



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL SUSTAINABILITY COMMITTEE MEETING

Hayward City Hall – Conference Room 2A
777 B Street, Hayward, CA 94541-5007

Mission Statement:

Make Hayward a more sustainable community in order to ameliorate negative impacts of climate change, conserve natural resources and promote a clean environment.

March 3, 2010
4:30 p.m. – 6:00 p.m.

A G E N D A

- I. Call to Order
- II. Roll Call
- III. Public Comments: *(Note: All public comments are limited to this time period on the agenda. For matters not listed on the agenda, the Committee welcomes public comments under this section, but is prohibited by State Law from discussing items not listed on the agenda. Items not listed on the agenda brought up under this section will be taken under consideration and may be referred to staff for follow-up as appropriate. Speakers will be limited to 5 minutes each; organizations represented by more than one speaker are limited to 5 minutes per organization.)*
- IV. Approval of Minutes of February 3, 2010
- V. Summary of Issues and Regional Efforts Regarding a Ban on Plastic Bags and Styrofoam Containers -Robert Bauman, Public Works Director
- VI. General Announcements and Information Items from Staff
- VII. Committee Referrals and Announcements
- VIII. Next Meeting: Wednesday, April 7, 2010
- South Hayward BART Form-Based Code Parking Strategies Options
- XI. Adjournment



Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Please request the accommodation at least 48 hours in advance of the meeting by contacting Katy Ramirez at (510) 583-4234 or by calling the TDD line for those with speech and hearing disabilities at (510) 247-3340.

CITY COUNCIL SUSTAINABILITY COMMITTEE MEETING
Hayward City Hall – Conference Room 2A
777 B Street, Hayward, CA 94541-5007

February 3, 2010
4:30 p.m.

MEETING MINUTES

I. Call to Order – Meeting called to order at 4:36 p.m. by Council Member Olden Henson. Council Member Henson welcomed everyone.

II. Roll Call

Members:

- Michael Sweeney, Mayor
- Olden Henson, Council Member
- Bill Quirk, Council Member
- Julie McKillop, Planning Commissioner
- Al Mendall, Planning Commissioner
- Marvin Peixoto, Planning Commissioner
- Doug Grandt, Keep Hayward Clean and Green Task Force (KHCG) (Absent)

Staff:

- Council Member Barbara Halliday
- Fran David, Assistant City Manager
- David Rizk, Development Services Director
- Robert Bauman, Public Works Director
- Erik Pearson, Senior Planner
- Richard Patenaude, Planning Manager
- Glen Martinez, Building Official
- Katy Ramirez, Administrative Secretary (recorder)

Others:

- Mike Gabel, Gabel Associates, LLP
- Amelia Schmale, Qantum Energy Services & Technologies, Inc. (QuEST)
- Kali Steele, Mills College Student
- Simon Wong, Tri-City Voice Newspaper

Mayor Sweeney arrived and apologized for his delay and welcomed everyone.

III. Public Comments

None.

IV. Approval of Minutes of January 6, 2010

The Minutes were approved with minor changes from Doug Grandt and Planning Commissioner Al Mendall.

V. Introduction of Sustainability Coordinator Consultant Team

David Rizk, Development Services Director, provided background information, experience and education, for Amelia Schmale, Program Manager of QUEST, and said that Ms. Schmale will be the City of Hayward's staff liaison and will be at City offices two days a week with the support of her supervisor, Derrick Rebelló, Director at QuEST.

Mr. Rizk said one of the reasons why we decided to hire QuEST, as summarized in his City Council staff report of January 5, 2010, is because QuEST is highly engaged in the East Bay and has established partnerships and several programs with PG&E, and they have a web-based tool we can use to track our greenhouse gas emissions.

Mr. Rizk also provided background information and experience for Mike Gabel, and outlined the various projects and studies produced by Gabel Associates, LLP. Mr. Rizk reminded everyone that Gabel Associates was the firm that did the cost-effectiveness study that Stopwaste.Org utilized, and which was incorporated in the revisions to the City of Hayward's Green Building Ordinance, which led to approval by the California Energy Commission.

VI. Initial Discussion on Residential Energy Conservation Ordinance (RECO) and Commercial Energy Conservation Ordinance (CECO)

Mr. Gabel did an overview of a PowerPoint presentation introducing the development of a Residential Energy Conservation Ordinance (RECO) and Commercial Energy Conservation Ordinance (CECO). Mr. Gabel highlighted major policy development and implementation issues, which generated concerns and comments by the Sustainability Committee members, as outlined below:

Ordinance trigger:

- Phased implementation - buyer must comply 6 months to 2 years after point of sale;
- Date Certain - several committee members are interested in investigating this trigger;
- Renovation - one example would be getting a permit to upgrade a roof;
- Explore voluntary action.

Incentives:

- Look into providing a grant to buyers to offset cost of mandatory energy upgrades;
- CaliforniaFIRST (tax lien financing) reduce buyers upfront cost of mandatory energy upgrades;
- Focus on 'carrots' rather than 'sticks.'

Community Outreach:

- Ensure that outreach to the public, home owners groups, realtors, etc., is ongoing throughout different phases of ordinance research and development;
- Message - let people know the important reasons behind the purpose of the ordinance.

Mr. Gabel noted that we are at the beginning of the contract and asked the Committee to put in writing their ideas and comments; the direction and thoughts about what the Committee considers acceptable/unacceptable, good or bad; possible things that they would like explored; and the direction the Committee is setting, formally or informally.

Ms. Schmale said that she would type what has been discussed today and send to the Committee. Mayor Sweeney said that this item is coming back to the Sustainability Committee at their May meeting and the Committee will bring any additional comments at that time.

Mayor Sweeney thanked Mr. Gabel for his presentation and said that the Committee looks forward to working with everyone. Mayor Sweeney also asked Mr. Gabel if the Committee could have a copy of his PowerPoint. Mr. Rizk noted that the PowerPoint would be available on the City of Hayward's website after the meeting.

VII. Review of Purpose and Productivity of the Sustainability Committee and 2010 Meeting Topics

Mr. Rizk noted that the City Council wanted to review the purpose and productivity of the Sustainability Committee two years after it was formed, which was in the fall of 2007. Mr. Rizk said that he feels the Committee has done a good job with addressing major topics, such as the Green Building Ordinance adoption, which was a major accomplishment, and other topics as summarized in his report. Mr. Rizk said that before we go to City Council with a report, he would like to hear the Committee's input and perspective.

There was discussion from the Committee members about the various topics on the schedule, the importance of each, and their priority (i.e., RECO/CECO, plastic bags, green collar jobs). The Committee members also expressed that they are very pleased with the progress and accomplishments of the Committee and of staff's performance, and agree that the productivity of the Committee is good.

Mayor Sweeney said that the consensus of the group is to recommend to the City Council that the Sustainability Committee move forward and report to the Council on productivity every two years. Mayor Sweeney also noted that the outline of the current schedule is good with CaliforniaFIRST being a big priority. Mayor Sweeney also pointed out the July topic of Large Commercial Energy Users Efficiency Program and reminded the Committee that it was promised to the large energy users that we would have something for them to utilize, and wants to make sure that we don't lose sight of this topic.

VIII. General Announcements and Information Items from Staff

None.

IX. Committee Referrals and Announcements –

None.

IX. Next Meeting: Wednesday, March 3, 2010

X. Adjournment – Meeting adjourned at 5:51 p.m.

DRAFT



CITY OF
HAYWARD
HEART OF THE BAY

DATE: March 3, 2010
TO: City Council Sustainability Committee
FROM: Director of Public Works
SUBJECT: Summary of Issues and Regional Efforts Regarding a Ban on Plastic Bags and Polystyrene Foam (Styrofoam) Containers

RECOMMENDATION

That the Committee reviews and comments on this report.

BACKGROUND

The City of Hayward's adopted Climate Action Plan has policies related to waste reduction, reuse, and recycling. Applicable policies include *Action 6.4 – Ban certain materials from the landfill*, and *Action 6.6 – Encourage waste reduction*. These policies can apply to use of plastic bags and other single-use bags.

The use of plastic bags in grocery stores has long been a source of concern related to pollution and impact on the environment. Because of its extremely light weight and physical features, plastic bags can be easily blown in the wind, tending to be a visible and persistent source of pollution. Improperly discarded plastic bags end up on streets and sidewalks, in storm drains, creeks, and waterways, and eventually in the Bay. Even when properly disposed, plastic bags continue to be a source of concern. There are various reports stating that plastic bags can and do get caught in recycling conveyor belts, causing malfunctions. Studies have concluded that bags can remain unchanged for hundreds of years when disposed in the landfills.

Currently, plastic bags are mainly reused to line trash cans, collect pet waste or other small amounts of refuse, and are disposed of in the garbage. Alternatively, used plastic bags can be taken to large grocery stores for recycling; by law, the stores are required to provide receptacles for the return of plastic bags for recycling. Larger grocery stores in the City do provide containers in the stores for this purpose.

Proponents of the use of plastic bags argue that the bags are easy to manufacture, inexpensive to purchase and easy to transport in great quantities, therefore, resulting in less cost to consumers. They are also easy to carry and are somewhat waterproof. Proponents further argue that plastic bags have secondary uses such as liners for kitchen and bath trash cans and for use to collect and dispose of pet waste. They cite numerous other uses, as well, such as for packing lunches, etc.

Given this dichotomy between usefulness and negative environmental impacts, various efforts have been made to reduce the harmful effects of the bags, and they continue to be in use. For example, some agencies have arrangements with their respective recycling service providers so customers can bundle and place bags in the recycling carts for pick up. The advantage of this approach is that it reduces the possibility of loose bags on recycling conveyor belts and causing stoppages if caught in the rotating assemblies. Waste Management of Alameda County (WMAC) has such an arrangement in areas served under its franchise agreement with Oro Loma Sanitary District.

There have also been efforts to get large grocery stores that dispense plastic bags to accept them back for recycling. To that end, AB 2449 established a statewide plastic bag recycling program that requires certain large grocery stores that meet the size, product mix, and annual sales requirements of the law, to provide plastic bag take-back opportunities at their stores for customers who wish to return used bags. This law will sunset in January 2013, unless extended.

There are also concerns related to the use of polystyrene foam (aka, Styrofoam) used mainly by prepared food vendors and coffee shops and for packaging. The concern here is both pollution potential, similar to concerns related to plastic bags, and that, currently, polystyrene foam is not easily and economically recyclable. Current proposed State legislation (AB 1358) would prohibit food vendors from distributing polystyrene. Supporters include Santa Clara County, Los Angeles County Solid Waste Management Authority, and StopWaste.org. Not unexpectedly, this proposed legislation is being opposed by a host of different groups, such as the American Chemistry Council, the California Chamber of Commerce, the California Grocers Association, and the California Restaurant Associations, as well as some private corporations involved in manufacturing and sales of polystyrene foam.

Those opposing the ban argue that polystyrene foam containers provide an easy-to-manufacture and easy-to-transport product, which allows for an easy-to-store, inexpensive, and clean way to dispense hot and cold foods and beverages. There are no readily available products that can replace polystyrene foam and offer similar performance and price points.

DISCUSSION

Local Government Actions and Industry Opposition to Plastic Bag Bans – Several municipalities have adopted or tried to adopt ordinances prohibiting the distribution of plastic bags. The ban has affected large grocery stores and, in some cases, large chain drug stores. “Save the Plastic Bag,” a coalition of plastic bag manufacturers has sued or indicated its intent to sue most of the municipalities that have introduced or adopted plastic bag bans. The suits assert that under California law the ordinances are subject to the California Environmental Quality Act and, thus, require preparation of an environmental impact report (EIR).

In Alameda County, the City of Oakland adopted an ordinance, in July 2007, prohibiting all retail establishments with annual sales greater than \$1 million, excluding restaurants, from distributing plastic bags. Allowed alternatives to plastic bags are reusable bags, paper bags that are 100 percent recyclable and contain at least 40 percent post-consumer content, and

compostable bags. The City of Oakland was sued and the Court suspended the ordinance until an EIR is prepared. The City of Berkeley is proposing a Bag Reduction Ordinance, which includes a ban on all retail plastic bags and a fee on large paper bags. Berkeley prepared a Negative Declaration of Environmental Impacts rather than a full EIR. Berkeley's ordinance is scheduled to become effective on February 23, 2010. The Save the Plastic Bag industry group has threatened to sue Berkeley on the grounds that the originally proposed 25-cent paper bag fee would be an incentive for retailers to promote paper bag use. This response and other public comments have led Berkeley to recommend a 15-cent paper bag fee, which is closer to the actual price point of a large paper bag.

Other municipalities, including the cities of Palo Alto and San José, Los Angeles County, and San Francisco, have adopted or proposed adoption of ordinances. When adopted last year, Palo Alto received a threat to sue and settled when the City agreed that the ordinance would only apply to a limited number of stores and that there would be no expansion of the ordinance without first preparing an EIR. The City of San José will complete an EIR for its plastic and paper carryout bag ban in order to address the threat of a law suit by the Save the Plastic Bag coalition. The EIR is anticipated in Spring 2010, and an ordinance would not become effective earlier than 2011. In Los Angeles County, a lawsuit is pending, but the ordinance is still active. Los Angeles County is also preparing a complete EIR. San Francisco's plastic bag ban only allows supermarkets and large pharmacies to distribute reusable bags, paper bags that are 100 percent recyclable and contain at least 40 percent post-consumer content, and compostable plastic bags. San Francisco has not received any threats of a law suit, perhaps because the ordinance may not have been noticed by the plastic industry because it was the first plastic bag ban.

Regional Effort – To help cities address the need for an EIR, “Green Cities California,” a consortium of municipalities and StopWaste.Org, is overseeing preparation of a master environmental assessment (MEA) for plastic bag bans. The City Council adopted a resolution on February 23 authorizing Hayward to join Green Cities California. The MEA would provide local governments in a designated area with a summary of research about the impacts of restricting the use of single-use plastic shopping bags or of imposing fees on disposable shopping bags. The MEA is intended to help local governments reduce the cost and time needed to prepare an EIR to assess the potential impacts of such ordinances. A final MEA is anticipated in February. The MEA and the EIRs from San José and Los Angeles County, both of which are expected to be completed in the next several months, can serve as templates for municipalities interested in adopting a local ordinance.

Local Governments' Ordinances Banning Polystyrene Foam Food Service Ware – Several municipalities have adopted ordinances prohibiting the use of polystyrene foam food service ware by food vendors, at facilities managed by those municipalities, and by contractors and vendors doing business with the municipality. Typical products covered by the bans include cups, bowls, plates, trays, clamshell containers, and egg cartons. Cities in Alameda County that have adopted such ordinances and the effective dates of those ordinances include Albany (September 2008), Berkeley (January 1990), Emeryville (January 2008), and Oakland (January 2007). The Berkeley and Oakland ordinances are attached as Attachment I and II respectively. In addition, City of Fremont staff is evaluating for its City Council's consideration later this

Spring a proposed ban on polystyrene foam food containers used by retail food vendors that would also require the use of biodegradable or recyclable food packaging. Other cities that have adopted an ordinance and the effective dates of those ordinances include Millbrae (January 2008), Monterey (May 2010), Palo Alto (April 2010), Richmond (July 2010), San Bruno (April 2010), San Francisco (June 2007), Santa Cruz (April 2010), and Watsonville (April 2010). The proposed Palo Alto ordinance is attached as Attachment III.

Other provisions of the ordinances include a requirement to use biodegradable or recyclable food service ware as it becomes affordable, i.e., at the same or at less-cost than the non-biodegradable or non-compostable disposables. Many of the municipalities also offer an exemption for a specific product, if the product is not affordable or would cause undue hardship. Some examples of food service ware identified as acceptable alternatives include products made from renewable resources, such as coated and uncoated paper, sugar cane, corn starch, or potato starch. Ordinances cited reasons to enact these provisions, including municipalities' efforts to achieve the countywide goal of 75 percent diversion and to reduce greenhouse gas emissions, pursuant to the State's Global Warming Solutions Act and the goals established in their Climate Action Plans. If a violation is noted, enforcement may include a written warning and citations for the first, second, and subsequent violations, with amounts beginning at \$100 and no more than \$500 for violations after the second citation. Staff is not aware of any organization that has indicated any legal challenge to any of the municipalities listed above regarding implementation of its ordinance.

There are several issues that need to be evaluated before staff could return to the Committee with a recommended course of action. It is apparent, given the opposition from organized industry groups, it is far preferable for cities and counties to act jointly and in a coordinated fashion rather than as individual cities. This approach would be far more effective in producing the intended outcome of reducing pollution and other harmful impacts on the environment than individual city actions. A regional approach would be preferable in regards to economic competitiveness, as well. A policy question is what should be banned and at what level. Until a few years ago, the commonly believed objective was to ban plastic bags. Today, that is being expanded to other single-use bags. Some are beginning to question the advisability of using multiple-use plastic bags, as opposed to canvas and other natural fiber materials.

ECONOMIC AND FISCAL IMPACTS

A determination of the economic and fiscal impacts of a ban on single-use plastic bags or a ban on polystyrene foam food service ware is not available, but will be completed following staff's review of the EIRs and the MEA with staff from StopWaste.Org and other jurisdictions in Alameda County. One possible recommendation might be to establish and collect a small fee on the use of plastic bags, single-use bags, and Styrofoam containers. The City could then use the proceeds of the fees to promote public education on minimizing the use and proper disposal of the bags and containers. Depending on the City's eventual decision regarding banning all single-use bags or allowing the use of paper bags, and its decision regarding Styrofoam, there would be additional costs for businesses related to switching to other products.

NEXT STEPS

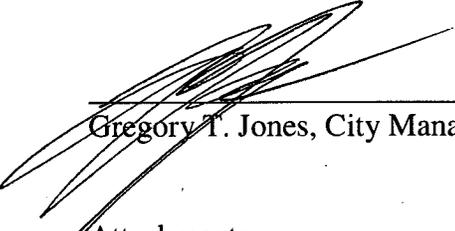
Upon the Committee's direction, staff will review the EIRs and the MEA cited previously and will continue to monitor the status of lawsuits that may be filed against jurisdictions proposing adoption of a ban on single-use plastic bags. Staff will also continue to monitor municipalities' adoption of ordinances banning polystyrene foam food service ware. There does not seem to be an organized opposition to a ban on the use of polystyrene foam food service containers. However, given the current state of the economy and its impact on the retail food sector, and the fact that none of our neighboring jurisdictions (Castro Valley, Fremont, Newark, San Leandro, San Lorenzo, and Union City) currently have such a ban, the Committee may want to wait a year before considering enactment of a ban on polystyrene foam food service ware.

Upon conclusion of staff's review of these documents, as well as discussions with StopWaste.Org and other jurisdictions in Alameda County, staff will provide an update to the Sustainability Committee presently scheduled for the December 1 meeting. The update will include a review of the MEA, San José's EIR, and recommended options for consideration regarding ordinances banning single-use plastic bags and polystyrene foam food service ware.

Prepared by: Alex Ameri, Deputy Dir. of Public Works

Recommended by: Robert A. Bauman, Director of Public Works

Approved by:



Gregory T. Jones, City Manager

Attachments:

- Attachment I - Oakland City Council Ordinance 12747 Prohibiting Used of Polystyrene Foam Disposal Food Ware
- Attachment II - Berkeley City Council Ordinance, Chapter 11.60: Polystyrene Foam, Degradable and Recyclable Food Packaging
- Attachment III - Palo Alto City Council Ordinance 5039, Chapter 5.30: Expanded Polystyrene and Non-Recyclable Food Service Containers

OFFICE OF THE CITY CLERK
CLERK

2006 JUN 26 AM 9:32

Introduced by Councilmember QUAN AND DE LA FUENTE
(USE IF APPLICABLE)

Approved as to Form and Legality

James Atenia
Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Ordinance No. 12747 C.M.S.

AN ORDINANCE TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE AND REQUIRE THE USE OF BIODEGRADABLE OR COMPOSTABLE DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS AND CITY FACILITIES

This ordinance will institute two distinct practices by all food vendors and City Facilities in Oakland. The first is that the use of polystyrene foam disposable food service ware will be prohibited. The second is that all disposable food service ware will be required to be biodegradable or compostable, as long as it is affordable.

WHEREAS, the City of Oakland has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, effective ways to reduce the negative environmental impacts of throw-away food service ware include reusing food service ware and using compostable and biodegradable take-out materials made from renewable resources such as paper, corn starch and sugarcane; and

WHEREAS, polystyrene foam is a common environmental pollutant as well as a non-biodegradable substance that is commonly used as food service ware by food vendors operating in the City of Oakland; and

WHEREAS, there continues to be no meaningful recycling of polystyrene foam food service ware and biodegradable or compostable food service ware is an affordable, safe, more ecologically sound alternative; and

WHEREAS, affordable biodegradable or compostable food service ware products are increasingly available for several food service applications such as cold cups, plates and hinge containers and these products are more ecologically sound than polystyrene foam materials and can be turned into a compost product; and

WHEREAS, the Oakland Coliseum has successfully replaced its cups with biodegradable corn starch cups and has shown an overall cost savings due to organics recycling; and

WHEREAS, over 155 businesses in Oakland engage in organics recycling and it has been demonstrated that the use of biodegradable or compostable food service ware can reduce waste disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill; and

WHEREAS, the natural compost product from these biodegradable or compostable materials is used as fertilizer for farms and gardens, thereby moving towards a healthier zero waste system; and

WHEREAS, disposable food service ware constitutes a large portion of the litter in Oakland's estuary, streets, parks and public places and the cost of managing this litter is high and rising; and

WHEREAS, polystyrene foam is notorious as a pollutant that breaks down into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them; and

WHEREAS, due to the physical properties of polystyrene, the EPA states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy." and

WHEREAS, a 1986 EPA report on solid waste named the polystyrene manufacturing process as the fifth largest creator of hazardous waste in the United States; and

WHEREAS, in the product manufacturing process as well as the use and disposal of the products, the energy consumption, greenhouse gas effect, and total environmental effect, polystyrene's environmental impacts were second highest, behind aluminum, according to the California Integrated Waste Management Board; and

WHEREAS, styrene, a component of polystyrene, is a known hazardous substance that medical evidence and the Food and Drug Administration suggests leaches from polystyrene containers into food and drink; and

WHEREAS, styrene is a suspected carcinogen and neurotoxin which potentially threatens human health; and

WHEREAS, styrene has been detected in the fat tissue of every man, woman and child tested by the EPA in a 1986 study; and

WHEREAS, the general public is not typically warned of any potential hazard, particularly in the immigrant and non-English-speaking community; and

WHEREAS, due to these concerns nearly 100 cities have banned polystyrene foam food service ware including several California cities, and many local businesses and several national corporations have successfully replaced polystyrene foam and other non-biodegradable food service ware with affordable, safe, biodegradable products; and

WHEREAS, restricting the use of polystyrene foam food service ware products and replacing non-biodegradable food service ware with biodegradable food service ware

products in Oakland will further protect the public health and safety of the residents of Oakland, the City of Oakland's natural environment, waterways and wildlife, would advance the City's goal of Developing a Sustainable City, advance the City's goal of Zero Waste by 2020 and fulfill Article 10 of the Environmental Accords, whereby Oakland partnered with other cities across the globe in signing a commitment to eliminate or restrict the use of one chemical or environmental hazard every year;

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN CHAPTER 8.07 OF THE MUNICIPAL CODE SHALL BE:

Section 8.07.010 Definitions

"Affordable" means purchasable by the Food Vendor for same or less purchase cost than the non-Biodegradable, non-Polystyrene Foam alternative.

"ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International standards D6400 or D6868 for biodegradable and compostable plastics.

"Biodegradable" means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

"Compostable" means all materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Compostable Disposable Food Service Ware includes ASTM-Standard Bio-Plastics (plastic-like products) that are clearly labeled, preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic.

"City Facilities" means any building, structure or vehicles owned or operated by the City of Oakland, its agent, agencies, departments and franchisees.

"Customer" means any person obtaining Prepared Food from a Restaurant or Retail Food Vendor.

"Disposable Food Service Ware" means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items that are designed for one-time use and on, or in, which any Restaurant or Retail Food Vendor directly places or packages Prepared Foods or which are used to consume foods. This includes, but is not limited to, service ware for Takeout Foods and/or leftovers from partially consumed meals prepared at Restaurants or Retail Food Vendors.

"Food Vendor" means any Restaurant or Retail Food Vendor located or operating within the City of Oakland.

"Polystyrene Foam" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene Foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

"Prepared Food" means Food or Beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Vendor's premises or within the City of Oakland. For the purposes of this ordinance, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises, also known as "takeout food".

"Restaurant" means any establishment located within the City of Oakland that sells Prepared Food for consumption on, near, or off its premises by Customers. Restaurant for purposes of this Chapter includes Itinerant Restaurants, Pushcarts and Vehicular Food Vendors as those terms are defined in sections 5.49, 8.08, 8.09 of the City of Oakland Municipal Code.

"Retail Food Vendor" means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a Restaurant, located within the City of Oakland that sells Prepared Food.

Section 8.07.040 Prohibited Food Service Ware

A. Except as provided in Section 8.07.042, Food Vendors are prohibited from providing Prepared Food to Customers in Disposable Food Service Ware that uses Polystyrene Foam.

B. All City Facilities are prohibited from using Polystyrene Foam Disposable Food Service Ware and all City Departments and Agencies will not purchase or acquire Polystyrene Foam Disposable Food Service Ware for use at City Facilities.

C. City franchises, contractors and vendors doing business with the City shall be prohibited from using Polystyrene Foam Disposable Food Service Ware in City facilities or on city projects within the City of Oakland.

Section 8.07.041 Required Biodegradable and Compostable Disposable Food Service Ware

A. All Food Vendors using any Disposable Food Service Ware will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application. Food Vendors are strongly encouraged to reuse Food Service Ware in place of using Disposable Food Service Ware. In instances that Food Vendors wish to use a Biodegradable or Compostable Disposable Food Service Ware Product that is not Affordable, a Food Vendor may charge a "take out fee" to customers to cover the cost difference.

B. All City Facilities will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application.

C. City franchises, contractors and vendors doing business with the City will use Biodegradable or Compostable Disposable Food Service Ware unless they can show an Affordable Biodegradable or Compostable product is not available for a specific application.

Section 8.07.042 Exemptions

A. Prepared Foods prepared or packaged outside the City of Oakland are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Oakland are encouraged to follow the provisions of this Chapter.

B. Food Vendors will be exempted from the provisions of this Chapter for specific items or types of Disposable Food Service Ware if the City Administrator or his/her designee finds that a suitable Affordable Biodegradable or Compostable alternative does not exist and/or that imposing the requirements of this Chapter on that item or type of Disposable Food Service Ware would cause undue hardship.

C. Polystyrene Foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

D. Disposable Food Service Ware composed entirely of aluminum is exempt from the provisions of this Chapter.

E. Emergency Supply and Services Procurement: In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter.

Section 8.07.043 Liability and Enforcement

A. The City Administrator or his/her designee will have primary responsibility for enforcement of this Chapter. The City Administrator or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, entering the premises of any Food Vendor to verify compliance.

B. Anyone violating or failing to comply with any of the requirements of this Chapter will be guilty of an infraction pursuant to Chapter 1.28 O.M.C.

C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

Section 8.07.044 Violations - Penalties

1. If the City Administrator or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the Food Vendor that a violation has occurred.
2. If the Food Vendor has subsequent violations of this Chapter, the following penalties will apply:
 - a. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
 - b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
 - c. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.
3. Food Vendors may request an administrative hearing to adjudicate any penalties issued under this Chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter. Any determination from the administrative hearing on penalties issued under this Chapter will be final and conclusive.

Section 8.07.045 Study

One year after the effective date of this Chapter, the City Administrator will conduct a study on the effectiveness of this Chapter.

Section 8.07.0456 Effective Date

This Chapter will become effective January 1, 2007.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 27 2006, 2006

PASSED BY THE FOLLOWING VOTE:

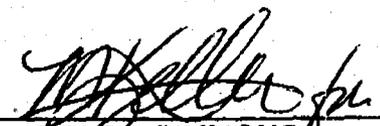
AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, ~~BRUNNER~~, REID, CHANG,
AND
PRESIDENT DE LA FUENTE - 7

NOES - 1, Brooks

ABSENT - 0

ABSTENTION - 0

ATTEST:


LATONDA SIMMONS
City Clerk and Clerk of the
Council of the City of Oakland

Chapter 11.60

POLYSTYRENE FOAM, DEGRADABLE AND RECYCLABLE FOOD PACKAGING**Sections:**

11.60.010	Findings and purposes.
11.60.020	Definitions.
11.60.030	Prohibited food packaging (polystyrene foam).
11.60.040	Degradable and recyclable food packaging.
11.60.050	Regulations applicable to all food vendors.
11.60.060	Inspection of documents.
11.60.070	Exemptions.
11.60.080	Existing contracts exempted.
11.60.090	City of Berkeley: purchases prohibited.
11.60.100	Separate food packaging waste receptacles.
11.60.110	City Manager's powers.
11.60.120	Liability and enforcement.
11.60.130	Severability.
11.60.140	Ordinance voided by superseding laws and regulations.
11.60.150	Effective date.

Section 11.60.010 Findings and purposes.

The council finds as follows:

A. Solid waste that is non-degradable or non-recyclable poses an acute problem for any environmentally and financially responsible program of solid waste management. Such waste covers the City's streets, parks, public places, and open spaces. It enters the marine and natural environment and is ingested by aquatic wildlife, frequently causing death. There is resultant damage to the ecological balance.

B. Products which are degradable or recyclable offer environmentally sound alternatives or non-degradable and non-recyclable products currently used. By decaying into their constituent substances, degradable products, compared to their non-degradable equivalents, are less of a danger to the natural environment, and less of a permanent blight on the urban landscape. Recycling of products reduces costly waste of natural resources and energy used in production of new products as well as costly disposal of waste in landfills.

C. Polystyrene foam is a petroleum processing by-product. Oil is a non-renewable resource, which can only be obtained by increasingly hazardous methods such as off-shore drilling, which poses significant dangers to the environment. Alternative products which are degradable or recyclable pose far less overall hazards than continued and expanded reliance on oil-based products.

D. Evidence indicates that all blowing agents currently used or proposed in connection with the manufacture of polystyrene foam pose dangers to the environment. Beyond the generally acknowledged dangers of Chlorofluorocarbons (CFCs) to the ozone layer, which are addressed in another City of Berkeley ordinance, other blowing agents also create dangers. For example, the blowing agent pentane creates hazardous earth-level smog and has already been restricted in some regions for air quality reasons.

E. Takeout food packaging constitutes the single greatest source of litter in Berkeley and is a significant contributor to the total amount of waste entering the City's waste stream.

F. It is in the interest of the health, safety, and welfare of all who live, work and do business in the City that the amount of litter on the public streets, parks, public places, and open spaces be reduced.

G. The City of Berkeley has the duty to responsibly dispose of its solid waste, yet existing landfill sites are rapidly approaching capacity, and additional sites are increasingly unavailable.

H. Reduction of the amount of non-degradable waste entering the waste stream and encouraging the use of recyclable containers further this goal.

Chapter 11.60

I. This Chapter is consistent with the City of Berkeley's 1986 Solid Waste Management Plan, the County of Alameda Solid Waste Management Plan, and the legislative intent and findings of the State of California Solid Waste Management and Resource Recovery Act of 1972 (Government Code Section 66700 et seq.) (Ord. 5888-NS § 1, 1988)

Section 11.60.020 Definitions.

A. "Polystyrene foam" means any styrene or vinyl chloride polymer which is blown into a foam-like material.

B. "Polystyrene foam food packaging" means any food packaging which contains any polystyrene foam.

C. "Customer" means anyone purchasing food or beverages from a restaurant or retail food vendor.

D. "Person", "Anyone" means any natural person, firm, corporation, partnership, or other organization or group however organized.

E. "Supplier" means anyone selling, or otherwise supplying food packaging to a restaurant or retail food vendor.

F. "Food vendor" means any restaurant or retail food vendor.

G. "Prepared food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed. "Prepared food" does not include any raw uncooked meat product or fruits or vegetables which are not chopped, squeezed, or mixed.

H. "Restaurant" means any establishment located within the City of Berkeley, selling prepared food to be eaten on or about its premises by customers. Restaurant includes a sidewalk food vendor.

I. "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are generally purchased in order to be consumed off the retail food vendor's premises.

J. "Retail food vendor" means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the City of Berkeley, which sells takeout food.

K. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on a restaurant's or retail food vendor's premises.

L. "Degradable food packaging" means food packaging which substantially reduces to its constituent substances through degradation processes initiated by natural organisms whose end products are substantially, but not necessarily entirely, carbon dioxide and water; and plastic items designed to degrade when exposed to ultraviolet light. Degradable food packaging does not include cellulose-based items which have a synthetic or plastic coating comprising more than five percent of the total volume of the item.

M. "Recyclable food packaging" means any food packaging including glass, cans, cardboard, paper, mixed paper, or other items which can be recycled, salvaged, composted, processed, or marketed by any means other than landfilling or burning, whether as fuel or otherwise, so that they are returned to use by society. (Ord. 5888-NS § 2, 1988)

Section 11.60.030 Prohibited food packaging (polystyrene foam).

A. Restaurants:

1. Except as provided in Sections 11.60.070 and 11.60.080, no restaurant shall provide prepared food to its customers in any polystyrene foam food packaging, nor shall any restaurant purchase, obtain or keep any polystyrene foam food packaging for such purpose.

2. As to any food packaging obtained after the effective date of this chapter, each restaurant shall obtain from each of its suppliers a written statement signed by the supplier, or by a responsible agent of the supplier, stating that the supplier will supply no polystyrene foam food packaging to that vendor, that the supplier will note on each invoice for food packaging supplied to that vendor that the packaging covered by the invoice is not polystyrene foam and the identity of the packaging's manufacturer.

3. All contracts between a restaurant and a supplier entered into after the effective date of this chapter shall include provisions that the supplier will supply no polystyrene foam food packaging; that the supplier will state on each invoice for food packaging supplied that the packaging is not polystyrene foam and the identity

of the packaging's manufacturer; and that failure to comply with such provisions shall constitute a material breach of the contract.

4. Restaurants shall retain each supplier's written statement for one year from the date of receipt of any food packaging from that supplier.

B. Retail food vendors:

1. Except as provided in Sections 11.60.070 and 11.60.080, no retail food vendor shall sell takeout food in any polystyrene foam takeout food packaging, nor shall any retail food vendor purchase, obtain or keep any polystyrene foam packaging for this purpose.

2. All retail food vendors shall segregate, in their warehouses or other storage areas, food packaging used in their takeout food operations from other food packaging. Takeout food packaging containers or boxes shall be labelled as such and shall indicate that they contain food packaging which is not polystyrene foam.

3. As to any takeout food packaging purchased after the effective date of this chapter, each retail food vendor shall comply with the requirements of Sections 11.60.030A, paragraphs 2 and 4 of this chapter.

4. All contracts for the purchase of takeout food packaging entered into after the effective date of this chapter shall comply with the provisions of Section 11.60.030A, paragraph 3. (Ord. 5888-NS § 3, 1988)

Section 11.60.040 Degradable and recyclable food packaging.

A. Restaurants:

1. At least fifty percent by volume of each restaurant's food packaging, in which prepared food is provided to customers, or which is kept, purchased, or obtained for this purpose, shall be degradable or recyclable.

2. Each restaurant shall maintain written records evidencing its compliance with this section.

B. Retail food vendors:

1. At least fifty percent by volume of each retail food vendor's packaging, in which takeout food is provided to customers, or which is kept, purchased, or obtained for this purpose, shall be degradable or recyclable.

2. Each retail food vendor shall maintain written records evidencing its compliance with this section. (Ord. 5888-NS § 4, 1988)

Section 11.60.050 Regulations applicable to all food vendors.

A. It shall be unlawful for any supplier to make any misstatement of material fact to any food vendor or to the City Manager or his or her agents regarding the degradable or recyclable nature of, or the use or non-use of polystyrene foam in the manufacture of any food packaging supplied to any food vendor.

B. Food vendors shall state that they are in compliance with this chapter on their annual business license renewal forms. (Ord. 5888-NS § 5, 1988)

Section 11.60.060 Inspection of documents.

All statements and documents required by this chapter shall be made available for inspection by the City Manager or his or her designated representative. It shall be unlawful for anyone having custody of such documents to fail or refuse to produce such documents upon request by the City Manager or his or her designated representative. (Ord. 5888-NS § 6, 1988)

Section 11.60.070 Exemptions.

The City Manager or his or her authorized representative may exempt an item or type of food packaging from the requirements of this chapter, upon a showing that the item or type has no acceptable non-polystyrene foam equivalent and that imposing the requirements on that item or type would cause undue hardship. Said documentation shall include a list of suppliers contacted to determine if non-polystyrene foam substitutes are available. (Ord. 5888-NS § 7, 1988)

Chapter 11.60

Section 11.60.080 Existing contracts exempted.

Food packaging required to be purchased under a contract entered into prior to September 22, 1987 is exempt from the provisions of this chapter. (Ord. 5888-NS § 8, 1988)

Section 11.60.090 City of Berkeley: purchases prohibited.

The City of Berkeley shall not purchase any polystyrene foam food packaging, nor shall any City-sponsored event utilize such packaging. At least fifty percent by volume of the food packaging which the City, or any City-sponsored event, utilizes shall be recyclable or degradable. (Ord. 5888-NS § 9, 1988)

Section 11.60.100 Separate food packaging waste receptacles.

Each restaurant and retail food vendor shall establish separate waste receptacles for each type of recyclable food packaging waste, generated on premises, including, but not limited to, glass, cans, cardboard, newspapers, and mixed paper. (Ord. 5888-NS § 10, 1988)

Section 11.60.110 City Manager's powers.

The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter including, but not limited to, inspecting any vendor's premises to verify compliance. (Ord. 5888-NS § 11, 1988)

Section 11.60.120 Liability and enforcement.

A. Anyone violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code.

B. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

C. The remedies and penalties provided in this section are cumulative and not exclusive. (Ord. 5888-NS § 12, 1988)

Section 11.60.130 Severability.

If any part or provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable. (Ord. 5888-NS § 13, 1988)

Section 11.60.140 Ordinance voided by superseding laws and regulations.

The provisions of this chapter with respect to polystyrene foam, shall be void upon the enactment or adoption of any law or regulation restricting the use of plastic foams. (Ord. 5888-NS § 14, 1988)

Section 11.60.150 Effective date.

The provisions of this chapter shall become effective on January 1, 1990. (Ord. 5888-NS § 15, 1988)

Ordinance No. 5039

Ordinance of the Council of the City of Palo Alto Repealing Chapter 5.30 ("Chlorofluorocarbon - Processed Food Packaging") and Adding a New Chapter 5.30 ("Expanded Polystyrene and Non-Recyclable Food Service Containers") to Title 5 ("Health and Sanitation") of the Palo Alto Municipal Code

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and purpose. The Council finds and declares as follows:

- (a) The prevalent use of polystyrene as a food service container product is increasing, largely bolstered by its affordability; however, production costs continue to rise due to increasing crude oil prices. While the California Integrated Waste Management Board (CIWMB) estimates that Californians use 165,000 tons of polystyrene each year for packaging and food service purposes alone, there is currently no economically feasible means of recycling the product in the City of Palo Alto. According to a 2000 CIWMB study only 0.2% of polystyrene food service packaging is recycled statewide.
- (b) There are two types of polystyrene commonly used as food service containers: oriented polystyrene (clear and rigid) and expanded polystyrene (opaque foam). The Palo Alto community throws away approximately 305 tons of expanded polystyrene containers each year, according to a Palo Alto Waste Composition Study conducted in May 2006. The Palo Alto Recycling Center has never been able to accept expanded polystyrene food service containers, and expanded polystyrene food service containers are not compatible with the new commercial composting service that commences on July 1, 2009.
- (c) On January 12, 2009, the Palo Alto Recycling Center stopped accepting expanded polystyrene peanuts and expanded polystyrene blocks commonly used for consumer goods packaging. Expanded polystyrene peanuts and expanded polystyrene blocks are considered to be more amenable to recycling than expanded polystyrene food service containers. Ongoing logistical and quality control challenges related to the minimal recycling market for expanded polystyrene make even the recycling program for peanuts and blocks infeasible. All expanded polystyrene materials must now be disposed of in a landfill.
- (d) Although expanded polystyrene is considered an inexpensive and effective product, it has many drawbacks and hidden costs which are deferred to the public and the environment. Food service polystyrene is a one-time use product that degrades extremely slowly in nature. Expanded polystyrene litter is not easily contained and is

often conveyed through storm drains to local creeks, the San Francisco Bay and the Pacific Ocean. Polystyrene waste constitutes 15% of the litter collected in storm drains, and is the second most abundant type of marine debris according to a 2004 CIWMB study.

- (e) Expanded polystyrene foam presents unique management issues because it is lightweight, floats, resists biodegradation, and easily breaks into smaller pieces. These small pieces, similar in size to plankton, are ingested by marine wildlife, leading to reduced appetite and nutrient absorption and possible death by starvation. According to a United Nations Environment Global Program of Action study, at least 162 marine species including most seabirds are reported to have eaten plastics and other litter.
- (f) On February 11, 2009, the San Francisco Bay Regional Water Quality Control Board listed two Palo Alto creeks, San Francisquito Creek and Matadero Creek, as having water quality that is impaired by trash, as defined by the Clean Water Act. The staff report recommending that the creeks be listed identifies expanded polystyrene as being one of the types of trash responsible for the impairment.
- (g) Both of the major chemicals used to produce expanded polystyrene, Benzene (a known human carcinogen) and Styrene (a possible carcinogen and neurotoxin), are suspected by the EPA and FDA to leach from polystyrene food containers, posing a threat to the environment and human health.
- (h) The City of Palo Alto desires to protect the natural environment, the health of its citizens, and the economy. This includes exercising environmental stewardship by reducing the amount of expanded polystyrene and non-recyclable plastic released into the City's ecosystem and beyond.
- (i) Non-recyclable materials pose a challenge to any environmentally and fiscally responsible solid waste management program. Regulation of food packaging is necessary to encourage a recyclable waste stream and to reduce the disposal of solid waste and the economic and environmental costs of waste management.
- (j) It is the intent of the Council to reduce the negative impacts of expanded polystyrene food service containers and encourage the use of recyclable alternatives through the implementation of this Ordinance.

SECTION 2. Chapter 5.30 (Chlorofluorocarbon – Processed Food Packaging) of the Palo Alto Municipal Code is hereby repealed in its entirety and a new Chapter 5.30 is added to read as follows:

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Chapter 5.30

EXPANDED POLYSTYRENE AND NON-RECYCLABLE FOOD SERVICE CONTAINERS

Sections:

5.30.010	Definitions
5.30.020	Prohibitions on the Use of Expanded Polystyrene and Non-Recyclable Plastic
5.30.030	Exemptions
5.30.040	Operative Dates
5.30.050	Severability
5.30.060	Penalties
5.30.070	Construction and Preemption

5.30.010 Definitions.

- (a) "City facilities" refers to any building, structure or vehicle owned or operated by the City of Palo Alto, its agents, departments and franchises.
- (b) "Disposable food service container" means single-use disposable product used by food vendors for serving or transporting prepared and ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, lids, trays and hinged or lidded containers. This does not include single-use disposable straws, utensils, or hot cup lids.
- (c) "Expanded Polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer, marked with recycling symbol #6, processed 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), sometimes incorrectly called Styrofoam[®], a Dow Chemical Company trademarked form of polystyrene foam insulation. In food service, expanded polystyrene is generally used to make cups, bowls, plates, and trays.
- (d) "Food vendor" means any establishment, located or providing food within the City of Palo Alto, which provides prepared and ready-to-consume food or beverages, for public consumption including but not limited to any store, supermarket, delicatessen, restaurant, retail food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, sidewalk or other outdoor vendor, or caterer.
- (e) "Non-Recyclable Plastic" means all plastics that do not meet the definition of "Recyclable Plastic".

- (f) "Prepared food" means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique, including but not limited to cooking, chopping, slicing, mixing, freezing, squeezing, or brewing, and which requires no further preparation to be consumed. Prepared food includes uncooked fruits or vegetables and any "take-out" food, or food consumed off the food vendor's premises. Prepared food does not include any uncooked meat, fish, poultry, or eggs.
- (g) "Recyclable Plastic" means all plastics that can be recycled, salvaged, composted, processed, or marketed by any means other than land-filling or burning, whether as fuel or otherwise, so that they are returned to use by society. Recyclable plastics include any plastic which can be feasibly recycled by the City's municipal recycling program and presently is limited to those plastics with the following recycling symbols: #1 - polyethylene terephthalate (PET or PETE), #2 - high density polyethylene (HDPE), #3 - polyvinyl chloride (PVC), #4 - low density polyethylene (LDPE), #5 - polypropylene (PP), #6 - polystyrene, except for the expanded version of polystyrene, and #7 - other plastics, including compostable plastics such as polylactic acid (PLA) For purposes of this Chapter, Recyclable Plastic does not include expanded polystyrene labeled with recycling symbol #6.

5.30.020 Prohibition on the Use of Polystyrene and Non-Recyclable Plastic.

- (a) Except as provided by section 5.30.030 food vendors are prohibited from providing prepared food in disposable food service containers made from expanded polystyrene or non-recyclable plastic.
- (b) Except as provided by section 5.30.030 all City facilities, City managed concessions, City sponsored events, and City permitted events are prohibited from using disposable food service containers made from expanded polystyrene or non-recyclable plastic.
- (c) Nothing in this Ordinance shall be interpreted to restrict the use of any form of fiber or paper disposable food service container, or the use of any form of biodegradable or compostable plastic food service container that meets the definition of Recyclable Plastic, in Section 5.30.010(g).

5.30.030 Exemptions

- (a) Foods prepared or packaged outside the City of Palo Alto are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Palo Alto are encouraged to follow the provisions of this Chapter.
- (b) Coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.
- (c) The director of Public Works, or his/her designee, may exempt a food vendor from the requirements of this Ordinance for a period of one year, upon showing by the food vendor that the conditions of this Ordinance would cause an undue hardship. An "undue hardship" includes, but is not limited to situations unique to the food vendor

where there are no reasonable alternatives to expanded polystyrene or non-recyclable plastic disposable food service containers and compliance with this Ordinance would cause significant economic hardship to that food vendor, or cause the food vendor to be deprived of a legally protected right.

- (d) A food vendor seeking an exemption application shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The Director may require the applicant to provide additional information to permit the Director to determine facts regarding the exemption application.
- (e) **Emergency Supplies and Service Procurement.** City facilities, food vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this chapter, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

5.30.040 Operative Dates.

All food vendors and City facilities must comply with the requirements of this Ordinance by April 22, 2010.

5.35.050 Severability.

If any provision or clause of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this chapter, and clauses of this chapter are declared to be severable.

5.35.060 Penalties

- (a) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction as set forth in Chapter 1.08 of the Palo Alto Municipal Code.
- (b) Each and every sale or other transfer of disposable food service containers made from expanded polystyrene or non-recyclable plastic shall constitute a separate violation of this Ordinance.
- (c) The remedies and penalties provided in this Section are cumulative and not exclusive.

5.35.070 Construction and Preemption

This Chapter and any of its provisions shall be null and void upon the adoption of any state or federal law or regulation imposing the same, or essentially the same, limits on the use of prohibited products as set forth in this Chapter. This Chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

SECTION 3. The City Council finds that the adoption of this Ordinance is subject to environmental review under provisions of the California Environmental Quality Act (CEQA) under Section 15070 of the CEQA Guidelines, ("Decision to Prepare a Negative or Mitigated Negative Declaration"). The Department of Planning and Community Environment prepared an Initial Study for this Ordinance, which confirmed that the Ordinance does not have the potential to result in a significant impact on the environment. Consequently, a Negative Declaration was prepared, made available for public review beginning August 29, 2008 through September 17, 2008 and is hereby adopted.

SECTION 4. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED: APRIL 27, 2009

PASSED: MAY 11, 2009

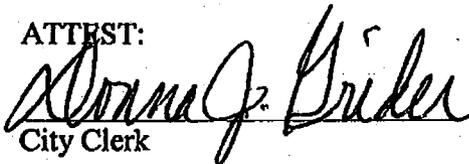
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SCHMID, YEH

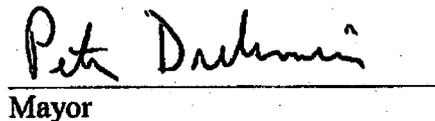
NOES:

ABSENT: MORTON

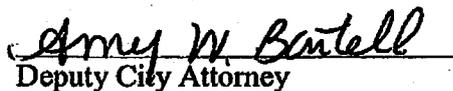
ABSTENTIONS:

ATTEST:

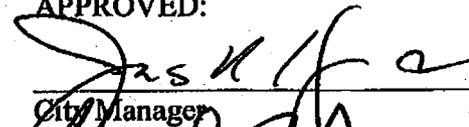

City Clerk

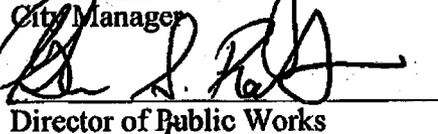

Mayor

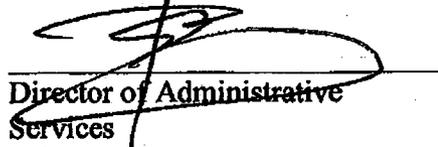
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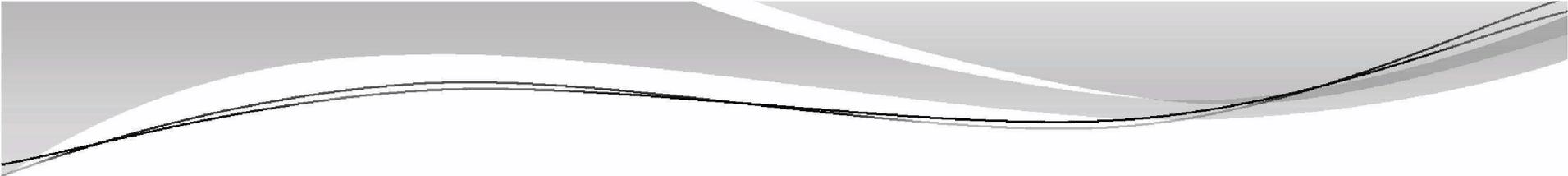

Deputy City Attorney

APPROVED:


City Manager


Director of Public Works


Director of Administrative
Services



Summary of Issues and Regional Efforts Regarding Bans on Plastic Bags and Styrofoam Containers

Sustainability Committee Meeting

March 3, 2010



Applicable Council Policies and Goals

- Ban Certain Materials from the Landfill
(Hayward's Climate Action Plan, Article 6.4)
- Encourage Waste Reduction
(Climate Action Plan Article 6.6)
- Keep Hayward Clean and Green



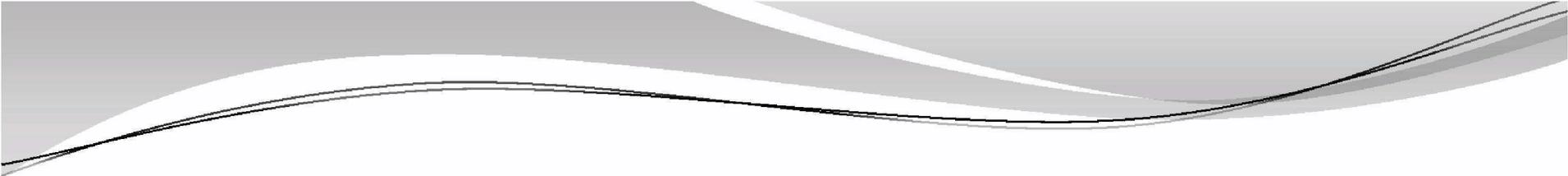
Concerns and Issues Regarding Plastic Bags

- “Perfect” trash specimens - plentiful, lightweight, catch the wind and get airborne easily, last a long time in the environment
- Pollute land, air, and water
- Menace to birds and aquatic animals
- Contain hydrocarbons



What Happens to Plastic Bags After the Initial Use?

- Very small number are taken back to the stores and recycled
- Collected in some municipalities (not Hayward) as part of the mixed recyclables and recycled
- Some reused once or twice, primarily for lining small trash cans, collecting pet waste, taking lunches to school or work, etc.
- Most end up in landfills
- Some end up in streets, sidewalks, parks, other open spaces...
- And eventually in storm sewers, creeks, the bay, and the ocean



What Plastic Bag Proponents Say?

- Plastic bags are ideal for the intended use - easy to manufacture and transport and inexpensive to purchase, thus less costly to consumers
- Easier to carry, even in higher quantities
- Water resistant
- Use less energy and water to manufacture compared with paper bags
- Consumers don't have to worry about taking the right quantity of bags to the market, unlike multiple use bags



Alternatives to Plastic Bags

- Paper Bags
 - Although they don't have *some* of the issues of plastic bags, paper bags have many of the issues that plastic bags have
 - More energy intensive and require more water to manufacture
 - Heavier, so require more energy to transport and more space to store them
- Compostable Bags
 - They don't last as long but have other concerns similar to plastic bags
- Reusable Bags
 - Durable Plastic Bags
 - Natural fiber-based bags (e.g., canvas)

Local Agencies Efforts to Limit Plastic Bags

- **San Francisco:** The first city to ban plastic bags
--Status: Ban successfully implemented
- **Oakland:** Plastic bag use banned in retailers with annual sales over \$1M
--Status: City was sued; Court suspended ban until City prepares an EIR
- **Berkeley:** Proposing a ban on plastic bags and a fee on paper; prepared a mitigated negative declaration
- **Palo Alto:** Issued a plastic bag ban last year.
--Status: Limited the scope and applicability of the ban after threat of lawsuit
- **San Jose:** Preparing an EIR for a ban on both plastic and paper bags, after the threat of lawsuit



Regional Efforts

- Green Cities California (a consortium of cities and StopWaste.org) preparing a Master Environmental Assessment (MEA) for banning plastic bags (City Council last month authorized joining GCC)
- Final MEA is expected this month
- MEA would help cities reduce time and cost of preparing full EIRs
- MEA, along with San Jose's EIR, can be strong tools for cities considering a ban



Concerns and Issues Regarding Styrofoam Containers

- Pollution potential similar to those of plastic bags
- Can break down in the environment, which makes them harder to remove
- Not easily recyclable



What Happens to Styrofoam After the Initial Use?

- Truly one-time-use products – rarely reused.
- Most end up in landfills
- Some end up in streets, sidewalks, parks, and other open spaces...
- Eventually in storm sewers, creeks, the bay, and the ocean



What Styrofoam proponents say?

- Styrofoam is ideal for the intended use since it is lightweight, easy to manufacture, and inexpensive to purchase; thus, less costly to consumers
- Can be used both for hot and cold beverages, as well as hot and cold food
- Moisture resistant so products last longer
- No readily available alternatives with the same price and performance points, but without the negatives

Alternatives to Using Styrofoam Containers

- Use *treated* paper containers
 - Treatment allows use for hot and cold beverages and hot and cold foods, but adds cost and the process could result in air pollution
 - Will not solve trash-related concerns
- Use compostable containers
 - Limited availability; more expensive
 - Will not solve litter-related issues
- Use PET and other clear plastic containers
 - Will not solve trash-related issues
 - Introduces other problems (e.g., suitability for hot food)



Local Agencies Efforts to Ban Styrofoam

- Berkeley: One of the first cities with a ban, adopted in 1990 (For many years minimally enforced)
- Oakland: Adopted in 2007
- San Francisco: Adopted in 2007
- Albany: Adopted in 2008
- Emeryville: Adopted in 2008
- Fremont: Ban is under evaluation
- Millbrae, Monterey, Palo Alto, Richmond, San Bruno, Santa Cruz, and Watsonville: Will go into effect in April 2010



Regional Approach

- Regional approach far more effective in reducing pollution and other environmental impacts
- Less negative impact on the economic competitiveness
- However, staff is not aware of any coordinated regional effort to ban the use of Styrofoam
- None of the City's neighboring agencies currently have such a ban (Although Fremont is considering one)



Economic and Fiscal Impacts of Banning Plastic Bags and Styrofoam

- Economic impact analysis not available at this time but can be prepared after MEA and EIRs completed
- Consumers would likely see a slight increase in costs if bans were enacted
- The bigger unknown is whether consumers would decide to shop in communities where the ban is not in place (primarily due to convenience factor)



Next Steps

- Committee should discuss the issues, both plastic and single use bags, as well as Styrofoam containers , and provide direction to staff
- Staff will review the MEA and EIRs when they become available
- Staff will also monitor the regional efforts and neighboring local jurisdiction ordinances
- Staff will return to the Committee at its December 1 meeting with an update and recommended options



Summary of Issues and Regional Efforts Regarding a Ban on Plastic Bags and Styrofoam Containers

Sustainability Committee Meeting

March 3, 2010

Sustainability Committee Monthly Meeting Topics for 2010

Presenting Department	Date	Topics	Climate Action Plan Action Number(priority)
DS	January 6, 2010	Annual Review of Green Building Ordinances and Implementation	Actions 4.1, 4.2, 4.3
DS		Bay Area Climate Collaborative (BACC)	
DS		Summary of Education and Outreach Efforts (Permit Center Green Display, Website, etc.)	Actions 9.1, 9.2, 9.3
DS <i>Sustainability Coordinator</i>	February 3, 2010	Introduction of Sustainability Coordinator and Initial Discussion on the Residential Energy Conservation Ordinance (RECO) and Commercial Energy Conservation Ordinance (CECO)	Actions 3.1(11), 3.2(12), 3.3(2)
DS		Review of Purpose and Productivity of the Sustainability Committee and 2010 Meeting Topics	
PW	March 3, 2010	Summary of Issues and Regional Efforts Regarding a Ban on Plastic Bags and Styrofoam Containers	Action 6.4(25)
DS	April 7, 2010	South Hayward BART Form-Based Code Parking Strategies Options	Action 1.3(23)
DS <i>Sustainability Coordinator</i>	May 5, 2010	Update on Development of a Residential Energy Conservation Ordinance (RECO) and Commercial Energy Conservation Ordinance (CECO)	Actions 3.1(11), 3.2(12), 3.3(2)
DS		Introduction of the Climate Action Management Team	CAP Implementation
DS <i>Sustainability Coordinator</i>	June 2, 2010	Overview of Community Outreach Plan	Actions 9.2*(10), 9.3*(11)
DS <i>Sustainability Coordinator</i>	July 7, 2010	Large Commercial Energy Users Efficiency Program Development	Actions 3.9(1), 5.2(5)
	August 2010	No Meeting – annual recess	
DS <i>Building Division staff</i>	September 1, 2010	Update on State Green Building Code and its Impacts on Hayward's Green Building Ordinance, including Solar Requirements	Actions 4.1(9), 4.2(7), 5.3(8)
DS <i>Sustainability Coordinator</i>	October 6, 2010	Draft Residential Energy Conservation Ordinance (RECO) and Commercial Energy Conservation Ordinance (CECO)	Actions 3.1(11), 3.2(12), 3.3(2)
DS <i>Sustainability Coordinator</i>	November 3, 2010	CaliforniaFirst Pilot Financing Program Implementation and Program Continuation	Actions 3.7(3), 3.8(4), 3.9(1), 5.1(15), 5.2(5),
PW	December 1, 2010	Increase Participation in Food Scraps Collection, Recycling, and Construction and Demolition Debris Programs	Actions 6.1(14), 6.2(13), 6.3(6), 6.6(19)
		Update on Ordinances to Ban Plastic Bags and Styrofoam containers	Action 6.4(25)

*emissions reductions not quantified in the Climate Action Plan