



PISMO BEACH COUNCIL AGENDA REPORT

Agenda Item #6.A

SUBJECT/TITLE:

AN ORDINANCE REGULATING EXPANDED POLYSTYRENE (STYROFOAM) PRODUCTS

RECOMMENDATION:

1. Conduct a public hearing to receive public input on the proposed Ordinance;
2. Waive the reading of, and introduce by title only, an **Ordinance** adding Chapter 8.40: Expanded Polystyrene, to Title 8, Health and Safety, of the City of Pismo Beach Municipal Code.

EXECUTIVE SUMMARY/BACKGROUND:

On September 15, 2015, the Council considered a report from staff regarding options for the regulation, and possible prohibition, of the use of extruded or expanded polystyrene foam (EPS) food containers and other similar products, often referred to by the trade name Styrofoam, in the City of Pismo Beach. At that meeting, several public comment letters were received and members of the public spoke both in support of and opposition to such a ban. At the conclusion of the public comment period, the Council directed staff to return with an ordinance prohibiting certain EPS products, modeled after the ordinance adopted by the City of San Luis Obispo in July 2015.

There are some misconceptions about the use and types of polystyrene on the market and in use in Pismo Beach. The proposed Ordinance (**Attachment 1**) contains a large number of definitions intended to clarify which products and uses would be subject to the new regulations, and which would be exempt. In particular, the type of EPS that would be prohibited is the expanded or extruded foam type not wholly encased by a more durable material, common examples of which include food containers such as coffee cups, plates, and take-out boxes. Examples of exempt products that use expanded polystyrene include surfboards and life preservers.

Recognizing that businesses may have existing supplies of prohibited EPS products, the second reading (adoption) of the proposed ordinance is tentatively scheduled for December 15, 2015, leading to an effective date of January 14, 2016. This delayed adoption and effective date will allow business owners to remove as much EPS from circulation as possible during the holiday season.

Staff anticipates that, for the first few months, enforcement of the new regulations would focus on warnings and education. This would further allow businesses adequate time to use up their existing inventories and to arrange for alternative containers. Section 8.40.060 of the proposed Ordinance provides for fines in the case of violations as well as a one-time in-lieu provision of purchasing suitable containers to offset the amount of the fine. The proposed Ordinance also provides for the possibility of a one-time extension for certain demonstrated hardship situations.

FISCAL IMPACT:

An ordinance banning use of EPS containers will have little direct fiscal impact on the City although it will generate some level of costs for enforcement of the regulations. The majority of enforcement costs are likely to be borne in the first year of implementation until businesses adapt to the regulations, however some residual cost must be assumed.

If the Ordinance adopted as proposed, additional outreach to the business community will take place over the initial four to six months following the effective date in January 2016. The anticipated work load should be absorbed by the proactive code compliance program approved by Council on November 3, 2015, with no additional cost to the general fund.

ALTERNATIVES:

1. Introduce the Ordinance with additional revisions.
2. Introduce the Ordinance; conduct a first reading in full.
3. Decline to introduce the Ordinance.

ATTACHMENTS:

1. Ordinance No. O-2015-XXX, an Ordinance establishing regulations regarding expanded polystyrene products.

Prepared by:

Michael Draze, Interim Community Development Director

Meeting Date: November 17, 2015

City Manager Approval:



ORDINANCE NO. O-2015-XXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH
ADDING CHAPTER 8.40: EXPANDED POLYSTYRENE, TO TITLE 8, HEALTH AND
SAFETY, OF THE CITY OF PISMO BEACH MUNICIPAL CODE**

WHEREAS, the City of Pismo Beach 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 studies, expanded polystyrene comprises approximately 15% of storm drain litter and is the second most common form of beach debris in California, and plastic products, including expanded polystyrene, make up 80—90% of floating marine debris; and

WHEREAS, the City is situated adjacent to the Pacific Ocean and during regular maintenance of the City's beach, creeks and other locations within the City, the City finds and discards a significant amount of expanded polystyrene products such as clamshell food containers, cups and plates; and

WHEREAS, items made from expanded polystyrene are not biodegradable, compostable, or recyclable locally, and expanded polystyrene as litter is highly durable; and

WHEREAS, expanded polystyrene breaks into small, lightweight pieces that may be picked up by the wind even when it has been disposed of properly, and flow or be blown into creeks and the Pacific Ocean, contributing to water quality and habitat protection concerns; 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, expanded polystyrene is not recycled at the Cold Canyon Landfill and there are no plans to provide for its recycling, and regulating the use of expanded polystyrene products will therefore maximize the operating life of landfills; 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, and when these products are recycled, natural resources are spared and less energy is used for the production of new products; and

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

NOW, THEREFORE, the City Council of the City of Pismo Beach does ordain as follows:

SECTION 1.

Chapter 8.40 of the Pismo Beach City Code shall be added, to read as follows:

Chapter 8.40 EXPANDED POLYSTYRENE

8.40.010 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 costs no more than fifteen percent greater than the purchase cost of comparable expanded polystyrene alternatives.
- B. "ASTM standard" means meeting the standards of the American Society for Testing and Materials international standard D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.
- C. "Biodegradable" means compostable, or able to be broken down from a complex to a more simple form through the action of bacteria or other living organisms.
- D. "City facility" means any building, structure or vehicle owned and operated by the city of Pismo Beach, 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. "Compost" means the product of the decomposition process resulting from the aerobic treatment of organic material.
- G. "Compostable" means all the materials in a product or package will break down, or otherwise become part of usable compost. Compostable disposable food containers must meet ASTM standards for compostable materials.
- H. "Disposable food container" means all containers that are used to hold prepared food or drinks. Disposable food containers include clamshells, bowls, plates, trays, cartons, cups and similar items that are intended for single use, including, without 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.

- I. "Events promoter" means the holder of any event permit issued by the city pursuant to Chapter 12.16 or any city employee(s) responsible for any city-organized event.
- J. "Expanded polystyrene" (EPS) means blown or extruded polystyrene or other plastic foams that are manufactured or processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam polystyrene). Expanded polystyrene shall not include recyclable clear or solid polystyrene (oriented polystyrene).
- K. "Expanded polystyrene product" means any item made from expanded polystyrene that is not wholly encapsulated or encased by a more durable material, including but not limited to coolers, ice chests, cups, bowls, plates, trays, clamshell containers, shipping boxes, and packing peanuts. Products made from expanded polystyrene that are wholly encapsulated or encased by a more durable material are exempt from the provisions of this chapter. Examples of exempt products include surfboards, life preservers, and craft supplies that are wholly encapsulated or encased by a more durable material, and coolers encased in hard plastic. Construction products made from expanded polystyrene are exempt from the provisions of this chapter if the products are used in compliance with Title 15, Buildings and Construction and if they are used in a manner preventing the expanded polystyrene from being released into the environment.
- L. "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.
- M. "Person" means an individual, business, event promoter, trust, firm, joint stock company, corporation, nonprofit, including a government corporation, partnership, or association.
- N. "Polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer. The recycle code for polystyrene is "6" or "PS," either alone or in combination with other letters. This definition includes and applies to all polystyrene products, regardless of whether they exhibit a recycle code.
- O. "Prepared food" means food or beverages that 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.

- P. "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 solid polystyrene (oriented polystyrene), corrugated cardboard and mixed paper.
- Q. "Vendor" means any store or business that sells or offers goods or merchandise, located or operating within the city of Pismo Beach, including those referenced in the definition of "food provider."

8.40.020 Expanded polystyrene disposable food containers prohibited.

- A. Food providers and vendors within the city of Pismo Beach may not provide prepared food in, or provide separately, any disposable food container made from expanded polystyrene, except as permitted in Section 8.40.050.
- B. Disposable food containers made from expanded polystyrene shall not be used in any 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.

8.40.030 Required biodegradable, compostable, or recyclable disposable food containers.

- A. Food providers and vendors within the city utilizing disposable food containers shall use biodegradable, compostable or recyclable food container products.
- B. All city facilities utilizing disposable food containers shall use biodegradable, compostable or recyclable food container products.
- C. City contractors and events promoters utilizing disposable food containers shall use biodegradable, compostable, or recyclable food container products while in the performance of city contracts and events.

8.40.040 Prohibited sales.

No vendor or events promoter in the city shall sell or otherwise provide any expanded polystyrene product, except as permitted in Section 8.40.050.

8.40.050 Exemptions.

- A. The city manager or designee may exempt a vendor or food provider from the requirements set forth in Section 8.40.020(A) for a single, six-month period upon written application by the vendor or food provider showing that this chapter would

create an undue financial hardship or practical difficulty. The city manager's decision shall be in writing, and the decision shall be final and not subject to appeal. The city manager or designee may approve the exemption application in whole or in part, with or without conditions.

- B. The city manager or designee may exempt a vendor or food provider from the requirements set forth in Section 8.40.020(A) if the vendor or food provider demonstrates in writing a public health and safety requirement or medical necessity to use a disposable food container product otherwise prohibited by this chapter. The city manager's decision shall be in writing, and the decision shall be final and not subject to appeal. The city manager or designee may approve the exemption application in whole or in part, with or without conditions.
- C. An exemption application under subsections (A) or (B) 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.
- D. Foods prepared and packaged in expanded polystyrene products outside the city and sold inside the city are exempt from the provisions of this chapter.
- F. Raw meat, fish and other raw food trays made of expanded polystyrene are exempt from the provisions of this chapter.
- G. 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.

8.40.060 Violations.

- A. Any violation of the provisions of this chapter by any person is subject to administrative fines as provided in Chapter 1.24.
- B. For a first violation, the city manager or designee may allow the violating food provider or vendor, in lieu of payment of the administrative fine, to submit receipts demonstrating the food provider's or vendor's post-citation purchase of biodegradable, compostable, or recyclable products in an amount equal to the amount of the administrative fine levied under Chapter 1.24.
- 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 2.

This ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.). Pursuant to State CEQA Guidelines section 15307 (14 Cal. Code Regs. § 15307), this ordinance is covered by the CEQA Categorical Exemption for actions taken to assure the maintenance, restoration, enhancement, or protection of a natural resource where the regulatory process involves procedures for protection of the environment. The adoption of this ordinance will result in the enhancement and protection of natural resources, and will not result in cumulative adverse environmental impacts or any other potentially significant impact described in State CEQA Guidelines section 15300.2. It is therefore exempt from the provisions of CEQA.

SECTION 3.

This ordinance shall not be interpreted in any manner to conflict with controlling provisions of state or federal law, including, without limitation, the Constitution of the State of California or of the United States of America. If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. If this ordinance, or any section, subsection or clause of this ordinance shall be deemed unconstitutional or invalid as applied to a particular appeal, the validity of the remainder of this ordinance and its sections, subsections and clauses shall not be affected.

SECTION 4.

This ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

SECTION 5.

The City Clerk shall certify to the passage and adoption of this Ordinance, shall enter the same in the book of original ordinances of the City and shall make a minute of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted. Before the expiration of fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause the same to be posted in three public places within the City of Pismo Beach, to wit: 1) City Hall, 760 Mattie Road, Pismo Beach, 2) U.S. Post Office, Shell Beach Road, Pismo Beach, 3) U.S. Post Office, Crest Drive, Pismo Beach.

INTRODUCED at a regular meeting of the City Council held this 17th day of November, 2015, on motion of Council Member _____, seconded by Council Member _____, and on the following roll call vote, to wit:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:
RECUSED: Council Members:

Approved:

Attest:

Shelly Higginbotham
Mayor

Erica Inderlied
City Clerk

SECOND READING AND ADOPTION at a regular meeting of the City Council held this _____th day of _____, 2015, on motion of Council Member _____, seconded by Council Member _____, and on the following vote:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:
RECUSED: Council Members:

Approved:

Attest:

Shelly Higginbotham
Mayor

Erica Inderlied
City Clerk

APPROVED AS TO FORM:

David M. Fleishman, City Attorney