




Agenda Item #4.B

DATE: October 21, 2019

TO: Honorable Mayor and Members of the City Council through City Manager 

FROM: Ingrid Alverde, Director of Economic Development and Open Government
Patrick Carter, Senior Management Analyst, City Manager's Office

SUBJECT: Introduction (First Reading) of an Ordinance Prohibiting Use and Sale of Specified Disposable Food Service Ware and Other Non-Reusable Products Containing Polystyrene Foam

RECOMMENDATION

It is recommended the Council consider an Ordinance (First Reading) to Prohibit Use and Sale of Specified Disposable Food Service Ware and Other Non-Reusable Products Containing Polystyrene Foam.

BACKGROUND

Polystyrene, often referred to as the Dow Chemical Company trademarked brand name of Styrofoam, is a hydrocarbon polymer widely used in plastic products and packaging. Polystyrene foam is relatively inexpensive and lightweight and has excellent insulation qualities making it a common choice for building insulation and hot beverage cups, as examples. However, polystyrene is extremely slow to degrade in the environment, is a common form of both land-and water-based litter due to its lightweight nature and has very limited recycling potential. There are no curbside collection options for polystyrene in Sonoma County or in most jurisdictions throughout the state.

Regional Waste Reduction Efforts: The City of Petaluma is a member of the Sonoma County Waste Management Agency (SCWMA), a joint powers authority whose mission is to divert waste from landfill disposal in Sonoma County through reduction, reuse, and recycling. The SCWMA Board approved a model polystyrene waste reduction ordinance last spring for use by its member agencies to address polystyrene and food service ware items (e.g. foam cups, to-go clamshell containers, and foam ice chests), which are common forms of litter. The SCWMA staff studied polystyrene waste and litter issues and concluded that there are environmentally friendly alternatives to polystyrene food service ware items and that it would be environmentally beneficial for SCWMA members to adopt ordinances to reduce the amount of polystyrene waste. SCWMA staff researched over 100 such ordinances in California and drafted a model ordinance largely from those adopted by the Counties of Santa Clara and Santa Cruz.

Statewide Waste Reduction Efforts: The California legislature put forth two identical bills (AB 1080 and SB 54) during the 2019-20 legislative session that would establish requirements for

producers to reduce waste from single-use plastic packaging and products, including plastic to-go food ware, by at least 75% by January 1, 2030. Under these bills, all producers of single-use packaging offered for sale, sold, distributed, or imported into California would be required to ensure their single-use packaging or products are reusable, recyclable, or compostable. The bills set interim waste reduction requirements on producers of 20% by 2026 and 40% by 2028. Under the bills, non-compliant producers could receive administrative civil penalties from the California Department of Resources Recycling and Recovery of up to \$50,000 per day. The bills were not approved by both the Assembly and Senate and will not be acted on again until at least January 2020.

The proposed ordinance is related to the City’s waste reduction efforts to reduce a voluminous and frequently littered waste product; is aligned with the Zero Waste Principles the City Council adopted pursuant to Resolution No. 2019-114 approved by the City Council on July 15, 2019; and meets the City Council Goal to “preserve and protect Petaluma’s environment with smart and efficient use of resources.”

DISCUSSION

The proposed ordinance is based on a template provided by the SCWMA in the hope that the ordinances that are being considered by member agencies may achieve some regional consistency. This would reduce complexity for education and compliance for multi-jurisdictional food establishments and for County citizens. To date in Sonoma County, only the City of Sebastopol has adopted the SCWMA model ordinance, which it did at its May 21, 2019 City Council Meeting. Staff understands that the City of Healdsburg will be considering the SCWMA model ordinance before the end of the year, and several other Sonoma County cities will be considering the SCWMA model ordinance early next year.

The main elements of the proposed ordinance include:

1. A prohibition against polystyrene foam food service ware distributed by food establishments and food providers within Petaluma
2. A prohibition against polystyrene foam products sold by retail vendors within Petaluma
3. Authorization for the City Manager or designee to grant exemptions on a case-by-case basis for up to one year if the food provider or retail vendor demonstrates an undue hardship resulting from the ordinance.

The proposed ordinance would not:

1. Require all food establishments or retailers to only distribute or sell only reusable, recyclable, or compostable disposable food service ware
2. Require use of reusable, recyclable, or compostable disposable food service ware in City facilities
3. Require utensils to be provided only upon customer request
4. Prohibit the sale of products packaged in polystyrene foam outside of Petaluma
5. Prohibit polystyrene foam used as insulation in buildings
6. Prohibit polystyrene use of City facilities, by city personnel, or by city contractors or lessees

Staff intend to draft a City policy restricting the purchase of single-use disposable polystyrene products and use of single-use disposable polystyrene products in City facilities by City personnel, outside food service contractors, lessees and other users of City facilities. Staff plan to have a draft City polystyrene policy ready for consideration by the City Council and implementation on or before the May 1, 2020, the proposed effective date of the attached ordinance. This will allow for time to educate the business community and work with the newly-seated Climate Commission to develop the legislation and outreach strategy.

The SCWMA is willing to indemnify and perform the education and enforcement activities for member jurisdictions that adopt the proposed ordinance without significant alterations, but may not do so if significant changes are made. A separate City Council action and agreement between the SCWMA and City could be used to indemnify the City and to delegate the education, and enforcement of the proposed ordinance, if desired.

In researching single-use disposable food ware items, staff made the following findings:

- On a per unit basis, compostable alternatives (uncoated paper, birch wood, bamboo, or bagasse feedstocks) are about 2 to 10 times more expensive than the single-use polystyrene counterparts. While this ordinance would not require replacement of polystyrene items with compostable items, this information is useful for potential future action.
- Recyclable PET or Polyethylene cups and containers are similar in price to non-recyclable polystyrene cups and containers.
- Hot beverage cups do not have an alternative product that would be allowed in the City's composting or recycling programs. Paper cups do not work because the plastic lining that prevents liquid absorption is problematic for recycling or composting. The lack of a viable compostable or recyclable hot beverage cup replacement is a major issue to be addressed in potential future action.
- "Compostable" cup liners are not accepted at the composting facilities which receive Petaluma material.

The public response to the City's outreach regarding the proposed polystyrene prohibition has been favorable. Most of the input received indicates that the public understands that reasonable alternatives to polystyrene foam exist, and while some alternatives may be more expensive, increased customer container reuse may allow food vendors to offset some the additional costs.

During development of the proposed ordinance, staff presented the public with an option to include a single-use plastic ban with the polystyrene prohibition language. Alameda County, Arroyo Grande, Brisbane, Concord, City and County of San Francisco, San Pablo, Santa Barbara, and Solana Beach include provisions requiring that all single-use food ware items be compostable or recyclable in their waste reduction ordinances. Single-use food ware items such as utensils, cups, containers, straws, lids, stirrers, and napkins are included in such bans unless the items are recyclable at a local compost facility. Many of the single-use items listed have recyclable, compostable, or reusable alternatives, though these alternatives are typically significantly more expensive on a per unit basis. The prohibition of single use plastic items has notable, vocal support in Petaluma.

Single-use hot beverage cups are discarded in large volumes daily throughout Petaluma. However, staff is not aware of any recyclable or compostable alternative that could replace those cups. Businesses selling hot beverages to-go would be required to make expensive changes to their business practices to accommodate a single use item ban. Staff believes further outreach and feedback from affected businesses and their customers is need before moving forward with a ban on all single-use food ware products that are not reusable, compostable, or recyclable under the City's waste reduction ordinance. For these reasons, staff is not recommending inclusion of a "single-use plastics" ban in the proposed ordinance at this time. Additional outreach and community acceptance are recommended. Accordingly, the proposed ordinance does not include "single-use plastics" ban provisions.

Staff believe the proposed ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of Title 14 of the California Environmental Code of Regulations because it can be seen with certainty that there is no possibility that the ordinance will have a significant negative effect on the environment, and on the separate but related ground that the proposed ordinance is an action of the City to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment in accordance with Section 15308 of the CEQA Guidelines. The restrictions on polystyrene products contained in the proposed ordinance constitute regulatory procedures for protection of the environment in accordance with Section 15308 because the ordinance provisions will reduce the negative environmental impacts of disposal and littering of polystyrene products. The draft ordinance and its expected environmental impact are analogous to those of plastic bag ban regulations which have been adopted in many local jurisdictions. Such ordinances were found to qualify for the Section 15308 exemption in *Save the Plastic Bag Coalition v. County of Marin* (2013) 218 CA4th 209 and *Save the Plastic Bag Coalition v. City and County of San Francisco* (2013) 222 CA4th 863.

PUBLIC OUTREACH

SCWMA Outreach: SCWMA staff conducted outreach to residents and businesses within Sonoma County to determine interest and the potential impacts on local businesses caused by adopting an ordinance regulating polystyrene products. SCWMA staff publicized an online survey, contacted Chambers of Commerce, trade organizations, and local businesses that generated approximately 3,000 responses. Respondents overwhelmingly supported the model ordinance as highlighted below:

- 91% supported a ban on polystyrene food containers at food establishments
- 89% supported a ban on the sale of polystyrene foam products at retail stores
- 87% supported straws being provided upon request, rather than automatically
- 69% supported food establishments charging a fee for compliant food containers

Petaluma Outreach: City staff published information about the proposed ordinance in all Petaluma commercial utility bills, the Petaluma Chamber of Commerce newsletter, posted information on the City's Facebook and NextDoor sites, placed advertisements running in the

September 19 and 26 Petaluma Argus Courier editions, and had multiple discussions with Petaluma Argus Courier reporters, which resulted in articles published on June 30, 2019 and July 12, 2019, and September 26. Staff presented the proposed ordinance to the Chamber of Commerce Government Affairs subcommittee on September 6, 2019.

Feedback from outreach fell into the following categories: support, concern regarding financial impacts to businesses and customers, desire for City resources to be directed elsewhere, and concern regarding how consumers would be able to handle to-go food. These comments were taken into consideration as reflected in City staff next steps above.

Public Comment can be found online at cityofpetaluma.net/cclerk/archives in the October 21, 2019 Agenda under Item 4.B.

FINANCIAL IMPACTS

Financial impacts to the City are expected to be minimal as a result of adopting the proposed ordinance. Reduced sales tax collections from the prohibition of purchasing polystyrene service ware items are expected to be offset by the purchase of alternative service ware. There will be an undetermined, but minimal impact to budget for enforcement and education, if performed by City staff. Enforcement would focus on education first, would be complaint driven, and, based on the experiences in the Counties of Santa Clara and Santa Cruz, an initial spike in staff time needed to respond to complaints in the first months after the ordinance takes effect is expected, which should taper off afterwards.

ATTACHMENTS

1. Ordinance Prohibiting Use and Sale of Specified Disposable Food Service Ware and Other Products Containing Polystyrene Foam

EFFECTIVE DATE
OF ORDINANCE

ORDINANCE NO. _____ N.C.S.

Introduced by

Seconded by

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA ADDING
CHAPTER 8.17 TO THE PETALUMA MUNICIPAL CODE PROHIBITING THE USE
AND SALE OF SPECIFIED DISPOSABLE FOOD SERVICE WARE AND OTHER
PRODUCTS CONTAINING POLYSTYRENE FOAM**

WHEREAS, the California Integrated Waste Management Board (“CIWMB”) estimates that Californians use 165,000 tons of expanded polystyrene (foam and Styrofoam™ products) each year for packaging and food service purposes; and

WHEREAS, a 2004 study by the CIWMB ranked polystyrene’s environmental impacts second highest among materials in terms of both manufacturing and disposal, behind aluminum, in the categories of energy consumption, greenhouse gas emissions and total environmental effect; and

WHEREAS, a 2014 waste characterization study performed on behalf of the California Department of Resources Recycling and Recovery (“Cal Recycle”) estimated that 11,310 tons of remainder/composite plastic materials, including polystyrene food ware, were disposed in Sonoma County; and

WHEREAS, according to the 2004 CIWMB study, as well as studies published in *Materials Science and Technology*, a trade journal, expanded polystyrene is not fully biodegradable, takes hundreds of years to deteriorate or breakdown in the environment or a landfill, and currently no effective or economically feasible means of recycling polystyrene is available in Sonoma County; and

WHEREAS, according to the 2004 CIWMB study, a 2009 United Nations Environment Programme Report on Marine Litter, and Environment California, a non-profit organization, polystyrene foam litter breaks down into smaller, non-biodegradable pieces that pose significant threats to marine and other wildlife from ingestion, and poses an environmental threat to creeks and waterways due to its potential for clogging estuaries; and

WHEREAS, according to Cal Recycle, polystyrene foam litter contaminates the public drainage systems, requiring the expenditure of limited public infrastructure maintenance resources for removal and disposal, and;

WHEREAS, over one hundred-twenty jurisdictions in California have adopted ordinances banning the use of polystyrene foam packaging, with local and national businesses successfully replacing polystyrene packaging with affordable, durable, recyclable and/or biodegradable alternatives; and

WHEREAS, although clean polystyrene is recyclable, there are no curbside polystyrene recycling programs within Sonoma County due to its low density and high transportation cost;

WHEREAS, Petaluma is situated near the Sonoma Coast and near waterways which drain to the marine environment, and marine animals and birds often confuse polystyrene foam pieces with food and ingest them, which often leads to death, according to Environment America, a non-profit; and

WHEREAS, it is the desire of the City of Petaluma to preserve natural resources, protect wildlife and natural habitat, reduce waste, litter and marine pollution and protect the public health, safety and welfare

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Petaluma as follows:

Section 1. Recitals. The above recitals are hereby declared to be true and correct and hereby incorporated into this ordinance as findings of the City Council.

Section 2. CEQA Compliance. The City Council finds this ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of Title 14 of the California Environmental Code of Regulations because it

can be seen with certainty that there is no possibility that the ordinance will have a significant negative effect on the environment, and on the separate but related ground that the ordinance is an action of the City to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment in accordance with Section 15308 of the CEQA Guidelines. The restrictions on polystyrene products contained in the proposed ordinance constitute regulatory procedures for protection of the environment in accordance with Section 15308 of the CEQA Guidelines because the ordinance provisions will reduce the negative environmental impacts of disposal of polystyrene products.

Section 3. Authority. The City Council adopts this ordinance in reliance on the City's police power as a California municipal corporation and charter city pursuant to Article XI, Sections 5 and 7, of the California Constitution.

Section 4. Chapter 8.17 Entitled "Sale and Use of Polystyrene Foam Products" is hereby added to the Petaluma Municipal Code to read as follows:

8.17.010 Purpose.


The purpose of this chapter is to regulate the sale and use of specified disposable food service ware and other products containing polystyrene foam in the city to protect the environment and the public health, safety and welfare from the environmental impacts of such products. Large volumes of polystyrene foam products are disposed of in Sonoma County, and such products are not fully biodegradable, and currently have no locally available, economically feasible recycling program. Polystyrene foam products also pose a threat to marine and other wildlife as well as to creeks and waterways and contaminate the public drainage system. This chapter is intended to reduce the environmental and public health, safety and welfare threats from disposal of polystyrene foam products.

8.17.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- A. "City" means the City of Petaluma, California, a California municipal corporation and charter city, and the area within the territorial limits of the City.
- B. "Disposable food service ware" includes all containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, napkins and other food ware items designed for one-time use for prepared foods, including, without limitation, service ware for take-out foods and/or leftovers from partially consumed meals prepared by food

providers. The term “disposable food service ware” does not include items composed entirely of aluminum.

- C. “Food provider” means any vendor, business, organization, entity, group or individual, and includes retail food establishments located or providing food within the city that offer food or beverages for sale or purchase to the public.
- D. “Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.
- E. “Polystyrene foam” means blown polystyrene and expanded and extruded foams (sometimes called Styrofoam™) which are thermoplastic, petrochemical materials utilizing a styrene monomer processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable 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. Polystyrene products subject to this chapter are those imprinted with the number 6 resin identification code, as illustrated by the number six inside a triangle with three arrows () .
- F. “Prepared food” means food or beverages prepared for consumption within the city, using any cooking or food preparation technique. Prepared food includes food prepared for consumption off the food provider’s premises, also known as “take-out” food.
- G. “Retail vendor” means any store or other business that sells retail goods or merchandise and that is located or operating within the city.

8.17.020 Prohibited polystyrene food service ware and products.

Beginning on and after May 1, 2020, except as otherwise provided in this chapter, food providers shall not sell, hand out, give away, distribute or otherwise make available for public or customer use prepared food in disposable food service ware that contains polystyrene foam.

8.17.030 Prohibited polystyrene retail sales.

Beginning on and after May 1, 2020, except as otherwise provided in this chapter, no retail vendor shall sell, rent or otherwise provide any disposable food service ware which is composed

in whole or in part of polystyrene foam, and no retail vendor shall sell, rent or otherwise provide the any of following products that contain polystyrene foam:

- A. coolers, ice chests, or similar containers, unless they are wholly encapsulated or encased within a more durable material so as to be durable and reusable;
- B. pool or beach toys, not including personal floatation devices such as life jackets; and
- C. packing peanuts or other packaging materials.

8.17.040 Exemptions.

- A. The City Manager or the City Manager’s designee may waive the applicability of this chapter to food providers and retail vendors for a one-year period upon the City Manager or City Manager’s designee determining, in his or her sole discretion, that this chapter would create an undue hardship or practical difficulty not generally applicable to other persons. To be eligible for waiver, food providers and retail vendors must apply in writing to the City Manager’s office documenting how this chapter would create an undue hardship. Determinations regarding waiver applications shall be in writing. Waivers may be granted in whole or in part, with or without conditions, and shall expire one year after issuance without further action of the city. To renew a waiver granted pursuant to this paragraph, food providers and retail vendors must reapply at least 30 days prior to expiration of the waiver. Renewal waiver applications are subject to the same requirements as new waiver applications.
- B. Foods prepared or packaged outside the city and sold inside the city are exempt from the provisions of this chapter.
- C. Polystyrene products, that such as insulation or personal flotation devices, that are completely encased in a more durable material are exempt from the provisions of this chapter. Examples of such exempted products include, but are not limited to, surfboards, boats, life preservers, construction materials, craft supplies, and coolers in which polystyrene materials are encased in more durable material.
- D. Packaging for raw, uncooked meat and fish is exempt from the provisions of this chapter.

8.17.050 Enforcement and penalties.

- A. Informal resolution. The city may in the city’s sole discretion seek informal resolution of violations of this chapter.

- B. Violations a nuisance. Violations of this chapter are hereby declared to be public nuisances in accordance with Chapter 1.10 of this code, and subject to enforcement in accordance with Chapter 1.10, Code Enforcement Generally, Chapter 1.13, Violations Enforced by Civil Action, Chapter 1.14, Administrative Enforcement, and Chapter 1.16, Administrative Citations, of this code.

- C. Business license revocation. The city business licenses of persons in violation of this chapter are subject to suspension or revocation in accordance with Section 6.01.350 of this code.

8.17.060 No city duty created.

This chapter does not create, and may not be construed so as to create, any city duty to implement or enforce the requirements of this chapter.

8.17.070 No cause of action against the City.

To the maximum extent permitted by law, nothing in this chapter may be construed to create a cause of action against the city or a basis for seeking an award of attorneys' fees against the city pursuant to the private attorney general's statute in California Code of Civil Procedure Section 1021.5 or on any other basis arising from or related to alleged violations of the requirements of this chapter and/or based on or related to the city's prosecution or enforcement or alleged failure to prosecute or enforce such alleged violations, and/or based on or related to the city's implementation or alleged failure to implement the requirements of this chapter.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 6. Effective Date. This ordinance shall become effective thirty (30) days after its adoption by the City Council. By their express terms, the prohibitions in Sections 8.17.020 and 8.17.030 will not become effective until May 1, 2020.

Section 7. Publication. The City Clerk is hereby directed to post and/or publish this ordinance or a synopsis for the period and in the manner provided by the City Charter and any other applicable law. The City Clerk is also hereby directed to file a Notice of Exemption concerning this ordinance with the Office of the Sonoma County Clerk in accordance with Section 15062 of the CEQA Guidelines.

INTRODUCED and ordered posted this 21st day of October 2019.

ADOPTED this __ day of _____, 2019 by the following vote:

Ayes:	Noes:	None
Abstain:	None	
Absent:	None	

Teresa Barrett, Mayor

ATTEST:

APPROVED AS TO FORM:

Claire Cooper, CMC, City Clerk

Eric W. Danly, City Attorney