



## Council Agenda Report

From: Susan DeCarli, City Planner

Subject: City Council Review and Direction for Regulating Expanded Polystyrene “Styrofoam” Products

Date: June 19, 2018

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### Facts

1. On July 18, 2017, the City Council received a staff briefing on options for regulating the sale and use of Styrofoam products in the City. City Council directed staff to take no action.
2. On March 20, 2018, the City Council received a presentation by students from Paso Robles High School on issues related to expanded polystyrene (EPS). The Paso Robles Youth Council also participated at the meeting. The students provided a presentation on information on EPS, and the state of regulating EPS in the State and San Luis Obispo County. The students requested the City Council adopt an ordinance to ban use and sale of EPS products in the City.
3. The presentation reported that Morro Bay, Pismo Beach, Arroyo Grande, Grover Beach, and San Luis Obispo (see Attachment 1) have all banned use and sales of EPS products. Paso Robles and Atascadero are the only two cities in the County that do not have EPS regulations.
4. Some cities also provide for business exemptions for undue economic hardship because either alternatives are not available or they are not affordable, and/or exemptions for packaging of uncooked food (e.g., meat) and food prepared outside the City limits. Local thresholds for economic hardships in other communities have been established on a case-by-case basis.
5. During public comment on the item, other members of the public also urged the Council to consider adopting an ordinance to ban the use and sale of this type of product in the City of Paso Robles.
6. After the students’ presentation and public input, the City Council directed staff bring a discussion item on this topic back for further consideration.
7. There are several issues to consider regarding the use and sale of EPS, including potential environmental effects and economic impacts of regulation on businesses and consumers.
8. Currently, over 100 cities in California have an ordinance in effect which prohibits the use and/or sale of some or all EPS products. Key results in these cities include:
  - Prohibits food providers from using disposable food or drink containers made of EPS;
  - Requires food providers to use disposable food and drink containers that are recyclable, compostable, or biodegradable;
  - Prohibits the retail sale of products made of EPS if they are not wholly encapsulated or encased in a more durable material (e.g. cups, plates, bowls, coolers or packing peanuts);
  - Cities provided a time (between 30 days to 1 year) to phase in the effective date of their ordinance prohibiting use and sale of EPS, to allow businesses time to adjust their operations and/or inventory of EPS products.

9. EPS products used by local businesses include disposable restaurant “Styrofoam” food containers, raw meat trays in grocery stores, and packing “peanuts” and blocks used in shipping businesses. Consumers can purchase Styrofoam picnic wear, packing peanuts, and Styrofoam ice-chest coolers at local retail stores.
10. Most agencies that have enacted a ban on the use and/or sale of EPS products cite environmental effects, potential health risks, and an interest in reducing trash going to landfills.
11. EPS contains the toxic substances Styrene and Benzene, which are suspected carcinogens and neurotoxins that are hazardous to humans. Literature on the topic reports that EPS may pose health risks from hot food that interacts with the toxic chemicals and releases the chemicals into food which is then consumed.
12. EPS is made of non-renewable petroleum products. EPS is harmful to the environment because it is a durable material that is not biodegradable, and can take several decades to hundreds of years to deteriorate in the environment or landfill. Its foam structure allows it to break down easily into smaller pieces, making it more difficult and expensive to remove from the environment. Due to the lightweight nature, floatability, and prevalence of the material to be blown around, it travels easily through gutters and storm drains, eventually reaching streams, rivers, and the ocean. Studies indicate that polystyrene makes up 80-90 percent of floating marine debris. The material readily absorbs pollutants, concentrating contaminants in the environment.
13. EPS food containers, packing materials, and particles tend to become unsightly trash, littering streets, parks and other public spaces, which becomes a negative visual impact that reduces the overall quality of the community. Additionally, trash clean-up requires City services and increases the City’s costs for maintaining a clean, attractive community. Decreasing trash to be cleaned up on streets and other public spaces, as well as creeks and storm drains, could also benefit the City in terms of use of City staff resources. A reduction and/or ban on the use of EPS products would also reduce the amount of trash in the solid waste stream and prolong the life and capacity of the landfill.
14. According to the California Department of Transportation, (Caltrans), EPS comprises approximately 15 percent of storm drain litter. However, it is difficult to approximate the exact amount of EPS in stormdrains, waterways, and oceans due to the small size of the materials when they are broken down. It is estimated that EPS comprises 80 – 90 percent of all floating marine debris. EPS is difficult to recycle since it can only be recycled if it is clean/free from food debris, and there are no recycling centers that take EPS on the Central Coast.
15. As EPS particles move through the environment, fish and wildlife mistake them for food and ingest the plastic.
16. The City is also under a mandate by the State Water Board to comply with new statewide trash provisions that require the City to catch trash before it enters the City’s stormwater drainage system. This is part of the City’s statewide general permit (Phase II MS4 Permit). This regulation will require the City to install Full Capture Systems. This effort would dovetail with efforts to reduce EPS waste from entering the City’s waterways.
17. There are no polystyrene recycling facilities located on the Central Coast. Transportation of this material to an appropriate facility is cost-prohibitive.
18. The costs of non-EPS food containers and other products have been dropping, such that they tend to be competitive with the EPS-based materials that they would replace.

19. If the Council is interested in pursuing research and/or regulation of EPS, there are different options that could be considered on the timing of implementation, including phasing regulations in over time. This could allow businesses to use up their existing stock of materials and purchase new alternative supplies.
20. The Integrated Waste Management Authority (IWMA) considered a ban on polystyrene at their meeting on May 14, 2018. The IWMA voted (11-2) in support to consider an ordinance to ban polystyrene at their next meeting on September 12, 2018. An IWMA ordinance would apply throughout the County, including the City of Paso Robles. IWMA staff expects an ordinance to be in effect before the end of the year. The IWMA made specific recommendations regarding the ordinance including:
  - The IWMA ordinance should be drafted based on the 5 existing ordinances within the County. Businesses have adapted to these ordinances. Having similar ordinances throughout the County simplifies education and compliance issues for businesses with multiple locations.
  - Enforcement would be a shared responsibility. The initial outreach and education regarding the ordinance would primarily be the responsibility of the IWMA. In addition, any complaints regarding non-compliance with the ordinance by a restaurant or retail store, would be investigated by the IWMA. If after a visit by the IWMA, the restaurant or retail store continues to violate the ordinance, then enforcement would be turned over to the local jurisdiction.
  - No preemption of local ordinances. If the IWMA ordinance is similar to the local ordinances, there is no need to preempt the existing ordinances. Thus the IWMA ordinance would only apply to those jurisdictions that have not enacted a similar ordinance. However if requested by a local jurisdiction, the IWMA would take on the initial visit associated with non-compliance with an ordinance.
  - In addition to an ordinance, the IWMA would undertake a program to educate the public and businesses about polystyrene and the ordinance. After implementation, the IWMA would monitor the effectiveness of the ordinance.

### **Options**

1. Do nothing.
2. Defer consideration of a City ordinance and monitor the IWMA's EPS ordinance process, returning to Council if the IWMA chooses to not adopt an ordinance or chooses to adopt an ordinance that would be out of sync with what would be desired in Paso Robles.
3. Provide alternative direction to staff.

### **Analysis and Conclusions**

As noted above, the IWMA is considering adopting an ordinance that would go into effect County-wide, regulating both unincorporated and incorporated areas. This has several advantages, including uniformity County-wide (since many businesses have locations in different parts of the County, and many residents in one area work and shop in others).

It would seem prudent for the City to delay moving forward with a City ordinance banning polystyrene to see what develops at the County-wide level in September.

Existing City Policy Analysis. When considering new or modified regulations, it is appropriate to review existing City policies for consistency. A list of City policies that would be consistent with and support measures to regulate EPS products is provided below: None of the City's policies were found in conflict with regulating EPS products.

- **General Plan – Land Use Element**

**POLICY LU-2K:** Support environmental responsibility. Manage the natural landscape to preserve the natural beauty and rural identity of the community, which enhances ecological functions and maintains environmental and public health.

- **General Plan - Conservation Element**

**POLICY C-1D:** Solid Waste. Ensure that the City's landfill maintains sufficient capacity to serve the needs of the City through the year 2025.

**Action Item 2.** Reduce the amount of solid waste to be taken to the landfill by implementing the City's Source Reduction and Recycling Element.

- **Stormwater Management Guidance Document, Municipal Stormwater Permit, 2013-1208**

**E.11.h (b)** Identify all materials that could be discharged from each O&M activities, and which materials contain pollutants. (Metals, chlorides, hydrocarbons, sediment, green waste, herbicide dried paint, and trash.

- **Economic Strategy**

**Environmental Responsibility.** Communities should support and pursue economic development that maintains or improves, not harms, the environment and public health.

**Long-Term Investment.** Publicly supported economic development programs and investments should be evaluated on their long-term benefits and impacts on the whole community, not on short-term job or revenue increases.

**Integrated Approach.** Government, business, education and the community should work together to create a vibrant local economy, through a long-term investment strategy that encourages local enterprise, serves the needs of local residents, workers, and businesses, and protects the natural environment.

**Quality of Life; Quality of Place.** Maintain a safe, healthy and attractive physical environment.

- **Climate Action Plan**

Waste management can be achieved by reducing the amount of trash and other waste that is discarded; reusing containers, projects and building materials; and recycling as many materials as possible.

**Fiscal Impact**

No fiscal impacts have been identified if the City defers to the IWMA to prepare a countywide ordinance banning polystyrene products.

**Recommendation** (Option 3)

Defer consideration of a City ordinance at this time, and monitor the IWMA's EPS ordinance process, returning to Council if the IWMA chooses to not adopt an ordinance or chooses to adopt an ordinance that would be out of sync with what would be desired in Paso Robles.



# EXPANDED POLYSTYRENE REGULATION

On June 16, 2015, the City Council approved an ordinance to regulate the use and sale of expanded polystyrene (also called EPS or white plastic foam) food containers and products in the City. The ordinance will help to protect the City's natural environment and decrease the amount of waste sent to landfills. The ordinance will become effective January 1, 2016.

## REQUIREMENTS FOR AFFECTED BUSINESSES:

### ***For restaurants and food providers:***

The ordinance prohibits restaurants and food providers in the City from using EPS food and drink containers and requires that a recyclable, compostable or biodegradable product be used instead. Acceptable alternative products include uncoated paper, coated paper, cardboard, aluminum foil, compostable or "bio-products" and other non-foam, plastic containers with the "chasing arrow" symbol numbers 1-7.

### ***For grocery stores and other retailers:***

The ordinance prohibits the retail sale of any EPS product such as disposable foam coolers, cups, plates, bowls and packing peanuts except as exempted.

**EXEMPTIONS:** Exemptions are provided for certain products including:

- Foam trays for uncooked meats.
- Food prepared or packaged outside of the City.
- Packing materials which have been collected for reuse.
- Products that contain EPS, but are encased in a more durable material (e.g. rigid plastic covered foam coolers).

In addition, food providers have the ability to apply for a one time, one year exemption from the ordinance if alternative products are unaffordable or unavailable. Exemption forms for food providers will be available online on August 1, 2015. ***Exemption forms must be submitted by November 1, 2015.***

Please visit [www.slocity.org/eps](http://www.slocity.org/eps) or call 781-7194 for more information.



# FAQ

## ***What is Expanded Polystyrene (EPS)?***

Expanded Polystyrene is a white, plastic foam commonly used for disposable food and drink containers such as cups, plates and clamshell containers. EPS is also used to make disposable foam coolers and packing peanuts for shipping.

## ***Why is EPS now regulated?***

EPS products are commonly only used once and are not recyclable. When discarded, EPS can be blown from trash receptacles and disposal sites. EPS breaks easily into smaller pieces, does not biodegrade, and can be ingested by wildlife. EPS comprises 15% of the litter found in storm drains and is the second most common type of litter on California beaches. For more information, please read the report to the City Council online at [www.slocity.org/eps](http://www.slocity.org/eps).

## ***What makes food containers biodegradable, compostable or recyclable?***

**“Biodegradable”** means a product or package will completely break down and return to nature; decomposing into natural elements within a reasonably short period of time.

**“Compostable”** means a product or package will break down into, or become part of, usable compost (such as mulch) in an appropriate composting program or facility.

**“Recyclable”** means a product can be recycled as part of the City’s Recycling Program, including uncoated paper, coated paper, cardboard, aluminum foil and other non-foam, plastic containers with the “chasing arrow” symbol numbers 1–7.

## ***What are the alternatives to EPS?***

Alternative products include: uncoated paper, coated paper, cardboard, aluminum foil, compostable or “bio-products” and other non-foam, plastic containers with the “chasing arrow” symbol numbers 1–7. Please consult with your packaging supplier for the alternative that is right for your business.

## ***To whom does the ordinance apply?***

All businesses in the City of San Luis Obispo including: restaurants, bars & pubs, cafeterias, caterers & event organizers, convenience & liquor stores, delis & coffee shops, ice cream & yogurt shops, mobile food vendors, grocery & drug stores, or retail outlets. City-approved special events within the City of San Luis Obispo must also comply with the ordinance.

## ***What are the exemptions?***

An “undue hardship” exemption may be granted if alternatives are not readily available or because the alternatives are not affordable (more than 15% increase in cost). These exemptions apply to the first year of the ordinance only. Exemption forms will be available on this webpage on August 1, 2015. Exemption forms must be submitted by November 1, 2015. There are also standing exemptions for foam trays for uncooked meats, foods prepared or packaged outside the city, packing materials which have been collected for reuse and products that contain EPS, but are encased in a more durable material (e.g. rigid plastic covered foam coolers).

## ***When will the ordinance take effect?***

**January 1, 2016.** Warnings will be given through July 1, 2016 and citations may be issued thereafter.

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