



MEMORANDUM

TO: CITY COUNCIL

FROM: TERESA MCCLISH, COMMUNITY DEVELOPMENT DIRECTOR

BY: MATTHEW DOWNING, ASSOCIATE PLANNER

SUBJECT: CONSIDERATION OF AN ORDINANCE REGULATING EXPANDED POLYSTYRENE FOOD CONTAINERS AND PRODUCTS; LOCATION – CITYWIDE; APPLICANT – CITY OF ARROYO GRANDE

DATE: JANUARY 26, 2016

RECOMMENDATION:

It is recommended the City Council introduce an Ordinance adding Chapter 8.34 to the Arroyo Grande Municipal Code prohibiting the use of expanded polystyrene food or drink containers and the retail sale of non-encased expanded polystyrene products.

IMPACTS ON FINANCIAL AND PERSONNEL RESOURCES:

Development of the proposed Ordinance had minimal impacts on personnel resources. The regulation of expanded polystyrene will have little direct fiscal impact on the City, although it will generate some costs for enforcement of the regulations. The majority of enforcement costs are anticipated to peak during the first year of implementation until businesses adapt to the regulations. This item is not identified in the Critical Needs Action Plan.

BACKGROUND:

On October 13, 2015, the City Council provided direction to staff to move forward with an Ordinance prohibiting the sale and use of expanded polystyrene foam (EPS) products within the City.

Over 80 cities and counties in California have adopted regulations focused on restricting the use of food and drink containers made from EPS. Some of those agencies with regulations have taken the additional step of prohibiting the retail sale of most EPS products within the city. Most agencies cite in their ordinances the environmental effects of EPS as a basis for regulation. First, EPS is made of non-renewable petroleum products. Secondly, food and drink containers made from EPS are uniquely problematic when they become litter as EPS is a lightweight, durable material that is not biodegradable. Its foam structure allows it to break easily into small pieces, making it difficult and expensive to remove from the environment. Additionally, these pieces can be harmful to fish and wildlife as it is often mistaken as food and ingested.

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According to the California Department of Transportation, EPS comprises approximately 15% of storm drain litter. It can be difficult, however, to approximate the exact amount of EPS in storm drains, waterways and oceans due to the small size of the material when broken down. A study published in 2011 found that 71% of all the plastic flowing through the Los Angeles and San Gabriel Rivers is foam. It is the second most common form of beach debris in California, according to a study conducted in Orange County. Also, several studies approximate that plastic products, including EPS, make up 80-90% of floating marine debris. The City contains numerous creeks and other waterways and a significant amount of EPS is found and discarded during creek cleanups by local volunteer groups.

In addition to reducing the amount of harmful litter entering local waterways, cities also typically cite the improved potential for recycling opportunities and diverting trash from landfills as a basis for an ordinance. EPS products are challenging to recycle due to a lack of recycling facilities and difficulties with recycling EPS that has been in contact with food. EPS products are not currently recycled at the Cold Canyon landfill. There is also a clear, non-expanded form of polystyrene used in food service called "oriented" or "rigid" polystyrene. These polystyrene containers are recycled at the Cold Canyon landfill even after having been in contact with food.

Locally, the Cities of San Luis Obispo and Pismo Beach have adopted ordinances regulating the use of EPS. Morro Bay has developed an ordinance, which is anticipated to be considered by the City Council this month.

ANALYSIS OF ISSUES:

Proposed Regulations

The proposed Ordinance would prohibit any vendor within the City from selling or otherwise providing an EPS product that is not wholly encapsulated or encased with a more durable material. This prohibition would include, but not be limited to, cups, plates, bowls, trays, clamshells and other products intended primarily for food service use. It additionally includes coolers, containers, ice chests, shipping boxes, packing peanuts, or other packaging materials. Exemptions to these regulations are allowed in certain instances, such as foods prepared outside the City, trays for raw meat, fish and other raw food, and products encapsulated or encased by more durable materials.

Community Outreach

In review of other communities' ordinances staff noted several arguments on both sides of the issue. Those in opposition to EPS prohibitions are typically from the business community and involve the increased costs of food containers made of different materials and the ability for current EPS stocks to be utilized before changing products. Those in support of EPS prohibitions cite the many environmental benefits to reduced quantities of the products being in the environment. Staff has provided a copy of the proposed regulations to the Arroyo Grande/Grover Beach Chamber of Commerce for comment.

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Potential Impacts to Businesses

As previously mentioned, the most frequently cited impact to businesses during jurisdictions' outreach efforts is cost. Below is a comparison of the costs of EPS products to alternatives. This comparison was developed by the City of San Jose in 2012 as part of a county-wide effort to regulate EPS.

Material	Cups	Plates	Clamshell Container
EPS	\$0.035	\$0.056	\$0.09
Rigid Plastic	\$0.026	\$0.083	\$0.25
Paper	\$0.055	\$0.02	\$0.28
Molded Natural Fiber	n/a	\$0.064	\$0.22
Compostable Paper	\$0.07	\$0.15	\$0.33

Alternatives to EPS cups ranged from 26% less expensive to 50% more expensive. The range for plates was 35% less expensive to 63% more expensive for EPS alternatives. Clamshells containers ranged from 59% to 73% more expensive.

Potential Benefits to the Environment

It is important to consider potential benefits to the environment when considering the proposed Ordinance regulating EPS. Less EPS being consumed in the community will naturally tend to reduce the amount of EPS ending up as litter in the City's waterways and region's marine ecosystem. Additionally, due to the tendency for EPS to break apart into smaller pieces and be consumed by birds and other wildlife, less EPS in the community will reduce the biological impacts associated with wildlife ingestion.

Implementation and Enforcement

The proposed Ordinance has been designed to take effect six (6) months after final adoption. This is intended to allow businesses time to make the transition to alternative products. During this time, City staff can send additional notification to affected businesses. Enforcement of the EPS prohibition would occur on a complaint basis through the Community Development Department, as well as Neighborhood Services.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Introduce the Ordinance as proposed;
2. Modify and introduce the Ordinance prohibiting EPS food service products only;
3. Further modify and introduce the Ordinance;
4. Continue consideration of the proposed Ordinance and direct staff to conduct further public outreach;
5. Do not introduce the Ordinance and instead provide direction to not pursue regulations on EPS products; or
6. Provide other direction to staff.

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ADVANTAGES:

The proposed Ordinance is a step toward a more sustainable future by reducing the amount of EPS litter in the community, reducing dependence upon petroleum products, reducing the amount of EPS entering the local landfill, and protecting birds and wildlife from EPS ingestion.

DISADVANTAGES:

Adoption of the proposed ordinance will have a financial impact on businesses in the City that use EPS products. In some instances this will be a negative impact, requiring the use of products that have slightly higher costs; however, several alternative products have reduced costs over EPS products. Therefore, there is an opportunity for cost savings or reduced financial impacts associated with the Ordinance.

ENVIRONMENTAL REVIEW:

Staff has reviewed the proposed Ordinance in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the Arroyo Grande Procedures for the Implementation of CEQA and determined that the Ordinance is categorically exempt per Section 15308 of the CEQA Guidelines regarding actions by a regulatory agency for the protection of the environment.

PUBLIC NOTIFICATION:

The Agenda was posted in front of City Hall on Thursday, January 21, 2016. The Agenda and report were posted on the City's website on Friday, January 22, 2016. No comments have been received.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE ADDING CHAPTER 8.34 TO TITLE 8 OF THE ARROYO GRANDE MUNICIPAL CODE REGULATING EXPANDED POLYSTYRENE FOOD CONTAINERS AND PRODUCTS

WHEREAS, the City of Arroyo Grande (“City”) has the police power to protect the health, safety and welfare of the community, including the ability to protect and enhance the natural environment; and

WHEREAS, according to the California Department of Transportation, expanded polystyrene products (“EPS”) comprises approximately 15% of storm drain litter and is the second most common form of beach debris in California. Also, plastic products, including expanded polystyrene, make up 80-90% of floating marine debris; and

WHEREAS, the City boundary includes numerous creeks and other waterways, which are an important natural resource as exemplified in various policies of the City’s General Plan. Expanded polystyrene products break apart into small pieces and ultimately flow to the Pacific Ocean contributing to concerns related to water quality and habitat protection both within the creek system as well as the marine environment; and

WHEREAS, items made from expanded polystyrene are not biodegradable, compostable, or recyclable locally; and

WHEREAS, expanded polystyrene breaks into small pieces and because it is lightweight, may be picked up by the wind even when it has been disposed of properly; and

WHEREAS, expanded polystyrene as litter is highly durable and is present in many public places, streets and roads, waterways and storm drains which may ultimately float, or be blown, into the Pacific Ocean; and

WHEREAS, marine animals and birds often confuse expanded polystyrene with pieces of food, and when ingested, it can impact their digestive tracts, often leading to death; and

WHEREAS, expanded polystyrene is manufactured from petroleum, a non-renewable resource; and

WHEREAS, take-out food packaging that is biodegradable, compostable, and recyclable is the most responsible and sustainable choice for the City’s tourist economy, its citizenry and its environment. When products are recycled, natural resources are spared, less energy is used for the production of new products, and landfill space is preserved; and

WHEREAS, regulating the use of expanded polystyrene products will maximize the operating life of landfills; and

WHEREAS, regulating the use of expanded polystyrene products within the City will help protect the City's natural environment from contamination and degradation.

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

SECTION 1: The above recitals and findings are true and correct and incorporated herein by this reference.

SECTION 2: Arroyo Grande Municipal Code Chapter 8.34 is hereby added to the Arroyo Grande Municipal Code in its entirety as follows:

CHAPTER 8.34 – EXPANDED POLYSTYRENE

8.34.010 - Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

- A. "Affordable" means that a biodegradable, compostable or recyclable product may cost up to 15 percent more than the purchase cost of comparable expanded polystyrene alternatives.
- B. "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 those standards may be amended.
- C. "Biodegradable" means Compostable (separately defined) or the ability of organic matter to break down from a complex to a more simple form through the action of bacteria or to undergo this process.
- D. "City Facility" means any building, structure or vehicle owned and operated by the City of Arroyo Grande, its agents, agencies, and departments.
- E. "City Contractor" means any person or entity that enters into an agreement with the City to furnish products or services to or for the City.
- F. "Compostable" means all the materials in the product or package will break down, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch). Compostable disposable food containers must meet ASTM Standards for compostable materials.
- G. "Disposable Food Container" is interchangeable with "to go" packaging and "food packaging material" and means all containers that are used to hold Prepared Food or drinks. Disposable Food Containers include clamshells, bowls, plates, trays, cartons, and cups that are intended for single use, including without

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limitation, food containers for takeout foods and/or leftovers from partially consumed meals prepared by Food Providers. This does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

- H. "Events Promoter" means an applicant for any event permit issued by the City or any City employee(s) responsible for any City-organized event.
- I. "Expanded Polystyrene" or EPS means blown expanded and extruded polystyrene or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Expanded polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, ice chests, shipping boxes and packing peanuts.
- J. "Expanded Polystyrene Products" means any item such as coolers, ice chests, cups, bowls, plates, clamshells containers, shipping boxes, or any other merchandise made from expanded polystyrene that is not wholly encapsulated or encased by a more durable material.
- K. "Food Provider" Means any establishment located within the City, that is a retailer of Prepared Food or beverages for public consumption including, but not limited to any store, supermarket, delicatessen, restaurant, shop, caterer or mobile food vendor.
- L. "Person" means an individual, business, Event Promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.
- M. "Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the City. Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.
- N. "Recyclable" means any material that is specified in the franchise agreement with the City's solid waste removal provider including, but not limited to aluminum, tin and bi-metal cans, clear and colored glass containers, High Density Polyethylene (HDPE), Polyethylene Terephthalate (PET), clear or rigid polystyrene, corrugated cardboard and mixed paper.
- O. "Vendor" means any store or business which sells or offers goods or merchandise, located or operating within the City of Arroyo Grande, including those referenced in and including "Food Provider."

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8.34.020 – Expanded Polystyrene Disposable Food Containers Prohibited.

- A. Food Providers within the City of Arroyo Grande may not provide Prepared Food in or provide separately any Disposable Food Container made from Expanded Polystyrene, except as exempted in Section 8.34.050.
- B. Disposable Food Containers made from Expanded Polystyrene are prohibited from use in all City Facilities.
- C. City Contractors in the performance of City contracts and Events Promoters may not provide Prepared Food in Disposable Food Containers made from Expanded Polystyrene.

8.34.030 - Required Biodegradable, Compostable, or Recyclable Disposable Food Containers.

- A. All Food Providers within the City utilizing Disposable Food Containers shall use Biodegradable, Compostable or Recyclable products.
- B. All City Facilities utilizing Disposable Food Containers shall use Biodegradable, Compostable or Recyclable products.
- C. City Contractors and Events Promoters utilizing Disposable Food Containers shall use Biodegradable, Compostable, or Recyclable products while performing under a City contract or permit.

8.34.040 - Prohibited Sales.

No Vendor or Events Promoter in the City may sell or otherwise provide any Expanded Polystyrene Product, which is not wholly encapsulated or encased within a more durable material, except as exempted in Section 8.34.050. This specifically includes, but is not limited to, cups, plates, bowls, trays, clamshells and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, packing peanuts, or other packaging materials.

8.34.050 – Exemptions.

- A. The City Manager or designee, may exempt a Food Provider from the requirements set forth in section 8.34.020(A) of this ordinance for a one-year period upon the Food Provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty as evidenced by no alternatives being available or such alternatives are not Affordable. The City Manager or designee shall put the decision to grant or deny a one-year exemption in writing, and the decision shall be final.

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- B. Exemptions to allow for the sale or provision of Expanded Polystyrene Products may be granted by the City Manager or designee, if the vendor can demonstrate in writing a public health and safety requirement or medical necessity to use the product. The City Manager or designee shall put the decision to grant or deny the exemption in writing and the decision shall be final.
- C. An exemption application shall include all information necessary for the City Manager or designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The City Manager or designee may require the applicant to provide additional information. The City Manager or designee may approve the exemption application in whole or in part, with or without conditions.
- D. Foods prepared or packaged outside the City and sold inside the City are exempt from the provisions of this chapter.
- E. Raw meat, fish and other raw food trays are exempt from the provisions of this chapter.
- F. Products made from Expanded Polystyrene, which are wholly encapsulated or encased by a more durable material are exempt from the provisions of this chapter. Examples include surfboards, life preservers, and craft supplies, which are wholly encapsulated or encased by a more durable material, and coolers encased in hard plastic.
- G. Construction products made from Expanded Polystyrene are exempted from this ordinance if the products are used in compliance with Arroyo Grande Municipal Code Title 15 Buildings and Construction and used in a manner preventing the Expanded Polystyrene from being released into the environment.
- H. In a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety, City Facilities, Food Providers, City Contractors and Vendors doing business with the City shall be exempt from the provisions of this chapter.
- I. Expanded Polystyrene packaging products, which have been received from sources outside the City, may be reused to be kept out of the waste stream.

8.34.060 Violations.

- A. Any violation of the provisions of this chapter by any person is subject to the penalty provisions as provided in Chapter 1.16 of this code.
- B. For the first violation, the City Manager or designee may allow the violating Food Provider, in lieu of the penalty provisions contained above, to submit receipts

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demonstrating the purchase after the citation date, of Biodegradable, Compostable, or Recyclable products.

- C. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

SECTION 3: If any section, subsection, subdivision, paragraph, sentence, or clause of this Ordinance or any part thereof is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, or clause thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, or clause be declared unconstitutional.

SECTION 4: Upon adoption of this Ordinance, the City Clerk shall file a Notice of Exemption pursuant to 14 CCR § 15307.

SECTION 5: A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council Members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance.

SECTION 6: This Ordinance shall take effect six (6) months from the date of adoption.

On motion of Council Member _____, seconded by Council Member _____, and on the following roll call vote to wit:

AYES:

NOES:

ABSENT:

The foregoing Ordinance was adopted this ____ day of February, 2016.

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JIM HILL, MAYOR

ATTEST:

KELLY WETMORE, CITY CLERK

APPROVED AS TO CONTENT:

DIANNE THOMPSON, CITY MANAGER

APPROVED AS TO FORM:

HEATHER K. WHITHAM, CITY ATTORNEY

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