisions of this chapter:
 - (1) Prepackaged food; and
 - (2) Polystyrene coolers and ice chests intended for reuse.
- (b) Special Requests for an Exemption. Any food vendor may seek an exemption from the requirements of this chapter upon demonstrating that strict application of the requirements would cause undue hardship.
 - (1) An “undue hardship” shall be found in:
 - (A) Situations unique to the food vendor where a suitable alternative does not exist for a specific application; or
 - (B) Situations where no reasonable feasible available alternative exists to a specific and necessary container prohibited by this chapter.
 - (2) The application process for exemption shall be as follows:
 - (A) The food vendor seeking an exemption shall submit a written exemption request to the San Mateo County Director of Environmental Health.
 - (B) A written exemption request shall include all information and documentation necessary for the San Mateo County Director of Environmental Health to make a finding that imposition of this chapter would cause an undue hardship as described above.
 - (C) The San Mateo County Director of Environmental Health may require the applicant to provide additional information in order to make a determination regarding the exemption application.
 - (D) Exemption decisions are effective immediately and are final and not subject to appeal.
 - (E) The San Mateo County Director of Environmental Health may grant an exemption for a period of up to one year upon a finding that the food vendor seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship as defined above.

- (3) If a food vendor granted an exemption wishes to have the exemption extended, it must re-apply for the exemption prior to the expiration of the one-year exemption period and demonstrate continued undue hardship. Extensions may be granted for intervals not to exceed one year.

5.89.040 VIOLATION. Any violation of this Chapter is unlawful.

5.89.050 AUTHORIZATION FOR COUNTY ENFORCEMENT. In addition to the City's enforcement mechanisms set forth in Title 1 of this Code, the City of San Mateo authorizes the County of San Mateo's Environmental Health Division to enforce this Chapter of the Municipal Code, including, without limitation, the authority to act on requests for undue hardship exemptions, hold hearings, issue administrative fines and retain collected fines.

5.89.060 ADMINISTRATIVE FINES . In the event that the County enforces this Ordinance on the City's behalf within the City limits, the following administrative fine provisions apply:

- (a) Grounds for Fine. A fine may be imposed upon findings made by the Director of the Environmental Health Division, that any food vendor has used polystyrene-based disposable food service ware in violation of this Chapter.
- (b) Amount of Fine. Upon a finding of violation, the food vendor shall be subject to an administrative fine as follows:
 - (1) A fine not exceeding one hundred dollars (\$100) for a first violation;
 - (2) A fine not exceeding two hundred dollars (\$200) for a second violation; and
 - (3) A fine not exceeding five hundred dollars(\$500) for the third and subsequent violations;
- (c) Each day that a food vendor uses polystyrene-based disposable food service ware when providing prepared food shall constitute a separate violation.
- (d) Fine Procedures. Notice of the fine shall be served on the food vendor. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be either that (1) the food vendor did not use polystyrene-based disposable food service ware when providing prepared food or (2) the food vendor would have been granted an exemption of this ordinance if the food vendor had applied for such exemption. Said hearing must requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that one of the above listed grounds for a contest have been met and shall be a final administrative order, with no administrative right of appeal.
- (e) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the Environmental Health Division or his or her designee after the hearing, either the City or the County is authorized to bring an action to collect any unpaid administrative fine.

Section 2. SEVERABILITY. In the event any section, clause or provision of this Chapter shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 3. ENVIRONMENTAL REVIEW. In accordance with the California Environmental Quality Act, The City of San Mateo prepared a Negative Declaration, which concluded that adoption of this Ordinance would not have a significant impact on the environment.

Section 4. EFFECTIVE DATE. This Ordinance shall take effect 30 days after its adoption.

Section 5. PUBLICATION. This Ordinance shall be published in summary in the Examiner Peninsula Edition, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the Charter and shall be effective 30 days after the date of adoption.