



STAFF REPORT
CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ANDY HALL, CITY MANAGER
MEETING DATE: JANUARY 17, 2018
ORIGINATING DEPT.: CITY MANAGER'S OFFICE
SUBJECT: SECOND READING OF ORDINANCE NO. 2017-1171, KNOWN AS THE IMPERIAL BEACH MARINE AND BEACH PROTECTION ORDINANCE, REGULATING THE USE OF EXPANDED POLYSTYRENE AND NON-RECYCLABLE PLASTIC DISPOSABLE CONTAINERS AND PACKAGING

EXECUTIVE SUMMARY:

On December 6, 2017, the City Council introduced Ordinance Number 2017-1171 known as the Imperial Beach Marine and Beach Protection Ordinance that will be added to Chapter 16.16 of the Imperial Beach Municipal Code and prohibit any person, business or other establishment from dispensing prepared foods in a disposable container made from either expanded polystyrene ("EPS") or any other non-recyclable plastic container, and from using loose fill packing material made from EPS commonly known as packing "peanuts." The Ordinance has been placed on the agenda of the City Council for a second reading prior to adoption.

FISCAL ANALYSIS:

To the extent that the City purchases disposable food service containers made from expanded polystyrene or non-recyclable plastic on which to serve at City facilities, City-managed concessions, City-sponsored events, or City permitted events, the City would be prohibited from doing so and may incur additional costs for replacement products. In addition, the City may sustain additional costs to implement and enforce the Ordinance, which costs may be offset, in whole or in part, by any administrative fees collected.

RECOMMENDATION:

Staff recommends adoption of Ordinance No. 2017-1171, known as the Imperial Beach Marine and Beach Protection Ordinance, regulating the use of expanded polystyrene and non-recyclable plastic disposable food service containers by food providers and packaging by title only and waive further reading of the Ordinance. Often, second readings of Ordinances are placed on the consent agenda, but the City Council asked staff to place this item on the regular agenda given the importance of the subject matter and need for as much public education as possible, this item has been placed on the reports section of the City Council agenda.

OPTIONS:

- Conduct Second Reading and Adopt Ordinance 2017-1171 and establish 30 days after publication as the effective date.

- Continue the item and provide further direction to the City Manager.
- Deny the recommendation of staff and reject the proposed Ordinance.

BACKGROUND:

Consistent with the City's ongoing efforts to be stewards of the environment and improve the community through the reduction of products that are harmful to the environment, staff has prepared an Ordinance that would regulate the use of expanded polystyrene (ESP) materials in the City. The proposed regulations are similar to those adopted in other communities in the state which have been implemented with the support of environmental protection organizations and the general public.

In Imperial Beach, it is critical that these regulations be implemented in a manner that protects the environment, but with a balance that allows local businesses to adjust to the change without unnecessary financial impacts. Therefore, as proposed, the Ordinance will not be effective until 6 months after the adoption of the Ordinance by the City Council, and the Ordinance provides for hardship relief to be granted by the City Manager when appropriate.

Polystyrene is a plastic product that can be solid or blown into foam. As explained in the U.S. Department of Health and Human Services' 13th Report on Carcinogens (October 2, 2014):

Polystyrene is used extensively in the manufacture of plastic packaging, thermal insulation in building construction and refrigeration equipment, and disposable cups and containers. Styrene polymers and copolymers are also increasingly used to produce various housewares, food containers, toys, electrical devices, automobile body parts, corrosion-resistant tanks and pipes, various construction items, carpet backings, house paints, computer printer cartridges, insulation products, wood-floor waxes and polishes, adhesives, putties, personal-care products, and other items, and they are used in paper processing.

Common uses for polystyrene include protective packaging (such as packing peanuts and CD and DVD cases), food containers (such as "clamshells"), lids, bottles, trays, tumblers, and disposable cutlery. Polystyrene is most frequently used by the food service industry as an easy means to package food for consumption. The material is lightweight and is able to act as insulation for hot or cold foods, packaging, construction and the use of disposable food cups and containers, among other uses.

Plastics, due to their nature and use, "do not biodegrade or dissolve into organic matter that can reenter the life cycle. Instead, plastic photodegrades, which means that it breaks up into smaller pieces when exposed to sunlight, and these smaller pieces persist in the marine environment for hundreds of years." PELAGIC PLASTIC, Paper Prepared For AB 259 (Krekorian), AB 820 (Karnette), & AB 904 (Feuer), Algalita Marine Research Foundation (AMRF), Apr. 9, 2007.

The plastic breaks up into smaller and smaller pieces that can then enter the food chain by animals believing the pieces are food. Plastics also leech chemicals wherever they end up, including into soils and into the water. Approximately 80% of all refuse that ends up in the oceans comes from the land.

Polystyrene is particularly harmful to the environment because it is frequently single-use. Moreover, the U.S. Department of Health and Human Services' 13th Report on Carcinogens concludes that styrene "is *reasonably anticipated to be a human carcinogen.*" Californians Against Waste estimates that 377,579 tons of expanded polystyrene are produced in California and that

154,808 tons of that type of polystyrene are made specifically for food service packaging that ends up in landfills. Staff is unaware of any facility in the State of California that recycles polystyrene.

San Diego County is no different than elsewhere in the nation. Refuse found and collected along our coasts is primarily comprised of plastics. San Diego Coastkeeper reports that in 2014:

46% of debris collected was plastic.

The percent plastic found in the total items collected this year stayed roughly the same this year as last. This count however, does not include cigarette butts, which contain a plastic foam filter. Including cigarette butts, that percentage jumps 81 percent. Plastics are particularly damaging to the marine environment, as they do not biodegrade, and are easily ingested by wildlife. Many of the plastics collected were pieces less than one inch in diameter, and much of it was non-recyclable expanded polystyrene foam..."

The California Coastal Commission developed "A Plan of Action from The Plastic Debris Project" in 2006, which was funded by the State Water Resources Control Board, and includes recommendations to regulate polystyrene. Additionally, staff compared ordinances regulating the use of polystyrene in local cities such as Solana Beach, the first in San Diego County to adopt regulations and over 80 other jurisdictions in the State which have some form of polystyrene regulation.

In consideration of these findings, staff has prepared Ordinance No. 2017-1171 known as the Imperial Beach Marine and Beach Protection Ordinance which is attached for introduction and consideration by the City Council. The proposed Ordinance would regulate polystyrene use and other non-recyclable plastics used in the food industry for one-time use and is modeled after the approach of other cities' ordinances with an exemption for food packaged outside the City's boundaries and including a restriction on the use of polystyrene packing "peanuts" for items packaged in the City.

The proposed Ordinance would prohibit any person, business or other establishment from dispensing prepared foods in a disposable container made from either EPS or any other non-recyclable plastic container. The Ordinance would go into effect 6 months from adoption of the Ordinance. Additionally, businesses would have another 6 months to comply if they had an existing contract for purchase of the prohibited plastic containers at the time of the adoption of the ordinance in order to allow the vendors to use up their existing supplies.

In addition to food establishments, businesses within the City would be prohibited from using any form of loose fill packing material made from EPS commonly known as packing "peanuts." This regulation would apply to any items packaged within the City and would have no effect on items packaged elsewhere and shipped to residents or businesses in the City. Finally, the proposed ordinance would also apply to any City facilities, City-managed concessions, City-sponsored events or City-permitted events 30 days after adoption so that no prepared foods may be dispensed in a disposable container made from EPS or other non-recyclable plastic.

Food and items packaged or prepared outside the City boundaries would be exempt from these regulations.

It should also be noted that businesses may request a waiver from the City Manager if they can demonstrate an undue hardship in complying with the Ordinance. The exemptions may be renewed annually based on an ongoing hardship.

The City will enforce the regulations through administrative citations, civil penalties, injunctive relief, or criminal prosecution.

Staff requests that the Council receive this report, consider any public comment on the proposed Ordinance, and introduce Ordinance 2017-1171 for adoption at the next regularly scheduled Council meeting.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

Attachments:

1. Ordinance 2017-1171

ORDINANCE NO. 2017-1171

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, KNOWN AS THE IMPERIAL BEACH MARINE AND BEACH PROTECTION ORDINANCE, REGULATING THE USE OF EXPANDED POLYSTYRENE AND NON-RECYCLABLE PLASTIC DISPOSABLE FOOD SERVICE CONTAINERS BY FOOD PROVIDERS, AND EXPANDED POLYSTYRENE PACKAGING

WHEREAS, the City has engaged in ongoing efforts to reduce or limit products that are harmful to the environment; and

WHEREAS, plastic products photodegrade, meaning they break up into smaller pieces when exposed to sunlight, and these smaller pieces persist in the marine environment for hundreds of years and can enter the food chain by animals believing the pieces are food. Additionally, plastics also leech chemicals as they degrade into soils and water; and

WHEREAS, polystyrene is particularly harmful to the environment because it is frequently used for single-use purposes and Californians Against Waste estimates that 377,579 tons of expanded polystyrene are produced in California and that 154,808 tons of that type of polystyrene are made specifically for food service packaging and these products are often immediately disposed of after a single use or dispersed into the environment by being blown by the wind or falling out of trash receptacles; and

WHEREAS, approximately 80% of all refuse that ends up in the oceans comes from the land; and

WHEREAS, San Diego Coastkeeper reports that in 2014, 46% of debris collected on the coastline of San Diego County was plastic based and many of the plastics collected were pieces less than one inch in diameter, and much of it was non-recyclable expanded polystyrene foam; and

WHEREAS, the U.S. Department of Health and Human Services' 13th Report on Carcinogens concludes that styrene "is reasonably anticipated to be a human carcinogen"; and

WHEREAS, many local environmental groups support the efforts of local government to limit or ban the use of polystyrene in their jurisdictions and because the City of Imperial Beach is a coastal community, the City has the opportunity to reduce the amount of plastics that end up in the ocean; and

WHEREAS, the California Coastal Commission has developed "A Plan of Action from The Plastic Debris Project" in 2006, which was funded by the State Water Resources Control Board, that includes recommendations for local government to impose limits, bans, and prohibitions on materials that more commonly become litter and marine debris, including polystyrene; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH DOES ORDAIN AS FOLLOWS:

Section 1. The above recitals are true and correct and incorporated herein as though set forth in full.

Section 2. Chapter 16.16 of the Imperial Beach Municipal Code is hereby added to read as follows:

16.16.010. Definitions.

A. "Biodegradable" refers to the ability of a material to decompose into elements normally found in nature within a reasonably short period of time after disposal.

B. "City Facilities" refers to buildings and structures owned or leased by the City of Imperial Beach.

C. "City-Sponsored Event" means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.

D. "Disposable Food Service Container" 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.

E. "Expanded Polystyrene" (EPS) means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam.

F. "Food Provider" means any person or establishment that provides or sells Prepared Food within the City 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, delicatessen, restaurant, drive-thru, cafe, cafeteria, 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 the general public as a part of its activities or services.

G. "Non-Recyclable Plastic" refers to any plastic that cannot be feasibly recycled by a municipal recycling program in the State of California, including Polystyrene and Expanded Polystyrene.

H. "Polystyrene" means and includes Expanded Polystyrene that 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, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes clear or solid polystyrene that is known as "oriented polystyrene."

I. "Prepared Food" means any food or beverage that is (1) ready to consume without any further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a Food Provider using any cooking, packaging or food preparation technique. Prepared Food may be eaten either on or off the Food Provider's premises. For purposes of this ordinance, Prepared Food does not include: (1) any raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food preparation, or (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers' markets and other food vendors.

J. "Recyclable Plastic" means any plastic that can be feasibly recycled by a municipal recycling program in the State of California.

K. "Restaurant" means any person or establishment doing business within the City of Imperial Beach that provides prepared food or beverages for consumption on or off its premises such as a restaurant, cafe, bakery, grocery or convenience store food counter or delicatessen, or catering truck vehicle.

16.16.020. Prohibition on the Use of Non-Recyclable Plastic Disposable Food Service Containers.

A. Except as provided in Section 16.16.030, Food Providers are prohibited from dispensing Prepared Food to customers in Disposable Food Service Containers made from Expanded Polystyrene.

B. Except as provided in Section 16.16.030, Food Providers are prohibited from dispensing Prepared Food to customers in Disposable Food Service Containers made from Non-Recyclable Plastic.

C. All City Facilities, City-managed concessions, City-Sponsored events, and City permitted events are prohibited from using Disposable Food Service Containers made from Expanded Polystyrene or Non-Recyclable Plastic.

16.16.025 Prohibition on Expanded Polystyrene Packaging Materials.

No business or vendor in the City of Imperial Beach shall use Expanded Polystyrene loose-fill packaging and cushioning material, such as foam peanuts, packing peanuts, foam popcorn or packing noodles, in the packaging of products, equipment or other items.

16.16.030 Exemptions.

A. Automatic Exemptions. The following uses are exempt from the provisions of this chapter:

1. Prepared Foods prepared or packaged outside the City of Imperial Beach. Purveyors of food prepared or packaged outside the City of Imperial Beach are encouraged to follow the provisions of this section.

2. Products, equipment, or other items prepared or packaged outside the City of Imperial Beach.

B. Undue Hardship. The City Manager or his/her designee may exempt a Food Provider from the requirements of this ordinance for a one year period, upon showing by the Food Provider that the conditions of this ordinance would cause undue hardship.

1. An "undue hardship" shall be found in:
 - a. Situations unique to the Food Provider where there are no reasonable alternatives to Expanded Polystyrene or Non-Recyclable Plastic Disposable Food Service Containers and compliance with this Chapter would cause significant economic hardship to that Food Provider;
 - b. Situations where no reasonably feasible available alternatives exist to a specific and necessary Expanded Polystyrene or Non-Recyclable Plastic Disposable Food Service Container.
2. A Food Provider granted an exemption by the City must reapply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.
3. An exemption application shall include all information necessary for the City to make its decision, including, but not limited to, documentation showing the factual support for the claimed exemption. The City Manager may require the applicant to provide additional information to permit the City Manager to determine facts regarding the exemption application.
4. The City Manager may approve the exemption application, in whole or in part, with or without conditions.
5. Exemption decisions are effective immediately and final and are not appealable.
6. The City Council may by resolution establish a fee for exemption applications. The application fee shall be an amount sufficient to cover the costs of processing the exemption application.

16.16.040. Enforcement and Remedies.

A. The City Manager, or his or her designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this chapter, including, but not limited to, inspecting any Food Provider's premises to verify compliance.

B. Any person violating this chapter shall be guilty of an infraction, which shall be punishable by a fine in accordance with Chapter 1.12 of the Imperial Beach Municipal Code, or

a misdemeanor, which shall be punishable by a fine not exceeding \$1,000, or by imprisonment in the county jail for a period not exceeding six months or by both such fine and imprisonment. In addition to criminal fines, any person violating this chapter shall also be subject to civil penalties or administrative fines or both under Chapters 1.12 and 1.22 of the Imperial Beach Municipal Code.

C. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

D. Administrative enforcement of this chapter shall proceed pursuant to Chapter 1.22 of the Imperial Beach Municipal Code.

E. Each violation of this chapter shall be considered a separate offense.

F. The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this chapter shall preclude any person from pursuing any other remedies provided by law.

G. Notwithstanding any other provision of this chapter, this chapter may be enforced through any remedy as provided for in this section upon its effective date.

16.16.050. Operative Dates.

A. Chapter 16.16 shall become operative as to all Food Providers, businesses and vendors six (6) months after adoption by the City Council.

B. Within thirty (30) days after its adoption, Chapter 16.16 shall become effective for the City such that no City facilities, City managed concessions, City-Sponsored events or City permitted events shall distribute or utilize disposable food service containers containing Expanded Polystyrene or Non-Recyclable Plastic.

Section 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment" and pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within fifteen (15) days following adoption indicating votes cast.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach, California, on the 6th day of December, 2017; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Imperial Beach, California, on the 17th day of January, 2018, by the following vote:

- AYES: Councilmembers –
- NOES: Councilmembers –
- ABSTAIN: Councilmembers –
- ABSENT: Councilmembers –

Serge Dedina, Mayor

ATTEST:

Jacqueline Kelly, City Clerk

APPROVED AS TO FORM:

Jennifer M. Lyon, City Attorney

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be an exact copy of Ordinance No. 2017-1171, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, KNOWN AS THE IMPERIAL BEACH MARINE AND BEACH PROTECTION ORDINANCE, REGULATING THE USE OF EXPANDED POLYSTYRENE AND NON-RECYCLABLE PLASTIC DISPOSABLE FOOD SERVICE CONTAINERS BY FOOD PROVIDERS, AND EXPANDED POLYSTYRENE PACKAGING."

JACQUELINE KELLY, CITY CLERK

DATE _____