



CITY COUNCIL REPORT

8A

DATE: MARCH 6, 2018

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: ERIC S. CASHER, CITY ATTORNEY

COPY: MICHELLE FITZER, CITY MANAGER

SUBJECT: INTRODUCTION AND FIRST READING OF AN ORDINANCE
ADDING CHAPTER 8.37 TO THE PINOLE MUNICIPAL CODE
PROHIBITING THE USE AND SALE OF POLYSTYRENE
PRODUCTS IN THE CITY OF PINOLE

RECOMMENDATION

It is recommended that the City Council introduce and conduct a first reading of an ordinance adding Chapter 8.37 to the Pinole Municipal Code to prohibit the use and sale of polystyrene products within the City of Pinole.

BACKGROUND

In May 2017, the City Council approved the second phase of the Municipal Code update project, and directed Staff to prepare an ordinance that would ban polystyrene in the City of Pinole.

Polystyrene, commonly known by the brand name of “Styrofoam”, is a material traditionally used in disposable cups, food containers, coolers, and packing materials. Polystyrene is not biodegradable, cannot be recycled, and breaks into small pieces easily. As a result, polystyrene is a major source of trash within the City, its storm drains and waterways, and the San Francisco Bay.

The City of Pinole has been directed to decrease the amount of trash entering the Bay through its stormwater system. Specifically, the California Regional Water Quality Control Board, San Francisco Bay Region’s Municipal Regional Stormwater NPDES Permit (the “MRP Permit”) required the City to achieve a seventy percent (70%) trash load reduction by July 1, 2017. The City of Pinole currently has an approximately twenty one percent (21%) trash load reduction, significantly below the seventy percent required by the State.

In order to increase the City’s trash load reduction, the City Council recently adopted a trash capture ordinance, requiring all commercial properties to install trash capture devices on storm drain inlets on their property. However, trash capture devices alone will not be sufficient to meet the City’s trash capture obligations.

A ban on the sale of polystyrene products in the City will assist the City in achieving its trash reduction goals, as well as help improve the environment in the City overall. Because polystyrene easily breaks into small pieces, a polystyrene container creates more trash in the City than a typical plastic or paper container does.

On January 18, 2018, the City held an interested persons meeting to discuss the proposed ban on the use and sale of polystyrene products. Notice of the meeting was sent to over 170 retail businesses in the City that could be impacted. There were no attendees at the noticed meeting. On February 6, 2018, the City Council directed the City Attorney to prepare an ordinance prohibiting the sale or use of polystyrene products. Finally, on February 12, 2018, the Municipal Code Update Subcommittee considered the framework and proposed text for a possible polystyrene ban and provided staff with guidance on the drafting of an ordinance.

DISCUSSION

Many cities throughout the State of California have adopted bans on the sale of polystyrene as a way to decrease trash and protect the environment. Within Contra Costa County alone, the cities of El Cerrito, Hercules, Martinez, Pittsburg, and Richmond all currently have ordinances prohibiting the sale of polystyrene.

The proposed ordinance exempts single use straws, drink lids and utensils from the prohibition on the sale or use of polystyrene products. This is consistent with most other jurisdictions with similar ordinances. One of the reasons for this exemption is that, in contrast to containers, there are not easily available alternatives for these products at a similar price point.

The proposed ban on the sale of polystyrene products would apply to all businesses in the City, including fast-food establishments, restaurants, and grocery stores. The ban would not apply to food or products packaged outside of the City. Similarly, the proposed ordinance would allow for the packing of raw or uncooked meat, fish or eggs in polystyrene-based products. This exception is nearly universal. San Francisco is the only jurisdiction that does not exempt packaging for raw meat, fish or eggs, and that eliminated was just eliminated in 2017.

The proposed ban would be effective six (6) months after the ordinance is adopted by the City Council, in order to provide businesses the opportunity to use and deplete existing supplies of polystyrene products.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines, this ordinance is categorically exempt from CEQA review because it is an action by a regulatory agency as authorized by State law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the

regulatory process involves procedures for protection of the environment, as set forth in CEQA Guidelines Sections 15061(b)(2),15307.

FISCAL IMPACT

None

ATTACHMENTS

Attachment A--Ordinance Adding Chapters 8.37

Attachment B -- PowerPoint

2929799.3

ORDINANCE NO. 2018-____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PINOLE
ADDING CHAPTER 8.37 OF THE PINOLE MUNICIPAL CODE PROHIBITING THE
USE AND SALE OF POLYSTYRENE-BASED FOOD WARE**

WHEREAS, the City’s federally mandated National Pollutant Discharge Elimination System (NPDES) permit, which is overseen by the California Regional Water Quality Control Board, San Francisco Bay Region, requires the City of Pinole to achieve a seventy percent (70%) trash load reduction by 2017 and one hundred percent (100%) trash load reduction by 2022; and

WHEREAS, products made from polystyrene, commonly known by the trademarked name of Styrofoam, are a major source of trash and litter in the City, its waterways and storm drains, and the San Francisco Bay; and

WHEREAS, polystyrene food service containers easily break into smaller pieces, creating trash and litter that is harder to collect and remove; and

WHEREAS, trash and litter from polystyrene products affects the City’s parks, streets, creeks, and waterfront’s beauty and recreation activities, impacting the quality of life for residents; and

WHEREAS, the use of polystyrene products by food services providers and the sale of polystyrene products in the City is detrimental to the public health and welfare; and

WHEREAS, there are many widely available alternatives to polystyrene products, such as products made from paper, corn waste, and recyclable plastic; and

WHEREAS, the City desires to prohibit the use and sale of polystyrene food service containers and coolers in the City of Pinole.

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

Section 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

Section 2. Municipal Code Amendment.

Chapter 8.37, “Polystyrene Products” is hereby added to the Municipal Code to read as follows

CHAPTER 8.37 POLYSTYRENE PRODUCTS

8.37.010 Definitions

8.37.020 Prohibited Uses

8.37.030 Exemptions

8.37.040 Enforcement

8.37.050 Grace Period

8.37.010 DEFINITIONS

“City” means the City of Pinole.

“City department” means any governmental subdivision of the City.

“City facility” means any building, structure, vehicle, land or park owned and operated by the City.

“City facility user” means any person, society, association, organization or special events promoter who requires a permit to use a City facility or a permit or contract to use a plaza, sidewalk, or roadway.

“City Manager” means the City Manager of the City of Pinole or City Manager’s designee.

“City-sponsored event” means any activity that is organized by the City, and any private activity whose organizers voluntarily request and receive from the City any endorsement, financial assistance, or similar recognition that is unrelated to any requirements for such an event under applicable law.

“Disposable food ware” means single-use, disposable products used for serving or transporting prepared food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, hinged or lidded containers, cups or drink ware, or any other container designed for one-time use for prepared foods. This definition does not include single-use straws, drink lids or utensils, nor does it include disposable packaging for unprepared foods.

“Establishment” means a place of business of a food provider or other person subject to the requirements of this Chapter.

“Food provider” means any establishment located within the City, or any establishment that sells or otherwise provides prepared food or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food market, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food. Food provider also includes any organization, group or other person that regularly provides prepared food to its members or the general public as a part of its activities or services.

“Person” means any person, business, corporation, or event organizer or promoter; public, nonprofit or private entity, agency or institution; or partnership, association or other organization or group, however organized.

“Polystyrene” means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or expanded polystyrene, (sometimes incorrectly called Styrofoam™, a Dow Chemical Co. trademarked form of expanded polystyrene foam insulation) 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), and clear or solid polystyrene (oriented polystyrene). The recycle code for polystyrene is “6” or “PS,” either alone or in combination with other letters.

This definition applies to all polystyrene-based food ware and other products, regardless of whether it exhibits a recycle code. Expanded polystyrene (EPS) is generally used to make such items as cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

“Polystyrene cooler” means any cooler or ice chest made of polystyrene foam, where such foam is not fully encased in another material by its original manufacturer.

“Polystyrene-based disposable food ware” means disposable food ware that contains or utilizes polystyrene.

“Prepared food” means any food or beverage ready to consume without any further food preparation, alteration or repackaging, other than heating. Prepared food does not include (1) uncooked or raw meat, fish, poultry, or eggs unless provided for consumption without further food preparation; or (2) prepackaged food that is delivered to the food provider wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food provider in the same container or packaging.

8.37.020 PROHIBITED USE OF POLYSTYRENE-BASED DISPOSABLE FOOD WARE AND COOLERS

- A. Food providers are prohibited from providing prepared food to customers in polystyrene-based disposable food ware.
- B. No person shall sell any polystyrene-based food ware or polystyrene cooler at any location within the City.
- C. City facility users are prohibited from using polystyrene-based disposable food ware.
- D. City departments shall not purchase or acquire polystyrene-based disposable food ware for use at City facilities or City-sponsored events.

8.37.030 EXEMPTIONS

- A. This Chapter shall not prohibit the use of polystyrene-based disposable food ware for food prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits.
- B. This Chapter shall not prohibit coolers and ice chests, other than those defined as polystyrene coolers in this chapter.
- C. The City Manager or his/her designee may temporarily suspend the provisions of this Chapter for the immediate preservation of the public health, safety, or welfare in the event of an emergency or disaster as determined in his or her sole discretion.

8.37.040 ENFORCEMENT

A. Any violation of this chapter that occurs after the date set forth in Section 8.37.050 shall be subject to administrative enforcement pursuant to Chapter 1.12.

B. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter.

8.37.050 GRACE PERIOD

The provisions of this Chapter are voluntary until October 1, 2018. The City will begin enforcement after such date without further notice.

Section 3. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Pinole hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4. California Environmental Quality Act (“CEQA”).

This ordinance is categorically exempt from CEQA review because it is an action by a regulatory agency as authorized by State law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. CEQA Guidelines Sections 15061(b)(2), 15307.

Section 5. Effective Date.

In accordance with California Government Code section 36937, this ordinance shall take effect and be in force on the thirty-first day after adoption.

Section 6. Publication.

Within fifteen days after the passage of this ordinance the City Clerk shall cause this ordinance or a summary thereof to be published or to be posted in at least three public places in the City of Pinole in accordance with the requirements of California Government Code section 36933.

PASSED AND ADOPTED on this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Timothy Banuelos, Mayor

ATTEST:

Rosa Acosta, City Clerk

APPROVED AS TO FORM:

Eric S. Casher, City Attorney

2921376.3

ATTACHMENT B



Municipal Code Amendment Polystyrene (“Styrofoam”) Ban

Eric S. Casher, City Attorney

Polystyrene

- Commonly known by the brand name Styrofoam
- Often breaks into small pieces that are difficult to collect and penetrate trash capture devices
- Polystyrene is a significant source of trash in the City, its storm drains and waterways, and the San Francisco Bay



Direction From Council

- On February 6th, the City Council directed Staff to prepare an ordinance that would ban polystyrene in the City of Pinole
- The Municipal Code Subcommittee reviewed the proposed ordinance and provided feedback to staff on specific text



Proposed Ordinance

The proposed ordinance would:

- Prohibit the sale of polystyrene food service products in the City; and
- Prohibit the use of polystyrene food service products by:
 - ✓ Food providers, including fast-food establishments, carry-out restaurants and grocery stores
 - ✓ Individuals using City facilities with a permit
 - ✓ City departments

Exemptions

- The prohibition does not apply to food or other products prepared or packaged outside of the City
 - Examples: instant soup containers and electronics packaging
- The prohibition will not be effective until October 1, 2018, providing time for businesses to deplete existing inventory

Raw Meat, Fish and Eggs

- The prohibition does not apply to packaging used for uncooked or raw meat, fish, poultry, or eggs
- This exemption was requested by the California Grocers Association and is extremely common



Questions and Discussion


