

Agenda Report Reviewed by:
City Manager: 

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM

Meeting Date: March 19, 2019
To: Honorable Mayor and City Councilmembers
From: Engineering Manager Henry J. Mikus
Subject: Approval of Waiving of Second Reading and Adoption of Ordinance Number 1121 to Prohibit Use and Sale of Disposable Food Service Ware and Other Products Containing Polystyrene Foam
Recommendation: That the Council waive the Second Reading regarding the Ordinance Number 1121 to Prohibit Use and Sale of Disposable Food Service Ware and Other Products Containing Polystyrene Foam, and Approve the Ordinance.
Funding: Currently Budgeted: Yes No N/A
Net General Fund Cost: N/A Amount: N/A

Introduction:

This item is to request that the City Council Approve and Waive Second Reading and Approve Adoption of Ordinance Number 1121 to Prohibit Use and Sale of Disposable Food Service Ware and Other Products Containing Polystyrene Foam.

Background:

At the March 5, 2019 meeting, Council conducted a public hearing, received public comment and deliberated on the proposed ordinance. Council discussed changes to sections 05, 06D, 06E, and 06F, but approved the waiving of the first reading and introduced the ordinance, and directed staff to return for the Second Reading and final adoption with the amendments.

Discussion:

The City of Sebastopol is providing leadership regarding ordinance adoption, as this is the first jurisdiction among the SCWMA membership to consider the ordinance. It is clear implementation would work best on a regional basis in order to minimize confusion and maximize consistency across jurisdictional boundaries. With this in mind, in order to allow sufficient time for fellow SCWMA members to do their diligence and adoption process, the ordinance effective date has been set to be six (6) months from the date of Council adoption.

Recommendation: That Council approve waiving of the second reading and approve and adopt Ordinance Number 1121 to Prohibit Use and Sale of Disposable Food Service Ware and Other Products Containing Polystyrene Foam with an effective date six (6) months from the date of adoption.

Attachments:

Revised Ordinance to Prohibit Use and Sale of Disposable Food Service Ware and Other Products Containing Polystyrene Foam

ORDINANCE

**An Ordinance to Prohibit Use and Sale of Disposable Food Service Ware and Other Products
Containing Polystyrene Foam**

WHEREAS, public agencies have a duty to protect the natural environment, the economy, and the health and safety of residents; and

WHEREAS, products made from expanded polystyrene foam are not biodegradable, returnable or recyclable; and

WHEREAS, there is a prevalence of polystyrene foam debris littering parks and public places, streets and roads, waterways, storm drains and beaches, which results in a high financial and environmental cost to residents, wildlife and natural resources; and

WHEREAS, eliminating the use of polystyrene foam and other non-compostable and non-recyclable items will maximize the operating life of landfills, lessen the economic and environmental costs of waste management for businesses and residents of Sebastopol and elsewhere within Sonoma County, and further protect the public health and safety of residents, the natural environment, waterways and wildlife.

NOW, THEREFORE, the City Council of the City of Sebastopol does hereby ordain as follows:

Section 1. Recitals. The above recitals are hereby found to be true and correct and are incorporated herein by this reference.

Section 2. Amendment. The ordinance is hereby added to the Sebastopol Municipal Code to read in full as set forth in Exhibit "A", attached hereto and incorporated herein by this reference.

Section 3. CEQA. This ordinance is exempt from environmental review under the California Environmental Quality Act 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 this ordinance will have a significant negative effect on the environment. Further, the proposed Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for the protection of the environment because it will strengthen the City's regulations regarding the

distribution and sale of polystyrene products. Thus, this Ordinance is categorically exempt from the requirements of CEQA under Section 15308 of Title 14 of the California Code of Regulations as an action by a regulatory agency for the protection of the environment.

Section 4. 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 5. Effective Date. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same or a summary thereof to be published as required by law. This Ordinance shall take effect on and after six (6) months from the date of adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Sebastopol, California, at a regular meeting of the City Council held on the 19th day of March, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Neysa Hinton, Mayor

ATTEST:

Mary Gourley, Assistant city Manager/City Clerk, MMC

APPROVED AS TO FORM:

Larry McLaughlin, City Attorney

EXHIBIT "A"

Section 01. Findings and intent.

Section 02. Definitions.

Section 03. Prohibited food service ware and products.

Section 04. Prohibited retail sales.

Section 05. Nonfood packaging material.

Section 06. Required compostable or recyclable disposable food service ware.

Section 07. Implementation—contracts and leases.

Section 08. Exemptions.

Section 09. Enforcement.

Section 10. Violations.

Section 11. Severability.

Section 12. No conflict with Federal or State law.

Section 13. Preemption.

Section 14. Effective Date.

01. Findings and intent.

The City finds and declares:

- (A) The City has a duty to protect the natural environment, our economy, and the health of its citizens.
- (B) Products made from expanded polystyrene foam are not biodegradable, returnable or recyclable. Polystyrene foam easily breaks up into smaller pieces and, because it is lightweight, is carried by the wind even when it has been disposed of properly.
- (C) There is a prevalence of polystyrene foam debris littering our parks and public places, streets and roads, waterways, storm drains and beaches. This litter exists at a financial cost to residents and an environmental cost to our natural resources.
- (D) The City is situated near the Sonoma Coast and near waterways which drain to the marine environment. Marine animals and birds often confuse polystyrene foam pieces as a food source, which, when ingested, can impact the digestive track which often leads to death.

(E) Discarded polystyrene constitutes a portion of the City's waste stream. Laws, policies and regulations pertaining to this material, which is difficult to recycle, have become a vital component in the efforts to reduce the amount of disposed waste.

(F) It is not economically feasible to recycle most polystyrene in the City. Eliminating the use of polystyrene foam and other non-compostable and non-recyclable items will maximize the operating life of our landfills and will lessen the economic and environmental costs of waste management for businesses and citizens of Sonoma County.

(G) According to the California Department of Resources Recycling and Recovery (CalRecycle), polystyrene's overall environmental impacts were the second highest of any product, behind only aluminum.

(H) Alternative products exist for almost all uses of polystyrene foam.

(I) Restricting the use of polystyrene foam products will further protect the public health and safety of the City's residents, the natural environment, waterways, and wildlife.

02. Definitions.

Unless otherwise expressly stated, whenever used in this chapter the following terms shall have the meanings set forth below:

"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, as may be amended.

"Biodegradable" means all materials in the entire product or package will completely break down and return to nature, i.e., become part of usable compost and/or decompose into elements found in nature within a reasonably short period of time after customary disposal. "Biodegradable," as used herein, shall include but is not limited to, products that meet the then-applicable ASTM standards for compostability.

"City" means all the territory within the City of Sebastopol, State of California.

"City contractors and lessees" means any person or entity that has a contract with the City for works or improvements to be performed, for a franchise, concession or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the City.

“City facilities” means any park, building, structure or vehicles owned or operated by the City, its agent, agencies, departments and franchisees.

“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 or polystyrene foam coolers and ice chests that are intended to be reusable.

“Food provider” means any vendor, business, organization, entity, group or individual, and including retail food establishments, located or providing food within the City that offers food or beverage to the public.

“Person” means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.

“Polystyrene foam” means blown polystyrene and expanded and extruded foams (sometimes called Styrofoam™) 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-blown 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 prepared for consumption on the food provider’s premises or 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.”

“Recyclable” means material that can be sorted, cleansed, and reconstituted using recycling collection programs available in Sonoma County for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

“Retail vendor” means any store or other business that sells goods or merchandise located or operating within the City.

“Reusable” means materials that will be used more than once in its same form by the customer, retail vendor or other reuse program. Reusable food service ware includes: food and beverage containers,

packages and trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor or reused by the customer and that are provided as take-out containers. Reusable also includes durable containers, packages or trays used on-premises, returnable containers brought back to the food vendor and those intended to be taken home by the consumer for reuse, including all containers, bowls, plates, trays, cartons, cups, and other items that are designed for prolonged use, including, but not limited to, durable plastic, ceramic, glass, porcelain, and metal food service ware.

“Special event promoter” means an applicant for any special event permit issued by the City, or any City employee(s) responsible for any organized special event in the City.

03. Prohibited food service ware and products.

On and after six (6) months from the date of adoption:

- (A) 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.
- (B) City facilities, and any person renting a city facility, shall not provide prepared food in disposable food service ware that contains polystyrene foam.
- (C) City departments may not purchase, acquire or use disposable food service ware that contains polystyrene foam.
- (D) City contractors and lessees may not use disposable food service ware that contains polystyrene foam.

04. Prohibited retail sales.

No retail vendor or special event promoter shall sell, rent or otherwise provide any disposable food service ware which is composed in whole or in part of polystyrene foam, except as exempted in Section 08. In addition, no retail vendor shall sell, rent or otherwise provide the following:

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

05. Nonfood packaging material.

It shall be a policy goal of the City to promote and encourage, on a voluntary basis, the elimination of all polystyrene foam packaging. Where elimination is not possible, the City encourages reuse. Business establishments located outside the City are encouraged to eliminate use of any packaging that utilizes polystyrene foam, including both block polystyrene foam or packing peanuts; and to eliminate the purchase, use, distribution or sale, for home or personal use, any packaging which utilizes polystyrene foam.

06. Required compostable or recyclable disposable food service ware.

On and after six (6) months from the date of adoption:

- (A) All food providers utilizing any disposable food service ware shall use, when such products are commercially available, a compostable product that is accepted at local compost facilities or recyclable product.
- (B) All City facilities and departments using any disposable food service ware shall use compostable or recyclable disposable food service ware.
- (C) City contractors and lessees using any disposable food service ware shall use compostable or recyclable disposable food service ware in City facilities while performing under a City contract or lease.
- (D) All food providers shall only provide lids, cutlery, to-go condiment packages, and paper straws upon request of customers.
- (E) All food providers are encouraged to provide up to \$0.25 credit for customers bringing their own reusable containers for to-go items.
- (F) All food providers are encouraged to charge a 'take out fee' of up to \$0.10 for any combination of disposable cups, lids, straws, and/or utensils. This fee is intended to offset the potential cost difference of compostable or recyclable food service ware.

07. Implementation—City contracts and leases.

The City Manager or his or her designee is authorized to promulgate regulations, guidelines and forms and to take any and all other actions reasonable and necessary to enforce this chapter.

08. Exemptions.

- (A) The City Manager or his or her designee may exempt a food provider, retail vendor or special event promoter from the requirements of this chapter for a one-year period upon showing that this chapter would create an undue hardship or practical difficulty not generally applicable to other persons in

similar circumstances. The City Manager or his or her designee shall put the decision to grant or deny a waiver in writing and it shall be final.

(B) A food provider, retail vendor or special event promoter granted an exemption must reapply prior to the end of the one-year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

(C) 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 City Manager or his or her designee may require the applicant to provide additional information to determine facts regarding the exemption application.

(D) The City Manager or his or her designee may approve the exemption application, in whole or in part, with or without conditions.

(E) Foods prepared or packaged outside the City and sold inside the City are exempt from the provisions of this chapter. This exemption shall not apply to food providers operating in City facilities, pursuant to City contracts, or as a special event promoter in the City. Purveyors of food prepared or packaged outside the City are encouraged to follow the provisions of this chapter.

(F) Notwithstanding the prohibition on retail sales of products containing polystyrene foam, products which pose a small risk of becoming litter or in which polystyrene foam is included for insulating or flotation purposes and is completely encased in more durable material are exempt from the provisions of this chapter. Examples include surfboards, boats, life preservers, construction materials, craft supplies and durable coolers not principally composed of polystyrene.

(G) Packaging for meat and fish is exempt from the provisions of this chapter.

09. Enforcement.

Enforcement of this chapter shall be as follows:

(A) The City Manager, or designee, shall have primary responsibility for enforcement of this chapter and shall have authority to issue citations for violation of this chapter. The City Manager, or designee, is authorized to establish regulations or administrative procedures to obtain compliance with this chapter, including, but not limited to, inspecting any vendor's premises to verify compliance in accordance with applicable law.

(B) Anyone violating or failing to comply with any of the requirements of this chapter or of any regulation or administrative procedure authorized by it shall be guilty of an infraction.

(C) The City Attorney may seek legal, injunctive, or any other relief to enforce this chapter and any regulation or administrative procedure authorized by it.

(D) The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

(E) The City may inspect any retail vendor's or special event's premises to verify compliance with this chapter.

10. Violations.

Violations of this chapter shall be enforced as follows:

(A) For the first violation, the City Manager, or designee, upon determination that a violation of this chapter has occurred, shall issue a written warning notice to the food provider, retail vendor or special event promoter specifying that a violation of this chapter has occurred, along with the appropriate penalties in the event of future violations. The vendor will have 30 days to comply.

(B) The following penalties shall apply for subsequent violations of this chapter:

(1) A fine not exceeding \$100.00 for the first violation 30 days after the first warning.

(2) A fine not exceeding \$200.00 for the second violation 60 days after the first warning.

(3) A fine not exceeding \$500.00 for the third violation 90 days after the first warning, and for every 30 days not in compliance.

(C) Vendors or special event promoters who violate this chapter in connection with commercial or noncommercial special events shall be assessed fines as follows:

(1) A fine not exceeding \$200.00 for an event of 100 to 200 persons.

(2) A fine not exceeding \$400.00 for an event of 201 to 400 persons.

(3) A fine not exceeding \$600.00 for an event of 401 to 600 persons.

(4) A fine not exceeding \$1,000 for an event of 601 or more persons.

(5) The special events permit listing the number of persons expected to attend the special event shall be the basis upon which fines are assessed pursuant to this section.

11. Severability.

The provisions of this chapter are declared to be severable and if any provision, sentence, clause, section or part of this chapter is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this chapter or their application to persons and circumstances.

12. No conflict with Federal or State law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power or duty in conflict with any Federal or State law.

13. Preemption.

The provisions of this chapter shall be null and void on the day that California Statewide legislation or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent California State or Federal administrative agency issues and promulgates regulations, preempting such action by the City. The City shall determine by ordinance whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Section 14. Effective Date.

The City Clerk shall certify to the adoption of this Ordinance and shall cause the same or a summary thereof to be published as required by law. This Ordinance shall take effect on and after six (6) months from the date of adoption.