

TO: HONORABLE CITY COUNCIL 

FROM: CITY MANAGER

DEPARTMENT: PUBLIC WORKS

DATE: APRIL 27, 2009

CMR:201:09

REPORT TYPE: PUBLIC HEARING

SUBJECT: Approval of a Negative Declaration and Adoption of Ordinance 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

EXECUTIVE SUMMARY

Staff is recommending that Council approve a Negative Declaration and adopt the proposed Ordinance adding a new chapter 5.30 to the Palo Alto Municipal Code to restrict food vendors from providing prepared food in disposable food service containers made from expanded polystyrene or non-recyclable plastic to customers. The Ordinance would help reduce the amount of litter from expanded polystyrene entering local waterways.

RECOMMENDATION

Staff recommends that Council:

- 1) approve a Negative Declaration for the proposed Ordinance restricting food vendors use of Expanded Polystyrene and Non-Recyclable Food Service Containers (Negative Declaration, Attachment A); and
- 2) adopt the proposed Ordinance amending Chapter 5.30 (“Chlorofluorocarbon Processed Food Packaging”) of Title 5 (Health and Sanitation) of the Palo Alto Municipal Code to prohibit food vendors from providing food in disposable food service containers made from expanded polystyrene or non-recyclable plastic to customers (“Expanded Polystyrene and Non-Recyclable Food Service Containers”, Attachment B). The proposed Ordinance would eliminate the use of expanded polystyrene and non-recyclable food service containers by food vendors in Palo Alto.

BACKGROUND

Because of the undesirable effects of plastic litter on the environment (CMR:158:08), staff has been developing potential regulatory restrictions on use of disposable expanded polystyrene and non-recyclable plastic food containers. Polystyrene litter is a threat to natural ecosystems due to its light weight and its tendency to break apart into very small pieces that are similar in size and appearance to the food of some wildlife species. The main chemical constituent of polystyrene is the styrene

monomer which has been identified as a suspected carcinogen and neurotoxin by the United States Environmental Protection Agency. Palo Alto is currently unable to accept expanded polystyrene in its curbside recycling program, leading to its disposal in landfills or as litter in the environment. The proposed Ordinance (Attachment B) would restrict the use of expanded polystyrene and other non-recyclable plastics for a specific use, disposable food service containers, for which alternatives are readily available.

DISCUSSION

The primary goal of the proposed Ordinance is to restrict the use of expanded polystyrene disposable food service containers by food vendors, creating a shift to multiple-use containers where possible. Where multiple-use containers are not viable, the desired shift is to recyclable plastic or fiber (paper) containers. Although all single-use products produce negative aesthetic effects when not disposed of properly, the proposed Ordinance addresses the unique problems presented by expanded polystyrene with respect to its impacts on the environment.

The definition of Food Vendor contained in the proposed Ordinance is broader than traditional food service establishments and includes retail food vendors, cafeterias, sidewalk and other outdoor food vendors, food vehicles, and caterers. Foods that are prepared or packaged outside of the City of Palo Alto are exempted. The proposed food service container restriction is limited to containers used for prepared and ready-to-consume food, and would not apply to single-use disposable straws, utensils, or hot cup lids. The proposed Ordinance would also prohibit the use of expanded polystyrene or non-recyclable plastic food service containers at City facilities, City managed concessions, City sponsored events, and City permitted events. Food vendors would be required to comply within one year of the effective date of the proposed Ordinance; but the City may grant exceptions on a case by case basis exempting a vendor from compliance for up to one year based on undue hardship in certain specific situations.

Extrapolating from a survey of 118 Palo Alto Food Vendors, staff estimates that approximately 30% of all Palo Alto Food Vendors currently use expanded polystyrene or non-recyclable plastic food service containers (Attachment C). Staff sent a letter summarizing the proposed Ordinance to 375 Palo Alto Food Vendors and coordinated with the Chamber of Commerce to hold a stakeholder meeting to discuss the proposed Ordinance. Approximately 10 food vendor representatives attended and no major concerns were raised. A number of other cities have also prohibited the use of expanded polystyrene in disposable food containers. Attachment D lists several ordinances from other cities which staff evaluated while developing Palo Alto's proposed Ordinance.

RESOURCE IMPACT

Palo Alto Public Works staff inspects large food vendors regularly and implementing the proposed Expanded Polystyrene Ordinance at those facilities will not significantly increase staff workload. For small food vendor establishments, enforcement would largely be complaint based.

POLICY IMPLICATIONS

The proposed Ordinance is consistent with the City's Zero Waste Policy, Climate Action Plan, Clean Bay Plan and Comprehensive Plan.

ENVIRONMENTAL REVIEW

The proposed Ordinance is subject to environmental review under provisions of the California Environmental Quality Act (CEQA). An Initial Study (IS) has been completed and a Draft Negative Declaration (DND) has been prepared for this project in accordance with the CEQA requirements and it was determined that the project could not have a negative impact on the environment. The Draft Negative Declaration was circulated for public comment from August 29, 2008 to September 18, 2008; no comments were received during the public comment period.

Since the circulation of the DND and IS, the scope of the proposed draft Ordinance has been modified. The project that was analyzed in the circulated DND and IS included banning all polystyrene food containers, which included Expanded Polystyrene (foam) and Oriented Polystyrene (clear or solid plastic). The revised draft Ordinance proposes a ban on Expanded Polystyrene containers, but does not ban Oriented Polystyrene containers. The original environmental analysis that was done (DND and IS) is still applicable to the proposed Ordinance. The scope of the project has been reduced and therefore would have less impact than the original proposed project.

On July 14 2008, an email message providing information from a Seattle Public Utilities report was received from the American Chemistry Council (ACC). The ACC referenced the report as showing that a ban on polystyrene foodservice products would increase greenhouse gas emissions, non-renewable energy, and waste generated. Staff is familiar with the referenced report (2008 Seattle Public Utilities Report, prepared by Herrera Environmental Consultants, Inc.) and is clarifying that this statement was applicable to a limited ban of disposable expanded polystyrene food service clamshells. The statement does not apply to a ban of all expanded polystyrene (foam) containers, which would include clamshells as well as other containers such as plates, bowls, and cups. The Seattle report specifically cautioned that users should take care to avoid extrapolating the clamshell greenhouse gas emissions results to other food service products. The warning against extrapolating the clamshell results was further confirmed through direct Staff communications with the consultants who prepared the report. Although the ACC's correspondence was not in response to the City's proposed ordinance and DND, Staff has reviewed the issues that were raised and believes that they are not in conflict with the proposed Ordinance or environmental review.

ATTACHMENTS

- Attachment A: Environmental Review of Draft Expanded Polystyrene and Non-Recyclable Food Service Container Usage (Negative Declaration)
- Attachment B: Ordinance to Prohibit the Use of Expanded Polystyrene and Non-Recyclable Plastic
- Attachment C: Palo Alto Food Vendor Disposable Food Service Container Summary
- Attachment D: Analysis of Other City Ordinances Regarding Polystyrene Disposable Food Containers

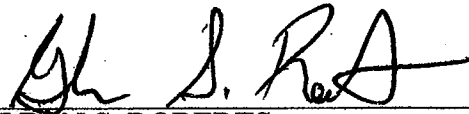
Copies of this staff report and attachments can be viewed on-line at <http://www.cityofpaloalto.org/knowzone/agendas/council.asp> or by contacting the Environmental Compliance Division Manager, Phil Bobel, at 650-329-2285.

PREPARED BY:



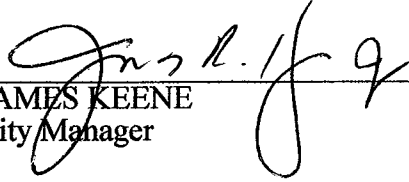
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