



DATE: January 28, 2014

AGENDA ITEM # 5

TO: City Council
FROM: Aida Fairman, Associate Civil Engineer
SUBJECT: Expanded Polystyrene ban

RECOMMENDATION:

Adopt Ordinance No. 2014-397, adding Chapter 6.44 – Polystyrene Foam Food Service Container-Ware

SUMMARY:

Estimated Fiscal Impact:

Amount: \$3,000

Budgeted: Yes; Solid Waste Fund (Approved at the January 14, 2014 Council meeting)

Public Hearing Notice: None

Previous Council Consideration: January 8, 2013, January 22, 2013, February 26, 2013, March 26, 2013, December 10, 2013, and January 14, 2014

CEQA Status: Negative Declaration

Attachment:

1. Ordinance No. 2014-397

BACKGROUND

On January 14, 2014, the City Council adopted Resolution No. 2014-01, certifying the City of San Jose Negative Declaration for expanded polystyrene foam food container-ware, and introduced and waived further reading of Ordinance No. 2014-397 (Attachment 1). The implementation date selected for the EPS ban was established as July 4, 2014.

DISCUSSION

This is the second reading of Ordinance No. 2014-397. The ordinance will go into effect on July 4, 2014.

Outreach will be conducted after the ordinance is adopted, consisting of mailers, announcement in the City's website and in the Town Crier, and other efforts as needed.

FISCAL IMPACT

The City Council approved \$3,000 at the January 14, 2014 Council meeting for the outreach of the EPS ban. The unspent funds will be returned to the Solid Waste Fund at the end of FY 2013/14.

PUBLIC CONTACT

The Chamber of Commerce and the Los Altos Village Association received a copy of this report.

Posting of the meeting agenda serves as notice to the general public.

ORDINANCE NO. 2014-397

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LOS ALTOS ADDING CHAPTER 6.44 TO THE LOS ALTOS
MUNICIPAL CODE TO PROHIBIT THE USE OF
POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE
CONTAINER-WARE BY FOOD PROVIDERS**

WHEREAS, plastic debris and in particular expanded polystyrene foam (“EPS”) is a distinctive litter concern because it is lightweight, floats, and readily travels from land to inland waterways and out to the ocean where it breaks down into small pieces to be mistaken for food by birds and other marine wildlife; and

WHEREAS, EPS disposable food service ware comprises a majority of EPS litter observed in storm drains; and

WHEREAS, the proposed ban of EPS disposable food service ware would require food providers to use alternative disposable food service ware that should result in a reduction of EPS litter, reduce the risk of harm to aquatic wildlife, and improve water quality in the City of Los Altos creeks and the Southern San Francisco Bay; and

WHEREAS, on January 14, 2014, prior to taking action on the Ordinance, the City of Los Altos City Council reviewed, considered and adopted by separate Council resolution, the proposed Negative Declaration analyzing the regional environmental impacts of the Ordinance to ban EPS disposable food service ware or food container-ware.

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

SECTION 1. AMENDMENT OF CODE: Chapter 6.44 “Polystyrene Foam Disposable Food Service Ware” is hereby added as follows:

“Chapter 6.44 – POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE

6.44.010. – Definitions.

The definitions set forth in this Section shall govern the application and interpretation of this Chapter 6.44.

- A. “Customer” means a person obtaining prepared food from a food provider.
- B. “Disposable food service ware” or “food container” means a container or single-use disposable product that is used, or intended to be used, to hold prepared food. “Disposable food service ware” or “food container” includes, but is not limited to, plates, trays, cups, bowls, and hinged or lidded containers (clamshells) and EPS coolers or ice chests which are not wholly encapsulated or encased within a more

durable material. Disposable food service ware does not include straws, utensils or drink lids.

- C. “Food provider” means any establishment, vendor, business, organization, entity, group or individual located or operating in the City of Los Altos that offers prepared food or beverages, regardless of whether there is a charge for the food or beverage: (1) to the public for consumption on or off its premises; (2) as a catered event; and/or (3) at cafeterias of private schools and places of employment, whether or not such establishments are open to the general public. “Food provider” includes, but is not limited to, City-sponsored events, City-permitted events, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, pubs, coffee shops, convenience stores, liquor stores, supermarkets, delicatessens, fraternal clubs serving the public, itinerant restaurants, mobile food vendors, vehicles or carts, or roadside stands.
- D. “Vendor” means any store or business which sells or offers goods or merchandise, located or operating within the City of Los Altos.
- E. “Polystyrene foam” means the thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). “Polystyrene foam” is commonly made into disposable food service ware products. “Polystyrene foam” does not include clear or solid polystyrene (oriented polystyrene).
- F. “Prepared food” means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. “Prepared food” does not include (1) any raw, uncooked meat products or fruits or vegetables unless it can be consumed without further preparation; or (2) prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.

6.44.020. – Polystyrene Foam Disposable Food Service Ware Prohibited.

On or after **July 4, 2014**, a food provider shall not dispense prepared food to a customer in a polystyrene foam food container.

On or after **July 4, 2014**, polystyrene foam food containers and polystyrene foam service ware shall not be sold or provided by any vendor in the City of Los Altos.

6.44.030. – Exemptions to the Polystyrene Foam Disposable Food Service Ware Prohibition.

- A. Raw eggs and raw, butchered meat, fish, or poultry that is sold from a butcher case or a similar retail appliance.
- B. A food provider may seek an exemption from the prohibition under Section 6.44.030 due to a “unique packaging hardship” under Subsection B of this Section or a “financial hardship” under Subsection C of this Section.
- C. The food provider must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a “unique packaging hardship” exemption.
- D. The food provider must demonstrate both of the following to qualify for a “financial hardship” exemption: (1) a gross income under \$300,000 on their annual income tax filing for the most recent tax year; and (2) with respect to each specific and necessary polystyrene foam disposable food service ware, that there is no feasible alternative that would cost the same or less than the polystyrene foam disposable food service ware.
- E. The food provider may submit a written application for an exemption on a form provided by Public Works. The Director of Public Works (“Director”) may require the applicant to submit additional information or documentation to make a determination regarding the exemption requested. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The food provider or vendor must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Director shall be final and is not subject to appeal.

6.44.040. – Administrative penalty.

A penalty may be imposed upon findings made by a City’s code enforcement officer that any food provider has provided a “disposable food service ware” or “food container” in violation of this Chapter. The amount of penalty and the penalty procedures are contained in the Los Altos Municipal Code, Chapter 1.30, entitled “Administrative Citations and Orders.”

SECTION 2. CEQA REVIEW.

On September 10, 2013, the City of San Jose adopted a Program Initial Study (IS) and Final Negative Declaration (ND) that analyzed the impacts of this polystyrene ordinance if adopted in cities throughout the County of Santa Clara. The IS and ND was adopted

pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq. (“CEQA”) and the CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 et seq. It is incorporated by reference herein.

Pursuant to Section 15096 of the CEQA Guidelines, the City of Los Altos acts as a responsible agency for adoption of this ordinance within the City of Los Altos. Upon independent review of the IS/ND and all the evidence before it, the City Council makes the following findings:

1. The IS and ND are complete, correct, adequate, and prepared in accordance with the public comment period; and
2. On the basis of the IS and ND, and public comment received by the City of San Jose, there is no substantial evidence that the project as proposed will have a significant effect on the environment; and
3. Adoption of this ordinance and analysis of the IS and ND reflects the independent judgment of the City Council of the City of Los Altos; and
4. None of the conditions listed in CEQA Guidelines, Section 15162(a), are applicable to adoption of this Ordinance, and adoption of this Ordinance is an activity that is part of the program examined by the IS and is within the scope of the project described in the IS and ND; and
5. A Notice of Determination shall be filed pursuant to CEQA Guidelines, Sections 15094 and 15096.

SECTION 3. SEVERABILITY. If any provision of this Chapter or the application of such provision to any person or in any circumstance shall be held invalid, the remainder of this Chapter, or the application of such provision to person or in circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 4. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 5. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 6. EFFECTIVE DATE. This ordinance shall be effective on **July 4, 2014**.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on January 14, 2014 and was thereafter, at a regular meeting held on January 28, 2014 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Attest:

Jon Maginot, CMC, CITY CLERK

Megan Satterlee, MAYOR