



**DATE:** February 11, 2014

**CATEGORY:** Public Hearing

**DEPT.:** Public Works

**TITLE:** **Ordinance of the City of Mountain View Adding Article V to Chapter 16 of the Mountain View City Code Related to Use of Polystyrene Foam Food Service Ware by Food Providers**

### **RECOMMENDATION**

1. Adopt the Negative Declaration related to the use of polystyrene foam food service ware by food providers, in accordance with the California Environmental Quality Act (Attachment 1 to the Council report).
2. Introduce an Ordinance of the City of Mountain View Adding Article V to Chapter 16 of the Mountain View City Code Related to Use of Polystyrene Foam Food Service Ware by Food Providers, to be read in title only, further reading waived, and set a second reading for February 25, 2014 (Attachment 2 to the Council report).

### **BACKGROUND**

In March 2009, City Council adopted the Environmental Sustainability Action Plan (ESAP). The ESAP included two goals to reduce waste and eliminate the negative impacts of producing, using, and discarding products and packaging: (1) adoption of an ordinance banning the use of single-use bags; and (2) participation in a regional effort to ban polystyrene take-out food containers.

In January 2012, City Council adopted a work plan directing staff to prepare ordinances addressing single-use bags, polystyrene foam food service ware, and a policy for City facilities and events. This action was based on recommendations from the Santa Clara County Recycling and Waste Reduction Commission and new municipal Stormwater Permit requirements to reduce the amount of trash in waterways.

In July 2013, the City of San Jose, acting as the lead agency on behalf of 13 Santa Clara County cities, including the City of Mountain View, conducted an environmental review of potential impacts from a model ordinance to prohibit the use of polystyrene

foam food service ware by food providers in accordance with the California Environmental Quality Act (CEQA).

In August 2013, the City of San Jose adopted a Negative Declaration finding that the project will not have any significant effect on the environment, and later recorded a Notice of Determination. There have been no legal challenges to the environmental documents or related ordinances adopted by San Jose or other Santa Clara agencies subsequent to the environmental review. The Negative Declaration, Notice of Determination, and Initial Study are shown in [Attachment 1](#).

In November 2013, the Council Environmental Sustainability Committee (CESC) reviewed the draft ordinance prepared by staff. Staff answered CESC questions about the availability of substitute containers, pricing, exemptions, outreach, enforcement, and legal challenges. These topics are discussed later in this report. The minutes from the meeting are attached (Attachment 4).

## ANALYSIS

### Polystyrene Foam Food Service Ware Ordinance

The proposed ordinance would prohibit the use of polystyrene foam food service ware at any establishment located or operating in the City of Mountain View which provides ready-to-consume food and beverages for dine-in, take-out, or complimentary service, whether or not a charge is imposed. It applies to establishments providing food and beverage: (1) to the public for consumption on or off its premises; (2) at a catered event; and/or (3) at cafeterias in schools and places of employment, regardless if such establishments are open to the general public.

Food providers include, but are not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, sales outlets, grocery stores, delicatessens, fraternal clubs serving the public, mobile food vendors, vehicles or carts, and roadside stands. The proposed ordinance does not affect prepackaged foods, such as produce, noodles and soups, or raw eggs and meat.

The purpose of the ordinance is to reduce the amount of polystyrene foam food service ware litter in the environment to improve water quality, comply with new municipal Stormwater Permit requirements, and achieve the City's environmental objectives.

### Exemptions

A food provider may request an exemption of up to one year if the requirements of the proposed ordinance would cause undue economic hardship. The guidelines for hardship would include, but are not limited to:

- Overstocked supplies of polystyrene foam food service ware that cannot be returned to the distributor or used at another store outside the City. The exemption would allow the food provider to use the supplies within the exemption period rather than discard them.
- Unique packaging needs for which no suitable packaging alternate exists.

The exemption process would be administered by the Public Works Department.

### Environmental Review

The City of San Jose (Lead Agency) prepared an Initial Study and Negative Declaration ([Attachment 1](#)) on behalf of 13 participating cities (Responsible Agencies) in Santa Clara County under CEQA. The study area included the cities of Campbell, Cupertino, Gilroy, Los Altos, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Santa Clara, San Jose, Saratoga, and Sunnyvale. (Los Altos Hills, Palo Alto, and the County of Santa Clara previously adopted ordinances. Gilroy adopted a resolution.)

The Initial Study analyzed the environmental effects of a model polystyrene foam food service ware ordinance to assess potential significant environmental effects. Under CEQA, a “significant effect on the environment” is defined as a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. Based on the findings in the Initial Study and Negative Declaration, the project will not have a significant effect on the environment.

The CEQA documents were circulated for public review and comment, and the City of Mountain View participated in the process as a Responsible Agency under CEQA. The public comments and the City of San Jose’s responses to the comments were included as part of the Initial Study and Negative Declaration. On August 27, 2013, San Jose adopted and certified the Negative Declaration. As a Responsible Agency, City Council must consider the Initial Study and Negative Declaration, and adopt the Negative Declaration if it finds on the basis of the record before it (including the Initial Study and

any comments received) that there is no substantial evidence that the project will have a significant effect on the environment and that the Negative Declaration reflects the City Council's independent judgment.

Based on staff's review of the Initial Study and Negative Declaration, staff recommends that City Council find there is no evidence or circumstances that would require the preparation of additional environmental documents prior to adoption of the proposed ordinance by City Council, and there is no substantial evidence the proposed ordinance will have a significant impact on the environment. If City Council decides to make changes to the proposed ordinance, it could trigger the need for additional CEQA review.

### Model Ordinance and Options

The Initial Study considered model ordinances prepared by the cities of San Jose and Sunnyvale. The Sunnyvale ordinance was included in the Initial Study because of its additional provisions prohibiting the sale of polystyrene foam food service ware.

The Initial Study included two additional options:

1. Prohibiting sales of polystyrene foam food service ware.
2. Prohibiting sales of polystyrene foam ice chests or coolers which are not wholly encapsulated or encased within a more durable material (unencapsulated).

A few cities in Santa Clara County adopted one or both of these additional prohibitions, including Sunnyvale (polystyrene foam food service ware), Los Altos (polystyrene foam food service ware and ice chests/coolers), and County of Santa Clara (ice chests/coolers).

These optional prohibitions included in the environmental review arose after the City Council adopted the work plan directing staff to prepare an ordinance to address the use of polystyrene foam food service ware. They are not included in the proposed ordinance and have not yet been reviewed by the City Council or CESC.

Should the Mountain View City Council desire to include one or both options, staff has provided the necessary ordinance language additions in Attachment 3; and will extend outreach to include additionally affected businesses such as hardware, sporting goods, drug, and party supply stores selling polystyrene foam food service ware and

unencapsulated ice chests/coolers. If Council would like to include either of the options as part of the proposed ordinance, City Council may:

1. Introduce the proposed ordinance, include one or both options prohibiting the sale of polystyrene foam food service ware and/or unencapsulated ice chests/ coolers (using the language provided in Attachment 3), and set a second reading at least 30 days later to allow time to notify additionally affected businesses.
2. Introduce the proposed ordinance as is without including either option, set a second reading for February 25, 2014, and direct staff to return in 6 to 12 months with an amendment to include one or both options prohibiting the sale of polystyrene foam food service ware and/or unencapsulated ice chests/coolers.

### Litter

The Initial Study found that polystyrene foam food service ware is a distinctive litter concern because:

- It is friable (crumbles into small pieces or pulverizes), lightweight, and easily windblown into streets and waterways, which flow into the San Francisco Bay and eventually the ocean.
- The small particles are difficult to collect by street sweepers and creek clean-up volunteers.
- The particles are often mistaken as food and ingested by birds, fish, and wildlife, which can cause reduced food consumption and/or impair intestinal tracts.
- In ocean environments, the particles provide a surface upon which other pollutants may attach (e.g., pesticides from urban runoff), allowing the pollutants to be transported through waterways. If particles are ingested, the attached pollutants can cause reproductive failure, disease, or death in wildlife.

### Alternative Containers

Alternative containers are readily available and generally cost a few cents more than polystyrene foam food service ware. Alternatives to polystyrene foam food service ware that are less harmful to the environment include paper (which is compostable), recyclable plastic, or reusable containers. While a ban on polystyrene foam food service ware may not reduce the overall amount of litter, it will likely change its composition.

Following implementation of a similar ban in the City and County of San Francisco, litter composition surveys documented a 41 percent reduction in polystyrene foam food service ware.

According to the Initial Study, the main difference between paper and plastic (which includes polystyrene foam) materials in the environment is that paper biodegrades. Plastic does not biodegrade—it breaks into tiny pieces over time in the environment. As noted in the Initial Study, depending on composition, paper biodegrades in two to eight weeks while an intact polystyrene foam cup may take 50 years or more to break down. Since plastic particles can interfere with digestion in wildlife or carry pollutants like pesticides, the Initial Study notes the particles stand to cause negative indirect effects to wildlife in ways that paper products do not. Alternative materials like compostable paper and recyclable plastic are less harmful to the environment than polystyrene foam plastic.

### Recycling

Polystyrene foam food service ware is a thermoplastic material derived from petrochemicals (refined petroleum or natural gas) and is a nonrenewable resource. Efforts to recycle used polystyrene foam food service ware have not been successful because the costs of recycling it outweigh its market value as a recycled product. Consequently, most curbside recycling programs do not accept it. However, many paper and plastic alternatives to polystyrene foam food service ware are accepted in municipal recycling and composting programs.

### Outreach

Staff has conducted outreach to both businesses and residents. In July 2013, letters were mailed to more than 300 businesses with County food facility permits and City business licenses. The letter provided information about the proposed ordinance, a food vendor open house event, and community meetings for businesses and residents to be held on July 30 and July 31, 2013. Two people attended each meeting (one of whom attended both meetings).

The City also participated in a regional effort to inform businesses about alternatives to polystyrene foam food service ware. Several food vendor open house events were held by various cities throughout Santa Clara County in August 2013 and advertised in newspapers. The events helped businesses learn about alternative paper and nonfoam food service ware products, obtain price lists and free samples from distributors, and meet other restaurant owners who have already switched from using polystyrene foam

food service ware. Food providers from Mountain View attended the event held in Sunnyvale.

The community information and input meetings were publicized in the *Mountain View Voice* newspaper and on the City's website. E-mails were also sent to the Chamber of Commerce, Central Business Association, neighborhood groups, and other interested persons.

Staff recommends designating July 1, 2014 as the effective date for the ordinance. This should provide food providers with sufficient time to comply with the ordinance and locate alternative containers for food service ware. Staff will continue working with affected businesses prior to the effective date to help them prepare for the requirements of the new ordinance.

#### Other Cities

Since 2009, more than 75 jurisdictions in the State have taken action to reduce the use of polystyrene foam food service ware. In Santa Clara County, the cities of Cupertino, Los Altos, Los Altos Hills, Morgan Hill, Palo Alto, San Jose, Sunnyvale, and unincorporated Santa Clara County have adopted ordinances, and Gilroy has adopted a resolution. The cities considering ordinances include Campbell, Los Gatos, and Santa Clara. Milpitas does not have a schedule to bring an ordinance to their city council.

In the Bay Area, ordinances have been adopted by the County of Marin, County of San Mateo, and the County of Sonoma, and the cities of Alameda, Albany, Belmont, Berkeley, Burlingame, Capitola, El Cerrito, Emeryville, Fairfax, Foster City, Fremont, Half Moon Bay, Hayward, Hercules, Livermore, Menlo Park, Millbrae, Mill Valley, Oakland, Pacifica, Pittsburg, Portola Valley, Redwood City, Richmond, San Bruno, San Carlos, San Francisco, San Leandro, San Mateo, San Rafael, Santa Cruz (also bans sales of unencapsulated ice chests and coolers), Sausalito, Scotts Valley, and Watsonville.

#### City Operations/Facilities

In addition to the proposed ordinance, complementary policies and guidelines governing City operations and facilities have been drafted to prohibit the use/distribution of both polystyrene foam food service ware and single-use plastic bags at City facilities.

These policies and guidelines apply to all City facilities for public or private events, meetings, or other functions, whether held by the City or its vendors, concessionaires,

renters (including use of City facilities and permitted group barbecue areas), lessees, or employees, and whether or not a charge is imposed. (Restaurants, snack bars, and other lessees operating on City properties would be covered under the City-wide ordinance.) The personal use of polystyrene foam food service ware by City employees is also discouraged.

### **FISCAL IMPACT**

Business outreach and education costs associated with the implementation of the proposed ordinance are estimated at \$3,000 and are included in the Solid Waste Management Fund.

### **CONCLUSION**

Staff recommends that City Council consider the Initial Study and Negative Declaration prepared by the Lead Agency, adopt the Negative Declaration, and introduce the proposed ordinance banning the use of expanded or extruded polystyrene foam food service ware throughout the City, effective July 1, 2014, and set a second reading for February 25, 2014.

### **ALTERNATIVES**

1. Do not introduce the proposed Polystyrene Foam Food Service Ware Ordinance.
2. Introduce the proposed ordinance and prohibit the sale of polystyrene foam food service ware and/or unencapsulated polystyrene foam ice chests/coolers in Mountain View (using the language provided in Attachment 3), and set a second reading at least 30 days later.
3. Introduce the proposed ordinance, set a second reading for February 25, 2014, and direct staff to return in 6 to 12 months with an amendment to prohibit the sale of foam food ware and/or unencapsulated polystyrene foam ice chests/coolers.
4. Modify the proposed ordinance as desired by Council. Minor changes to the ordinance may not affect the CEQA findings or the effort to achieve regional consistency. However, should the Council desire more significant changes, staff will need to evaluate the need for supplemental CEQA analysis.

## **PUBLIC NOTICING**

In addition to the City's standard agenda posting requirements, notice of this meeting was provided via e-mail to neighborhood groups and other interested persons, the Chamber of Commerce, the Central Business Association, and by mail to approximately 400 food businesses potentially affected by the proposed ordinance. A notice was also posted on the City's website and by advertising in the *Mountain View Voice* newspaper and on KMVT cable television.

Prepared by:

Cynthia Palacio  
Senior Administrative Analyst

Lori Topley  
Solid Waste Program Manager

Approved by:

Michael A. Fuller  
Public Works Director

Daniel H. Rich  
City Manager

CP-LT/7/CAM  
920-02-11-14CR-E

Attachments: 1. [City of San Jose Negative Declaration, Notice of Determination, and Initial Study](#)  
2. Proposed Ordinance  
3. Optional Ordinance Language  
4. Council Environmental Sustainability Committee Minutes  
(November 18, 2013)

cc: TBM, SWPM, SAA – Palacio