



PUBLIC WORKS DEPARTMENT

CITY HALL

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CITY COUNCIL STAFF REPORT

Meeting: January 21, 2014

Subject

Adoption of the Initial Study and Negative Declaration conducted by the City of San José for the regional model Polystyrene Foam Food Service Ware Ordinance and consideration of an Expanded Polystyrene (EPS) Foam Food Service Ware Ordinance.

Recommended Action

- Adopt a Resolution Adopting the California Environmental Quality Act (CEQA) Negative Declaration.
- Approve an ordinance adding Chapter 9.15 to the Municipal Code, regulating the distribution of Expanded Polystyrene (EPS) Foam Food Service Ware.

Discussion

EPS foam food containers are a significant source of litter and water pollution in local communities. Small pieces of EPS foam break up easily in the environment and can pose a threat to wildlife when ingested. Clean-up of this type of litter is time-consuming, difficult and carries significant costs in staff time.

EPS foam food ware has been shown to leach potentially carcinogenic chemicals into food and drinks when heated, or when coming into contact with fatty or acidic foods. Using non-EPS alternative products for prepared foods prevents this risk. Many communities in the San Francisco Bay region are now prohibiting the distribution of EPS foam food service ware by food vendors to address environmental and public health issues. Some neighboring agencies that have adopted or are considering EPS food ware ordinances include the municipalities of Campbell, Los Gatos, Mountain View, Los Altos, Menlo Park, Morgan Hill, Palo Alto, San José, Santa Clara, Sunnyvale and the County of Santa Clara.

Removing EPS foam food ware from the City's waste stream will not only reduce harmful litter entering local waterways, it will improve the potential for composting and recycling—ultimately diverting trash from landfills. EPS foam products are not biodegradable. Once soiled with food, foam products are challenging to recycle and are not accepted at most recycling facilities in Santa Clara County. Customers often throw food waste and containers away together. Using paper-based packaging would support the City's composting program by allowing food and packaging to be put into yard waste or organics bins together for composting. Other acceptable disposable food service ware includes compostable paper-based, cardboard, or plant fiber products, and recyclable plastic products. All types of plastic are recyclable in the City's recycling program—even used food ware.

Cupertino's proposed ordinance prohibits food vendors, including restaurants, delis, cafes, markets, food trucks, cafeterias, etc. from distributing prepared food in EPS foam containers. The ordinance would not restrict the use of EPS foam for prepackaged food (such as egg cartons), pre-packaged uncooked food (such as meat trays), ice chests, or packaged food service ware sold by retailers for non-commercial use.

Cupertino participated in the City of San José's countywide environmental (CEQA) review for a model EPS foam food service ware ban. The Initial Study resulted in a Negative Declaration, finding that the model ordinance would have no significant effect on the region's environment. San José adopted the Negative Declaration on August 27, 2013. As a participant, the City of Cupertino may use this Initial Study in adopting its own foam food ware ordinance, and does not have to undergo a separate CEQA process. However, if the proposed ordinance is modified, it may trigger the need for further CEQA review.

Public outreach conducted to date includes staff communicating with food businesses during site visits to promote GreenBiz and educational outreach and support on waste reduction, stormwater pollution prevention, and litter prevention. To engage Cupertino's business community directly, staff wrote an article for the Chamber's newsletter and met with Chamber representatives to address questions and concerns.

Sustainability Impact

Adoption and implementation of the ordinance is expected to reduce harmful litter, improve water quality, reduce negative impacts to aquatic life, reduce waste, support the City's free residential compost give-back program, conserve natural resources, and reduce greenhouse gas emissions.

Fiscal Impact

No initial costs are required to adopt the ordinance. Since the impact would be limited to prepared food retail businesses, the City's support and educational outreach would consist of site visits to the City's prepared food establishments and enforcement on a complaint basis. Staff is equipped to provide these services at no additional cost.

Prepared by: Cheri Donnelly, Environmental Programs Manager

Reviewed by: Timm Borden, Director of Public Works

Approved for Submission by: David Brandt, City Manager

Attachments:

A- Draft Resolution

B- Draft Ordinance Adding Chapter 9.15 to the Cupertino Municipal Code

C- CEQA Initial Study and Negative Declaration for Countywide Polystyrene Foam Disposable Food Ware Ordinances