

City Council Meeting: December 5, 2006

Agenda Item: 7-D

To: Mayor and City Council
From: Craig Perkins, Director - Environmental and Public Works Management
Subject: Introduce Non-Recyclable Plastic Disposable Food Service Container Ordinance and Appropriate Funds upon Program Implementation

Recommended Action

Staff recommends that the City Council:

- 1) introduce for first reading an ordinance banning non-recyclable plastic disposable food services containers, and;
- 2) authorize the increase of 0.25 FTE (2-year) limited-term temporary Administrative Analyst position.
- 3) appropriate from the Wastewater Fund balance \$15,715 to account number 31662.511500 (temporary employees) and \$31,000 to account number 31662.522310 (office supplies).

Executive Summary

The attached ordinance bans all non-recyclable plastic disposable food service containers in Santa Monica. Due to recent legislation signed into law by the California Governor in September 2006, the City is prohibited from adopting, implementing or enforcing any ordinance that imposes a fee or tax on plastic carryout bags or requires a store to collect, transport or recycle plastic carryout bags until January 1, 2013. Therefore, the ordinance does not include any Council action regarding plastic carry out bags at this time. The attached ordinance applies to all food providers, including but not limited to restaurants, delicatessens, grocery stores, non-profit and for-profit organizations, groups and individuals as well as all City facilities, City managed concessions, City sponsored events and City permitted events that serve food prepared in Santa Monica. The ordinance prohibits the dispensing of prepared food to customers in disposable food service containers made from non-recyclable plastic (those

displaying recycling symbol #6), including expanded polystyrene. Budgetary impacts from the adoption of the draft ordinance could include additional costs to City operations to buy alternative food packaging, and would include costs to prepare and distribute outreach materials to businesses, and staffing costs for implementation of an outreach campaign. Staff estimates the total annual budgetary impact in the Environmental Programs Division related to the implementation of a ban to be approximately \$31,000 for supplies and materials and staff resources equivalent to approximately .25 FTE Administrative Analyst position on an as-needed basis at an anticipated annual cost of \$15,715.

Discussion

On June 13, 2006, City Council directed staff to prepare an ordinance banning the use of non-recyclable plastic disposable food service containers in Santa Monica, including those made from expanded polystyrene.

The ordinance prohibits food providers from dispensing prepared food in disposable food service containers made from non-recyclable plastic, including expanded polystyrene and clear polystyrene (Note: these plastics are designated with the recycling symbol #6, however recycling of these products is not economically viable at the municipal level). Other plastic containers made from recyclable materials, including those marked with the recycling symbols #1 through #5, are allowed by the ordinance. (Note: the City's Solid Waste Division currently collects and recycles plastic containers with the recycling symbols #1 to #5). Food service containers are defined as single use disposable products used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes, but is not limited to, plates, bowls, cups, trays and hinged or lidded containers. 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. A food provider is defined in the ordinance as any establishment that provides prepared food for public consumption in Santa Monica and includes, but is not limited to, restaurants, grocery stores and supermarkets, delicatessens, catering trucks, for-profit and non-profit food

providers, organizations, groups and individuals. The ordinance also applies to all City facilities, City managed concessions, City sponsored events, and City permitted events. The ordinance only applies to food prepared within Santa Monica.

The ordinance allows for a one year renewable hardship exemption if it can be demonstrated that compliance with the ordinance would cause undue economic hardship to a food provider. An undue hardship would include any situation where no reasonably feasible available alternatives exist to a specific and necessary non-recyclable plastic food service container. The decision to provide an exemption will be made by the Director of the Environmental and Public Works Management (EPWM) or his/her designee and will be based on review of an exemption application that includes documentation showing the factual support for the claimed exemption.

The Director of EPWM will have primary responsibility for enforcement of the ordinance. It is anticipated that enforcement will be primarily conducted on a complaint basis and will be carried out by existing EPWM inspectors on an as-needed basis. Inspectors will have the power to issue notices of violations to food providers who fail to comply with any of the requirements of the ordinance. For the first violation, a written warning notice will be issued. The penalty for subsequent violations will be a daily fine in increasing amounts from \$100 to \$250, depending on the number of times the food provider has previously violated the ordinance.

The requirements of the ordinance will come into effect one year after Council adoption for all food providers. Council directed staff to implement the proposed ban for City facilities, City managed concessions, City sponsored events and City permitted events beginning June 13, 2006. Environmental Programs Division staff will conduct workshops and other outreach activities during the interim to provide information and assistance to food providers in identifying alternatives to non-recyclable plastic disposable food service containers and locating suppliers of alternative products. The outreach program will strongly encourage the use of the most sustainable packaging

types from a resource use and marine debris perspective. The Santa Monica Chamber of Commerce has agreed to assist the City staff in providing outreach to its members.

Plastic Carryout Bags

On September 30, 2006, Governor Schwarzenegger signed into law AB 2449 which regulates plastic carryout bags statewide. The new law requires the operator of a store, as defined, to establish an in-store recycling program that provides an opportunity for a customer of the store to return clean plastic carryout bags to that store. The law requires a plastic carryout bag provided by a store to have specified information printed or displayed on the bag, and requires the placement of a plastic carryout bag collection bin in each store greater than 10,000 square feet that is visible and easily accessible to the consumer. These stores must send these collected bags for recycling. The law also requires the operator of a store to make reusable bags, as defined, available to customers for purchase. The law requires a manufacturer of plastic carryout bags to develop educational materials to encourage the reducing, reusing, and recycling of the bags and to make the materials available to stores.

The law specifically prohibits a city, county, or other public agency from adopting, implementing, or enforcing an ordinance, resolution, regulation, or rule that requires a store to collect, transport, or recycle plastic carryout bags or conduct additional auditing or reporting, or imposing a plastic carryout bag fee upon a store. The law will take effect on July 1, 2007, and will remain in effect through January 1, 2013. Due to the prohibition by this law on City regulation of plastic carryout bags, staff recommends that City Council take no action at this time to address plastic carryout bags.

Alternatives

In addition to the recommended action, the City Council could 1) modify the ordinance to better achieve the Council's intent; or 2) not adopt the ordinance.

The impact of the first alternative would depend on the modifications that Council made and could either expand or reduce the scope of the ordinance provisions, penalties and

who the ordinance applies to. Pursuing the second alternative would avoid additional costs to the City for outreach and implementation, and would avoid potential additional costs to some Santa Monica food providers, however, it would not support the Council's goal of reducing beach and marine pollution in Santa Monica.

Environmental Analysis

The City's action to adopt an ordinance that prohibits food providers from dispensing prepared food in non-recyclable plastic containers is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15061(b)(3) [project is exempt when it can be determined with certainty that there is no potential for causing a significant effect on the environment] and Section 15308 (Class 8) [action is taken by regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment where regulatory process involves procedures for the protection of the environment]. The proposed ordinance specifically prohibits the use of non-recyclable plastic, defined as expanded polystyrene (EPS) or rigid polystyrene (recycling symbol #6) by food providers in Santa Monica because these products currently cause significant adverse environmental impact to Santa Monica beaches, the marine environment, and wildlife. As more fully discussed in Attachment 2 to this report, the proposed ordinance will replace these environmentally harmful products with alternatives that minimize harm to the environment since these alternative materials are made from renewable resources and can be recycled and/or composted and processed through existing City facilities and infrastructure.

Budget/Financial Impact

The budgetary impacts from adoption of the recommended ordinance include additional costs to City operations to buy alternative food packaging (estimated to be less than \$1000 annually). Staff anticipates that additional staff and funding will be needed to conduct workshops and outreach activities during the interim period.

The following budget changes are needed for program implementation:

- 1) Authorize the increase of 0.25 FTE (2-year) limited-term temporary Administrative Analyst position.
- 2) Appropriate from the Wastewater Fund balance \$15,715 to account number 31662.511500 (temporary employees) and \$31,000 to account number 31662.522310 (office supplies).

Since enforcement will be carried out by existing City inspectors on an as-needed basis, it is anticipated that enforcement can be completed without any additional budgetary impacts.

Prepared by: Dean Kubani, Environmental Programs Manager

Attachments: [Ordinance](#)
[Response to Comments from the Polystyrene Packaging Council](#)
[Letter](#)