COUNCIL AGENDA: November 16, 2016

TO: Honorable Mayor and City Council

VIA: Sergio Gonzalez, City Manager

FROM: Lucy Demirjian, Assistant to the City Manager; Jennifer Shimmin, Senior Management Analyst

SUBJECT: Second Reading and Adoption of an Ordinance, Amending Chapter 16 (Garbage and Waste) of the South Pasadena Municipal Code Creating a new Article IV (Expanded Polystyrene Disposable Food Service Ware Ban) to Prohibit the Use of Expanded Polystyrene Disposable Food Service Ware Within South Pasadena

Recommendation
It is recommended that the City Council read by title only for second reading, waiving further reading, and adopt an ordinance to amend Chapter 16 of the South Pasadena Municipal Code (SPMC) by creating a new Article IV to prohibit the use of expanded polystyrene disposable food service ware within the City of South Pasadena.

Fiscal Impact
With the adoption of the ordinance there will be costs associated with educational outreach and possible enforcement actions by City staff. Implementation of the ordinance will likely reduce litter and storm water impacts providing a positive fiscal impact on cleanup efforts by the Public Works Department.

Commission Review and Recommendation
The Natural Resources and Environmental Commission (NREC) was presented with draft ordinance language at its September 27, 2016 meeting. They made minor, non-substantial changes and unanimously approved the ban on expanded polystyrene food service ware.

Background
On November 2, 2016, the City Council conducted a first reading and introduced the ordinance. An analysis of the ordinance can be found in a staff report dated November 2, 2016 (Attachment 2). If adopted, the ordinance will become effective on December 16, 2016.

Legal Review
The City Attorney has reviewed this item.

Public Notification of Agenda Item
The public was made aware that this item was to be considered this evening by virtue of its
inclusion on the legally publicly noticed agenda, posting of the same agenda and reports on the City’s website and/or notice in the South Pasadena Review and/or the Pasadena Star-News.

Attachments:
1. Ordinance Adding a New Article IV (Expanded Polystyrene Disposable Food Service Ware Ban) to Chapter 16 (Garbage And Waste)
2. November 2, 2016 City Council Agenda Report (w/o attachments)
ATTACHMENT 1
Ordinance Adopting Article IV (Expanded Polystyrene Disposable Food Service Ware Ban)
Amending SPMC Chapter 16
ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF SOUTH PASADENA, CALIFORNIA,
ADDING A NEW ARTICLE IV (EXPANDED POLYSTYRENE
DISPOSABLE FOOD SERVICE WARE BAN) TO
CHAPTER 16 (GARBAGE AND WASTE) OF THE
SOUTH PASADENA MUNICIPAL CODE

SECTION 1. A new Article IV (Expanded Polystyrene Disposable Food Service
Waste Ban) is added to Chapter 16 (Garbage and Waste) to read as follows:

ARTICLE IV. Expanded Polystyrene Disposable Food Service Ware Ban

16.40 Purpose
16.41 Definitions
16.42 Prohibition of Expanded Polystyrene Food Service Ware
16.43 Exceptions
16.44 Enforcement
16.45 Effective Date
16.46 No Conflict with Federal and State Law

16.40 Purpose

The purpose of this chapter is to establish standards and procedures for
environmental waste and litter reduction measures, and promote environmentally
sustainable practices throughout the City by prohibiting the use and sale of expanded
polystyrene food service ware by food providers within the city and in city facilities, city­
managed concessions, city-sponsored or co-sponsored events, city permitted events and
all franchisees, contractors and vendors doing business with the city.

16.40 Definitions

As used in this article, the following terms and phrases shall have the following
meanings:

City Facilities. The term “city facilities” means any building, structure, or vehicle
owned or operated by the City of South Pasadena, its agents, agencies, departments, and
franchisees.

Customer. The word “customer” means anyone purchasing food or beverages
from a restaurant or food provider.
Disposable Food Service Ware. The term “disposable food service ware” means 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, cups, bowls, 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.

Expanded polystyrene. The term “expanded polystyrene” or “EPS” means polystyrene that has been expanded or “blown” using a gaseous blowing agent into a solid foam. EPS is sometimes called “Styrofoam,” a Dow Chemical Co. trademarked form of polystyrene foam insulation.

Food packager. The term “food packager” means any person or entity, located within the City of South Pasadena, who places meat, eggs, baked products, or other food in Disposable Food Service Ware for the purpose of retail sale of those products.

Food provider. The term “food provider” means any person or place that provides or sells prepared food within the City of South Pasadena to the general public to be consumed on the premises or for take-away consumption. Food provider includes but is not limited to (1) a grocery store, supermarket, restaurant, drive-thru, cafe, coffee shop, snack shop, public food market, farmers’ market, convenience store, or similar fixed place where prepared food is available for sale on the premises or for take-away consumption, and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food provider also includes any organization, group or individual that regularly provides prepared food to its members or to the general public as a part of its activities or services.

Non-profit food provider. The term “non-profit food provider” means a recognized tax exempt organization which provides food or beverage as a part of its services.

Polystyrene. The word “polystyrene” means and include expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

Polystyrene food packaging. The term “polystyrene food packaging” means any food packaging which contains polystyrene foam or oriented polystyrene.

Prepared food. The term “prepared food” means any food or beverages which are served, packaged or are prepared on the retail vendor’s premises by cooking, chopping, baking, roasting, slicing, mixing, brewing, freezing, or squeezing. Prepared food may be eaten either on or off the retail vendor’s premises. For the purpose of this ordinance,
“prepared food” does not include raw, butchered, ground, chopped, or sliced meats, fish, and/or poultry sold from a butcher case or similar retail appliance for subsequent preparation.

Restaurant. The word “restaurant” means any establishment located within the city selling prepared food to be eaten on or about its premises by customers. “Restaurant” includes a sidewalk food vendor.

Retail vendor. The term “retail vendor” means any store, shop, sales outlet, or other establishment which sells food packaging.

16.42 Prohibition of expanded polystyrene food service ware

A. No restaurant, retail vendor, food packager, retail food vendor, or non-profit food provider shall provide prepared food to its customers in Disposable Food Service Ware made of expanded polystyrene; or purchase, obtain, keep, distribute, sell for home or personal use, or give, serve, or otherwise provide to customers any Disposable Food Service Ware made of expanded polystyrene.

B. No food provider shall distribute or sell prepared food in any Disposable Food Service Ware made of EPS at any location within the city, unless it is wholly encapsulated or encased within a more durable material, as exempted in Section 16.43. This specifically includes, but is not limited to, cups, plates, bowls, clamshells and other products intended primarily for food service use, as well as coolers, containers and, ice chests.

C. No person shall distribute or sell prepared food in any Disposable Food Service Ware made of EPS at city facilities. This subsection is limited to use of city facilities for which a person has entered into an agreement with the city to rent, lease or otherwise occupy a city facility. All facility rental agreements for any city facility shall include a provision requiring contracting parties to assume responsibility for preventing the utilization and/or distribution of disposable food service made of EPS while using city facilities. The facility rental agreement shall indicate that a violating contractor’s security deposit will be forfeited if the city manager or his/her designee determines that Disposable Food Service Ware made of EPS was used in violation of the rental agreement.

D. No person shall use or distribute Disposable Food Service Ware made of EPS at city-sponsored events, city-managed concessions or city meetings. This subsection shall apply to the function organizers, agents of the organizers, city contractors, food providers and any other person that enters into an agreement with one or more of the function sponsors to sell or distribute prepared food or otherwise provide a service related to the function.
E. The city, its departments, and its city contractors, agents, and employees acting in their official capacity, shall not purchase or acquire Disposable Food Service Ware made of EPS, or distribute it for public use.

F. All food providers required by this code to have a business license shall certify compliance with this chapter on the annual business license renewal application.

16.43 Exceptions

A. Food items which are packaged outside the boundaries of the city, provided that such food is not altered, packaged or repackaged within the city limits, are exempt from the provisions of this chapter.

B. The city manager or his/her designee may exempt any person from Section 16.42 following the operative date of this ordinance, as follows:

i. A request for an exemption shall be filed in writing with the city manager or his/her designee and shall include documentation of the reason for the requested exemption and any other information necessary for the city to make its decision. The city may require the applicant to provide additional information as necessary to make the required determinations. The city manager or his/her designee may approve an exemption request for a maximum of one (1) year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include, but not be limited to, situations where there are no reasonable alternatives to disposable food service ware made of EPS for reasons that are unique to the applicant.

ii. The city manager's written decision on the exemption is effective within 10 days of the decision. Decisions of the city manager may be appealed by the person applying for the exemption to the city council. Appeals shall be filed in writing with the city clerk within 10 days of the decision and shall be accompanied by a fee set by resolution of the city council. Notice of hearing shall be given to the applicant at least 10 days prior to the hearing. The city council shall make its decision within 60 days of receiving the appeal.

C. Food packaging required to be purchased under a contract entered into one year prior to the effective date of this Chapter is exempt from the provisions of this Chapter. This exemption will apply up to one (1) year from the effective date of this Chapter.
D. Food brought by individuals for personal consumption to city facilities, including but not limited to city parks, and centers, provided that the city facility is being used for individual recreation or similar purposes and such facility use is not part of a larger organized event that is otherwise governed by Section 16.42 (B-E).

E. EPS coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

G. The city manager or his/her designee may also determine to exempt from the requirements of this Chapter the procurement of supplies or services in the event of a proclaimed emergency or when otherwise deemed necessary by the city manager for the immediate preservation of the public health, safety, or general welfare.

16.44 Enforcement

A. The city manager or his/her designee shall have primary responsibility for enforcement of this Chapter. The city manager or his/her designee is authorized to establish regulations and administrative procedures and to take any and all other actions reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any food provider's premises to verify compliance in accordance with applicable law.

B. Any person violating or failing to comply with any of the requirements of this Chapter or of any regulation or administrative procedure authorized by it shall be guilty of an infraction.

C. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter and any regulation or administrative procedure authorized by it. The city may also enforce this ordinance through the administrative citation procedure set forth in Chapter 1A.

D. The remedies and penalties provided in this section and in Chapter 1A are cumulative and not exclusive of one another.

16.45 Violations

Violations of this Chapter shall be punishable as follows:

A. For the first violation, the city manager or his/her designee, upon determination that a violation of this chapter has occurred, shall issue a written warning notice to the person or food provider which will specify the violation and the appropriate penalties in the event of future violations.

B. Thereafter, the following schedule shall apply:
a. A fine not exceeding one hundred dollars ($100.00) for the first violation following the issuance of a warning notice;

b. A fine not exceeding two hundred dollars ($200.00) for the second violation following the issuance of a warning notice.

c. A fine not exceeding five hundred dollars ($500.00) for the third and any subsequent violation that occurs following the issuance of a warning notice. Any violation of this Chapter shall constitute sufficient grounds for the revocation, suspension, denial or non-renewal of a business license issued by the city, held by the violator for the location at which the violation occurs.

16.46 Effective Date

A. No food provider shall distribute or utilize disposable food service containers containing expanded polystyrene on or after one year following the November 16, 2016 date of adoption of this ordinance by the city council.

B. No city facilities, city-managed concessions, city-sponsored events or city-permitted events shall distribute or utilize disposable food service containers containing expanded polystyrene on or after the effective date of this ordinance.

16.47 No Conflict with Federal and State Law

A. Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

B. If any sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this ordinance. The city council hereby declares that it would have adopted this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 2. CEQA. This ordinance is not a “project” for purposes of the California Environmental Quality Act (CEQA), as that term is defined in CEQA Guidelines Section 15378. Because it is not a “project,” this ordinance is not subject to CEQA’s requirements. Further, even if this ordinance is deemed a “project” and therefore subject to CEQA, the Ordinance is exempt for the following reasons: 1) under CEQA Guidelines Section 15061(b)(3), it is not a project which has the potential for causing a significant effect on the environment, and 2) under CEQA Guidelines Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration, enhancement or protection of the environment.
SECTION 3. EFFECTIVE DATE. This ordinance shall take effect thirty days after its passage and adoption pursuant to California Government Code Section 36937.

SECTION 4. This ordinance shall take effect thirty (30) days after its final passage and within fifteen (15) days after its passage, the City Clerk of the City of South Pasadena shall certify to the passage and adoption of this ordinance and to its approval by the Mayor and City Council and shall cause the same to be published in a newspaper in the manner required by law.

PASSED, APPROVED, AND ADOPTED this ___ day of _______, 2016.

Diana Mahmud, Mayor

ATTEST:           APPROVED AS TO FORM:

Evelyn G. Zneimer, City Clerk       Teresa L. Highsmith, City Attorney
       (seal)                                 

Date:__________________________

I HEREBY CERTIFY the foregoing ordinance was duly adopted by the City Council of the City of South Pasadena, California, at a regular meeting held on the ___ day of _______, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

Evelyn G. Zneimer, City Clerk
            (seal)
ATTACHMENT 2
November 2, 2016 Agenda Report (w/o Attachments)
COUNCIL AGENDA: November 2, 2016

TO: Honorable Mayor and City Council

VIA: Sergio Gonzalez, City Manager

FROM: Lucy Demirjian, Assistant to the City Manager
      Jennifer Shimmin, Senior Management Analyst

SUBJECT: First Reading and Introduction of an Ordinance, Amending Chapter 16 (Garbage and Waste) of the South Pasadena Municipal Code Creating a new Article IV (Expanded Polystyrene Disposable Food Service Ware Ban) to Prohibit the Use of Expanded Polystyrene Disposable Food Service Ware Within South Pasadena

Recommendation
It is recommended that the City Council read by title only for first reading, waiving further reading, and introduce an ordinance to amend Chapter 16 of the South Pasadena Municipal Code (SPMC) by creating a new Article IV to prohibit the use of expanded polystyrene disposable food service ware within the City of South Pasadena.

Fiscal Impact
If the proposed ordinance is adopted there will be costs associated with educational outreach and possible enforcement actions by City staff. Implementation of the ordinance will likely reduce litter and storm water impacts providing a positive fiscal impact on cleanup efforts by the Public Works Department.

Commission Review and Recommendation
The Natural Resources and Environmental Commission (NREC) was presented with draft ordinance language at its September 27, 2016 meeting. They made minor, non-substantial changes and unanimously approved the ban on expanded polystyrene food service ware.

Background
The purpose of this ordinance is to protect the natural environment from non-biodegradable litter, reduce solid waste and promote public health. Most expanded polystyrene (EPS) food packaging products consist of disposable food and beverage take-out containers. EPS food packaging products make up a majority of visible wastes littering public places and natural environments, and are known to persist in the environment for many years before breaking down into non-biodegradable components, posing potential environmental and public health risks.

Polystyrene manufacturing is the fifth largest creator of hazardous waste in the United States (Environmental Protection Agency) and compromises 15% of the litter collected in storm drains.
Prohibition on the Use of Expanded Polystyrene Disposable Food Service Ware
November 2, 2016
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(State of California). Its environmental impacts were second highest, behind aluminum, in the cycle of product manufacturing, use and disposal of the products, the energy consumption, greenhouse gas effect, and total environmental effect (California Integrated Waste Management Board).

Although the technology exists to recycle EPS, very little is actually recycled due to economic and logistical constraints. In 2002, the polystyrene industry reported that of the 869 million pounds of EPS produced in the U.S. only 26.2 million pounds of post-consumer EPS packaging (3% of the total) was recycled.

The relationship between EPS disposable food service ware and beach litter/marine debris is a main reason cited by communities that have recently banned or restricted the use of EPS food packaging in their jurisdictions. Since EPS material is so light, it floats in water and is easily carried by the wind, even when disposed of properly. It also readily breaks down into small pieces (although it cannot ultimately biodegrade). Marine biologists have concluded that degraded EPS in the marine environment mimics certain natural food sources and therefore increases the chance of ingestion by wildlife. Recent studies have found plastics to be in the digestive systems of nearly all tested ocean-feeding bird species. Ingestion of EPS by birds and marine animals often results in reduced appetite, reduced nutrient absorption and possible death by starvation.

Alternatives to EPS Food Packaging
There are several alternatives to EPS currently available for food packaging. These include paper, aluminum, rigid plastic, and bio-products manufactured from corn starch, sugar cane, or a combination of bamboo, tapioca, and water. Cost and availability of these products differ based on the type of material and the type of product; however, the more commonly used container types are readily available from existing food packaging suppliers.

When considering only purchase costs, EPS is currently the least expensive food packaging available followed by paper products and then other types of rigid plastic containers. The price of biodegradable and compostable food packaging now on the market can be comparable to the cost of paper and non-EPS plastic for some types of containers and can be significantly more expensive for others.

Outreach Efforts
In a joint outreach effort with the South Pasadena Chamber of Commerce (Chamber), two informational meetings were held to discuss the ordinance with food service providers in July. Most attendees had concerns with a ban on products made from oriented polystyrene, however, there was mainly positive feedback regarding a ban on only expanded polystyrene food service ware.

After researching alternative product availability and cost, staff determined that it is only feasible to prohibit the use of expanded polystyrene products. The Chamber has also expressed its support of the proposed ordinance. The NREC has requested that staff monitor the issue on an ongoing
basis to determine if the City should consider expanding the types of prohibited food service ware in the future.

At the time of writing of this report, staff has scheduled a meeting for October 28, 2016, with the California Restaurant Association and a few businesses located in the City to hear any concerns with the proposed ordinance. Any input received will be provided to City Council during staff’s oral report at the City Council meeting.

Analysis

The ordinance prohibits food providers from dispensing prepared food in disposable food service ware made from expanded polystyrene within the City of South Pasadena. The requirements of the ordinance will come into effect one year after City Council adoption for all food providers. City Co-sponsored event will also be required to comply with the requirements, effective one year after adoption of the ordinance. City administration has for the past few years prohibited the purchasing of EPS products for City facilities, City managed concessions, and City sponsored events.

Disposable food service ware is 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, cups, bowls, 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 person or place that provides or sells prepared food within the City of South Pasadena to the general public to be consumed on the premises or for take-away consumption. Food provider includes but is not limited to:

(1) a grocery store, supermarket, restaurant, drive-thru, cafe, coffee shop, snack shop, public food market, farmers' market, convenience store, or similar fixed place where prepared food is available for sale on the premises or for take-away consumption, and
(2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food provider also includes:
(3) any organization, group or individual that regularly provides prepared food to its members or the general public as a part of its activities or services.

The ordinance also applies to all City facilities, City managed concessions, City sponsored and co-sponsored events, and City permitted events.

Exemption

The ordinance allows for a one-year renewable hardship exemption if it can be demonstrated that compliance with the ordinance would cause undue hardship to a food provider. The exemption shall be filed in writing with the City Manager or his/her designee, and shall include documentation of the reason for the requested exemption and any other information necessary for the City to make its decision. Undue hardship shall include, but not be limited to, situations where there are no reasonable alternatives to disposable food service ware made of EPS for
reasons that are unique to the applicant.

**Enforcement**

The City Manager or his/her designee is authorized to establish regulations and administrative procedures and to take any and all other actions reasonable and necessary to obtain compliance, including, but not limited to, inspecting any food provider's premises to verify compliance in accordance with applicable law. It is anticipated that enforcement will be primarily conducted on a complaint basis and will be responded to by City staff as soon as reasonably possible. For those in violation of the ordinance, the City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter and any regulation or administrative procedure authorized by it. The City may also enforce this ordinance through the administrative citation procedure set forth in Chapter 1A of the SPMC.

**Outreach**

Environmental Programs staff will conduct workshops and other outreach activities to provide information and assistance to food providers in identifying alternatives to expanded polystyrene disposable food ware and locating suppliers of alternative products. The Chamber has been helpful in current outreach efforts and will continue to assist in providing outreach to South Pasadena businesses.

**Policy Development Schedule**

- November 2, 2016 – First reading of ordinance
- November 16, 2016 - City Council adoption of Ordinance with second reading
- January 2017 – Outreach efforts begin
- January 2018 - Food Vendors, Food Providers, Food Service Establishments, Restaurants, and Retail Stores must be in compliance with ordinance

**Environmental Review (CEQA)**

This ordinance will preserve and enhance the environment within the City of South Pasadena and is exempt from the requirements of the California Environmental Quality Act (CEQA), as amended, pursuant to Guideline 15061(b)(3) and Guideline 15308, of the CEQA Guidelines.

**Legal Review**

The City Attorney has reviewed this item.

**Public Notification of Agenda Item**

The public was made aware that this item was to be considered this evening by virtue of its inclusion on the legally publicly noticed agenda, posting of the same agenda and reports on the City's website and/or notice in the *South Pasadena Review* and/or the *Pasadena Star-News*.

Attachment:  Ordinance Adding a New Article IV (Expanded Polystyrene Disposable Food Service Ware Ban) to Chapter 16 (Garbage And Waste)